



The Every Student Succeeds Act (ESSA) in Texas

When the Every Student Succeeds Act (ESSA) replaced the No Child Left Behind Act (NCLB) on December 10, 2015, it was generally regarded by states and many interest groups as a win. The bill reduces federal control and allows states to make key decisions regarding public school accountability. This article will address some of the major changes districts can expect from the implementation of ESSA in Texas.

On September 25, 2017, the Texas Education Agency (TEA) submitted a strategic plan describing the state accountability system and other methods the state would use to meet the federal requirements of ESSA. On December 21, 2017, the Department of Education (DOE) sent a feedback letter to Texas on certain provisions in the plan that they found to not meet federal requirements. On January 8, 2018, TEA submitted a revised plan to the DOE. TEA worked in collaboration with the DOE to revise the plan. TEA expects that the plan will be approved but stated in a public letter that they were not able to consult with stakeholders on portions of the revised plan and that they may have to amend the submitted plan.

In the state plan, TEA maintains that the goal is to align the federal ESSA plan with TEA's strategic plan as well as the state accountability system created and amended by the Texas legislature. But in order to meet federal requirements, TEA has had to conform several aspects of the state accountability system as explained in the state plan. Because the state accountability system is based on state law, districts should expect that the two systems are not perfectly aligned and they may be measured somewhat separately and differently under each system.

Although state plan approval has not yet occurred, much of ESSA became effective immediately (December 10, 2015) or within the past two years. For the 2016-17 school year, districts in Texas operated under the NCLB state plans, which means most state plan requirements remained the same. The 2017-18 school year is the first year that the assessment and accountability measures under ESSA are required to be implemented.

[TEA's Every Student Succeeds Act](#) Website includes links to the revised ESSA plan, peer review notes on the plan, and the feedback letter from the DOE. See the appendix for more links and resources.¹

¹ tea.texas.gov/About_TEA/Laws_and_Rules/ESSA/Every_Student_Succeeds_Act/.

1. Long-Term Goals

ESSA requires states to establish long term goals for all students. In 2016, Texas adopted the state's 60x30 plan. The goal of the 60x30 plan is that 60 percent of Texans aged 25-34 should possess some form of post-secondary credential by the year 2030. TEA describes in the ESSA state plan how they will track and determine that 60 percent of Texas students are on pace for likely success in a post-secondary setting by tracking STAAR scores at four performance levels: Masters Grade Level, Meets Grade Level, Approaches Grade Level, and Did Not Meet Grade Level. TEA originally proposed the long-term goal under ESSA in a way that aligned with the 60x30 plan: 90 percent of students and student groups should reach the threshold at the Approaches level on STAAR. After receiving feedback from the DOE that proficiency may not be measured by the Approaches level, TEA revised the long-term goal to include a 30 percent increase for all students and all student groups in obtaining the Meets or Exceeds level on the STAAR exam by 2032. This means TEA has set a goal that 74 percent of all students will obtain a Meets or Exceeds level on the STAAR exam by 2032.

2. Meaningful Differentiation

Under ESSA, the accountability system must allow a state to “meaningfully differentiate” between all public schools in the state and identify low-performing campuses and students. Each state may determine the weight of the different indicators in its own system, but academic measures must be given substantial weight. The statewide accountability system must include multiple factors such as academic achievement, student growth, graduation rates, progress in English language proficiency, and at least one indicator of school quality or student success. ESSA describes possible indicators of school quality or student success to include educator engagement, access to and completion of advanced coursework, postsecondary readiness, and school climate and safety. 20 U.S.C. § 6311(c)(4).

TEA intends on using components of the state accountability system to satisfy the system of “meaningful differentiation.” Before the 2017 legislative session, TEA developed the details of what’s known as “The A-F” accountability system mandated under House Bill 2804. The five domain accountability system was scheduled to be implemented in the 2017-18 school year, with ratings and interventions to be determined in August 2018. The “A-F” accountability system was criticized for its lack of fairness and accuracy. During the 85th legislative session in 2017, the Texas legislature passed House Bill 22, described below. Under the new version of the A-F accountability system, districts will receive A-F performance ratings in August 2018. Individual schools will receive A-F performance ratings in August 2019. Act of June 19, 2015, 84th Leg., R.S., H.B. 2804; Act of June 15, 2017, 85th Leg., R.S., H.B. 22.

