

# FairTest

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## National Center for Fair & Open Testing

### ESEA Reauthorization:

#### A New Basis to Expand High-Stakes Testing Resistance and Assessment Reform

By Monty Neill

Years overdue, Congress is about to vote on replacing the test-and-punish mandates of No Child Left Behind (NCLB) with a comprehensive overhaul of the federal Elementary and Secondary Education Act. The [re-write](#) will also end the even more punitive requirements of NCLB waivers granted by the U.S. Department of Education (DOE).

From an assessment reform perspective, FairTest is convinced that the “Every Student Succeeds Act” (ESSA) now before the House and Senate, though far from perfect, improves on current testing policy. The bill significantly reduces federal accountability mandates and opens the door for states to overhaul their own assessment systems.

Failure to pass this bill in 2015 means NCLB and waivers will continue to wreak havoc for at least another several years.

The primary improvement is in 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 coming 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 the 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.

The bill says test results, ELL progress and graduation rates together must carry “much greater weight” in school rankings than the additional indicator(s). Congressional aides disagree among themselves as to what this means and whether the additional indicators could weigh up to 49%. The issue may only be settled via U.S. Department of Education (DOE) regulations, an unfortunate prospect given the DOE’s history.

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States will have to identify the lowest-scoring five percent of their 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 will 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 and state progress monitoring. If a school or district does not make sufficient progress within four years, the state must provide technical assistance or intervene. In addition, an unspecified percentage of schools with highly unequal outcomes by race, class, language, or disability status will each have to develop improvement plans to address the gaps. Whether this process leads to genuine improvement or becomes a cover for test-driven sanctions will depend on the state and local political process.

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 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 (and new 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 growth of the testing resistance movement. This allows for assessment reform progress to be won state by state, though that is not optimal. In theory, Congress could have barred states from using test-based accountability and insisted on educator-led, bottom up assessment. That option was not seriously considered by Congress or the Obama Administration. The 2016 election cycle is highly unlikely to alter the inside-the-Beltway resistance to more fundamental reforms.

In the context of this political reality, the new ESEA is positive because it substantially reduces federally mandated damage from testing overkill, though, by itself, does little to advance assessment reform or otherwise improve education. The alternative is worse: NCLB and waivers, with all their destructive consequences, would stay in place until some unknown, later 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. If ESSA passes, it will mark the beginning of the next stage of the campaign. FairTest’s recommendation is to take what we have gained now as a basis for winning more in the near future.

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