

# FairTest

National Center for Fair & Open Testing

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## The New Federal Education Law:

### A Basis for a Stronger Testing Resistance and Assessment Reform Movement

The U.S. Congress has replaced No Child Left Behind (NCLB) with a comprehensive overhaul of the federal Elementary and Secondary Education Act, called the [“Every Student Succeeds Act”](#) (ESSA). The re-write ends most of the punitive NCLB mandates and the requirements of NCLB waivers granted by the U.S. Department of Education (DOE).

ESSA, though flawed in numerous serious ways, improves on current federal testing policy, particularly for accountability. The unrealistic “Adequate Yearly Progress” annual test score gain requirement is gone, as are all the specific punitive sanctions imposed on schools and teachers. States will be free to end much of the damage to educational quality and equity they built into their systems to comply with NCLB and waivers. Waivers to NCLB will end as of August 1, 2016. (Other provisions of the bill take effect over the summer and fall.)

Another modest win is federal recognition of the right for parents to opt their children out of tests in states that allow it. While a 95% test-participation provision remains, states will decide what happens to schools that do meet the threshold. The feds had [already backed down](#) from enforcing this dictate.

Unfortunately, the mandate remains to test children in reading and math in grades 3-8 and once in high school. States will also have to set long-term goals and use test results to measure interim progress.

A dangerous requirement to rank schools continues. Worse, rankings must be based predominantly on student scores. High school rankings must include graduation rates, and all schools must incorporate English learners’ progress towards English proficiency. This data must be broken out by “subgroup” status. However, states must incorporate at least one additional indicator of school quality (such as school climate or student engagement) and can include multiple such indicators.

Student scores, English Language Learner progress and graduation rates together must carry “much greater weight” in school rankings under ESSA than the additional indicator(s). Congressional aides disagreed among themselves as to what this means and whether the other indicators could count for up to 49% of school ratings. The issue may only be settled via U.S. Department of Education (DOE) regulations, an unfortunate prospect given DOE’s history.

States will have to identify the lowest-scoring five percent of all schools as well as high schools with graduation rates below two-thirds. This will almost entirely affect schools serving low-income children, disproportionately students of color or recent immigrants. States now get to decide how to intervene. The bill requires locally determined needs assessments (including identifying resources needed) and “evidence-based” interventions within a state-approved local plan. States must monitor progress. If a school or district does not make sufficient improvement after three years, the state must provide “technical assistance” or intervene. In addition, schools in which students are “consistently

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underperforming” by race, class, language or disability status must develop improvement plans to address the specific problems. Whether these processes will produce genuine improvement or perpetuate test-driven sanctions, including staff firings, privatization and school closings, will depend on state and local political processes.

Meanwhile, up to seven states will be able to fundamentally overhaul their assessments right away, with additional states allowed to join this pilot program after three years. States could design systems that rely primarily on local, teacher-developed performance assessments (as does the [New York Performance Standards Consortium](#)). New Hampshire already has a waiver from NCLB to do that, starting with allowing pilot districts to administer the state test in only three grades. For all grades, the New Hampshire pilots employ a mix of state and local teacher-designed performance tasks, an approach with great potential.

The new law also bars the U.S. Secretary of Education from intervening in most aspects of state standards, assessment, accountability and improvement. Given Secretary Duncan’s history of destructive reforms (and Acting Secretary of Education John King’s track record in New York), that seems a good thing.

How states respond to the new assessment flexibility will depend in large part on the strength and effectiveness of the testing resistance movement. Though that allows for assessment reform progress to be won state by state, it is not optimal public policy. In theory, Congress could have barred states from using test-based accountability and insisted on educator-led, bottom up assessment. But those options were not seriously considered by Congress or the Obama Administration, despite the efforts of a national test reform movement. The 2016 election cycle is unlikely to alter the inside-the-Beltway resistance to more fundamental reforms.

In the context of these political realities, the new ESEA is positive because it substantially reduces federally mandated damage from testing overkill. However, by itself it does little to advance assessment reform or otherwise improve education. Unfortunately, the alternative was worse: NCLB and waivers, with all their destructive consequences, would stay in place until some unknown date. That is why many assessment reformers, including FairTest, believe ESSA represents a modest step forward.

Fortunately, nothing in the new federal legislation will stop the grassroots testing resistance and reform movement from continuing to grow and fight for more fundamental wins at state and local levels: less testing, an end to high stakes, and educationally sound assessment, as well as the financial and programmatic systems that will provide every child with a high-quality education.

The proposed new law will be due for its own reauthorization in 2020, after a mere four years.

- An earlier version first appeared in the *Washington Post* [Answer Sheet](#) on December 1, 2015.
- ESSA text is at <https://www.gpo.gov/fdsys/pkg/BILLS-114s1177enr/pdf/BILLS-114s1177enr.pdf>.
- “Why You Can Boycott Standardized Tests Without Fear of Federal Penalties to Your School” is available at <http://www.fairtest.org/why-you-can-boycott-testing-without-fear>.
- New York Performance Standards Consortium is at <http://performanceassessment.org/>.