House Bill 22 reduces the domains measured in the A-F accountability system from five to three. The three domains include the following:

1. **Student achievement:** Similar to the prior system, this domain must include an indicator that evaluates satisfactory performance through the results of the state required assessments, including STAAR tests, EOC exams, STAAR A (for special education students), and STAAR L (for English language learners).

This domain must also include an indicator that evaluates the performance of high school campuses and districts. This indicator must account for students that: satisfy the Texas Success Initiative (TSI) college readiness benchmarks; satisfy performance standards on Advanced Placement (AP) tests or similar assessments; earn dual credits; successfully complete an OnRamps dual enrollment course; earn industry certifications; enlist in the US military; are admitted into certain postsecondary industry certification programs; successfully complete college preparatory courses; are awarded an associate's degree; and students who successfully met standards on a composite of indicators that through research indicates the student is prepared to enroll and succeed in bachelor's or associate's degree general education courses. This domain also includes high school graduation rates as computed under ESSA and is subject to certain statutory exclusions.

2. **School progress:** This domain measures a school or district's effectiveness in promoting school learning. The indicators must include assessment data on the percentage of students who met the standard for improvement, as determined by the commissioner, and relative performance as compared to similar districts and campuses.
3. **Closing the gaps:** This domain requires the measurement of disaggregated data to determine differences in academic performance among different racial and ethnic groups, socioeconomic backgrounds, and other factors, including students formerly receiving special education services, students continuously enrolled, and mobile students.

ESSA Indicator	Texas Measure as Indicated in the State Plan
Academic Achievement	Percentage of STAAR and EOC assessments at or above the Meets Grade Level standard for all students and student groups in the subjects of reading and math.
Student Growth for Public Elementary and Secondary Schools that are Not High Schools	Growth on STAAR assessments in reading and mathematics over a two-year period.
Graduation Rate	HS Graduation rates as defined by ESSA, 20 U.S.C. § 7801(25), (28).
English Language Proficiency	The percent of current English Learners in Grades K-12 who have made progress in developing their English language proficiency since it was last assessed on the Texas English Language Proficiency Assessment System (TELPAS).
School Quality of Student Success for Public Elementary and Secondary Schools that are Not High Schools	The achievement outcome as outlined in the Student Achievement STAAR component of the state accountability system (see above). The Student Achievement STAAR component includes the average of three performance levels (Approaches, Meets, or Masters) on the reading/English, language arts, mathematics, science, social studies, and writing assessments for all students assessed on a campus.
School Quality of Student Success Indicator for High Schools	Achievement outcomes of annual graduates on the college, career, and military readiness indicator, which includes several options such as students who satisfy relevant performance standards on AP exams, students who earn dual credit, students who earn an industry certification, among other indicators.

3. Assessment

ESSA and NCLB contain similar assessment requirements with respect to mandatory subjects and grade levels tested. However, ESSA does make a few changes to what states may choose as assessments. For example, a state may choose to include assessments partially delivered in the form of portfolios, projects, or extended performance tasks and may choose a single summative assessment or multiple statewide interim assessments that result in a single

summative score. Other state choices include the option to provide a nationally recognized assessment for high school students, such as the ACT or SAT; however, the state must determine that the assessment is consistent with state standards and must use the same locally selected assessment in all of its high schools. 20 U.S.C. § 6311(b)(2).

Under ESSA, states may also choose to provide an advanced mathematics assessment for eighth grade students. In the state plan, TEA indicated that an eighth grade student who takes the high school mathematics course with an end-of-course assessment would be exempt from taking the eighth grade math assessment. In response to feedback from the DOE, TEA included a provision in the revised plan that says the state will require the students who take Algebra I in middle school to also take the SAT, ACT, or Texas Success Initiative Assessment in high school so their results can be used in the accountability system. 20 U.S.C. § 6311(b)(2)(C).

No Child Left Behind	Every Student Succeeds Act	Texas Authority
<p>Reading/Language Arts: tested annually in grades 3-8, at least once in 10-12. Math: tested annually in grades 3-8, at least once in 10-12. Science: at least once in grade level spans 3-5, 6-9, and 10-12.</p>	<p>Mostly the same, except math and language arts shall be tested at least once in grades 9-12.</p>	<p>Reading and Math: tested in grades 3-8 annually. End-of-course (EOC) assessments required: English 1, English 2, Algebra 1, Biology, and U.S. History. Science: tested in grades 5 and 8. Writing: tested in grades 4 and 7. Social Studies: tested in grade 8.</p>

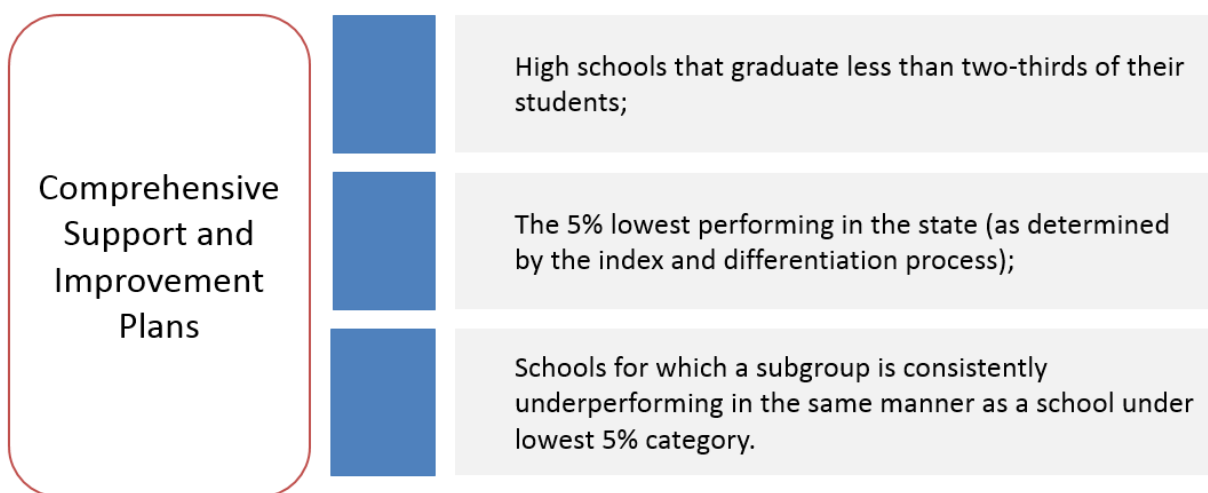
Alternate academic achievement standards and alternate assessments are available for students with the most significant cognitive disabilities. States have a 1% cap on students that may be assessed under these alternate assessments. Districts may exceed the 1% cap if they notify the state of the reason they need to exceed the cap. 20 U.S.C. § 6311(b)(1)(E), (b)(2)(D).

Parents may not opt their students out of state assessments. ESSA requires districts to provide parents with required assessment information, including student participation information, but an opt-out policy is only required “where applicable.” Texas law currently does not have an applicable law that provides for opting out of state assessments. In Texas, students that opt out will receive failing scores on the state assessment. This may affect their advancement to the next grade level or graduation, and it affects the requirement that schools have 95% of their students participating in state assessments. Schools that do not meet the 95 percent rate will have the denominator on their academic achievement score adjusted to 95 percent, which will may result in a reduction in the campus score. 20 U.S.C. § 6312(e)(2).

4. Support and Improvement Systems

Beginning in the 2018–19 school year, a state’s system of meaningful differentiation must identify the following: not less than the lowest-performing 5% of schools in the state; all public high schools failing to graduate one-third or more of their students; and schools in which any subgroup of students, as this term is defined in the bill, would on its own fall under the lowest-performing 5% across the state. 20 U.S.C. § 6311(c)(4)(D).

Districts with identified schools will need to develop and implement a comprehensive support and improvement (CSI) plan. In schools with subgroups consistently underperforming on the accountability indicators, schools are required to develop targeted support and improvement (TSI) plans. The requirements for TSI plans are similar to those for CSI plans, except that TSI plans must be approved and monitored by the school district. 20 U.S.C. § 6311(d)(1)-(2).



In order to identify the lowest performing schools in the state, TEA’s state plan says it will rank schools based on the overall composite score in the three domains of the state’s A-F accountability system. TEA will identify at least the lowest scoring five percent of campuses that receive Title I, Part A funds for comprehensive support. In addition, if a high school campus does not obtain a 67% four-year graduation rate, the campus will be automatically identified for comprehensive support and improvement. Any Title I campuses identified for targeted support and improvement for three consecutive years will be identified for comprehensive support and improvement the following school year. The identification will begin with the August 2018 accountability release, based on the 2017-18 performance data.

The Texas state plan requires any campus with one or more significant achievement gaps between individual student groups, as monitored through the Closing the Gaps domain of the state accountability system, be identified for targeted support and improvement. Additional action will be taken for “consistently underperforming schools,” defined by TEA as having one or more student groups that do not meet the interim benchmark goals for three consecutive years.

5. Rigorous Intervention

According to the state plan, in order to exit CSI status, campuses must not rank in the bottom five percent for two consecutive years and must have a C letter grade or better in the Closing the Gaps Domain. ESSA requires the state plan establish “rigorous” state-determined action, such as the implementation of interventions, when schools fail to satisfy the exit criteria within the state-determined timeline. 20 U.S.C. § 6311(d)(3).

Failure to Meet the Exit Criteria	Rigorous Intervention
Campuses that fail to exit comprehensive status within two consecutive years	Development of a Campus Turnaround Plan as required by the Texas Education Code section 39A.101
Campuses that fail to exit comprehensive status within five consecutive years	Interventions include, but are not limited to: <ul style="list-style-type: none"> • closure of the school • restarting the school in partnership with a charter school • converting the school to a charter school with an independent governing board • new leadership team • redesigned school model • appointing a Conservator to oversee the school or LEA • inserting a state-appointed Board of Managers to oversee the entire LEA

6. Teacher Qualifications

ESSA repeals the provisions set out by NCLB that required teachers to be highly qualified in districts supported by the federal funds of the ESEA. The highly qualified language and requirements were included in teacher applications, employment contracts, and several related statutes. Under ESSA, teachers and paraprofessionals must meet each individual state's certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification. Districts are still required to notify parents about a teacher's lack of qualifications if the child has been taught for four or more consecutive weeks by a teacher who does not meet applicable state certification or licensure requirements at the grade level and subject area in which the teacher has been assigned. In addition, each annual state report card must present information on the experience levels and credentials of teachers in the state. 20 U.S.C. §§ 6311(h)(1)-(2), 6312(e).

Federal requirements for paraprofessionals continue to go beyond state requirements in Texas. Paraprofessionals working programs supported by Title I, Part A funds must meet the qualification standards that were in effect prior to ESSA. NCLB required paraprofessionals to have completed at least 48 college hours or an associate's degree, or to have demonstrated knowledge and ability in reading and math. Under ESSA, those requirements remain because ESSA states that paraprofessionals shall meet the requirements of the bill that was in place prior to ESSA (NCLB). 20 U.S.C. § 6311(g)(2)(M).

In order to be considered highly qualified under NCLB, special education teachers providing direct instruction in core academic subjects had to demonstrate subject-matter competency in addition to being certified by the state. Texas did not have the requirement to demonstrate competency in core academic subjects prior to NCLB. After ESSA repealed the federal requirement, the Texas State Board of Educator Certification amended the Texas Administrative Code to essentially require what had been required under NCLB. The Texas Administrative Code now requires certified educators working in special education personnel assignments and providing content instruction in a special education classroom setting to be certified in the subject and grade level of the assignment, or to demonstrate competency through the state's system used prior to ESSA. Prior to ESSA, the state used the 2010 and 2011 high, objective, and uniform state standard of evaluation (HOUSE) system. 19 Tex. Admin. Code § 230.611.

7. Equitable Access to Effective Educators

ESSA requires the state to make an assurance that low-income and minority children are not disproportionately served by ineffective or inexperienced teachers. According to the state plan, TEA will evaluate and publicly report the progress in increasing access to effective educators through the [Texas Equity Toolkit](#) Website.² The state plan also includes a description of how TEA will calculate and post information regarding equitable access to experienced and effective educators.

The state plan explains that Title II, Part A funds will be used to create the Texas Equity Toolkit, which assists districts with issues of access to effective educators. The funds will also support the implementation of an instructional leadership initiative for districts and schools that did not earn satisfactory ratings in the state accountability system.

8. Prohibition on Aiding and Abetting Sexual Abuse

A state or district that receives federal funds under ESSA is now required to have laws, regulations, or policies in place to prevent what is commonly referred to as “passing the trash.” The laws or policies should prohibit any individual who is a school employee, contractor, or agent, or any state educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law. ESSA excludes from its definition of “assisting in obtaining a new job” routine transmission of administrative and personnel files. Additionally, this provision has exceptions for cases of acquittal or exoneration, or if the investigation remains open without charges within four years after the date this information was reported to law enforcement. 20 U.S.C. § 7926.

TASB Policy Update 107, released in the spring of 2017, included revisions to address the ESSA requirements. See TASB Policies CJ(LLEGAL) and DC(LLEGAL).

In 2016, the State Board of Education added Standard 1.14 to the Educator’s Code of Ethics, which partially addresses the aiding and abetting requirement. 19 Tex. Admin. Code § 247.2. In 2017, the Texas legislature passed Senate Bill 7, codified at Texas Education Code section 21.0581, which also addresses certification revocation, suspension, or other sanctions for educators who assist certain individuals from obtaining employment at a school district or open-enrollment charter school when the educator knew the individual had previously engaged in sexual misconduct with a minor or student in violation of the law.

² texasequitytoolkit.org/.

9. Student Subgroups

In addition to traditionally identified student subgroups, states and districts are now required to disaggregate student achievement data from academic assessments taken by students who are homeless, students in the state foster care system, and students with a parent in active duty in the armed forces. ESSA amended the McKinney-Vento Homeless Assistance Act to expand school of origin to include pre-kindergarten and schools for which school of origin is a feeder school. Districts are also required to arrange for transportation for these students to attend the school of origin, if necessary. 42 U.S.C. § 11432(g).

ESSA also implemented new provisions regarding students in the foster care system, including the presumption that it is in a child's best interest to remain in their school of origin after coming into a CPS conservatorship. ESSA requires collaboration between the district and child welfare agencies to provide transportation to maintain the student's enrollment in their school of origin. Each school district was required to have clear written procedures regarding transportation of these students in place by December 10, 2016. Both the [TEA Foster Care Website](#)³ as well as [Education Service Center Region 10's ESSA Support Website](#)⁴ provide resources on transportation. 20 U.S.C. §§ 6311(g)-(h), 6312(b)-(c).

The Texas state plan also addresses migrant student education. The plan describes the state's effort to follow the Continuous Improvement Cycle proposed by the federal Office of Migrant Education. The three-step process includes certified needs assessments, service delivery plans, and program evaluations. The state plan also describes TEA's current measurable program objective and outcomes for migrant students, migrant student record management, and use of funds under Title I, Part C. 20 U.S.C. § 6391 et seq.

10. English Learner Prioritization

ESSA places increased emphasis on English language proficiency by moving the accountability measures for English language learners (ELL) from Title III to Title I of the Act. Authorized funding is also increased under Title III with the intention of increasing English language proficiency and academic achievement of English learners. Under ESSA, the authorized funding for ELL programs is gradually increased from \$756 million in fiscal year 2017 to \$885 million by fiscal year 2020. According to the [DOE's budget Website](#),⁵ the federal government spent nearly 800 million dollars in 2017 on English Language Acquisition grants (a 63 million dollar increase from the previous year). In 2016, the DOE released [non-regulatory guidance for ESSA Title III](#).⁶ The guidance addresses the many legal requirements

³ tea.texas.gov/FosterCareStudentSuccess/Resources/.

⁴ region10.org/programs/title-i-capacity-building-initiative/essa-support/foster-care-transportation/.

⁵ ed.gov/about/overview/budget/budget17/budget-factsheet.pdf.

⁶ ed.gov/policy/elsec/leg/essa/essatitleiiiguidenglishlearners92016.pdf.

for the spending of the funds, but it also address many of the new ELL requirements in ESSA, such as English language proficiency standards and assessments, language instruction education programs, Title III professional development, and required reporting and data collection. 20 U.S.C. §§ 6311(b), 6811.

The DOE issued sharp feedback in its letter on TEA's state plan provisions under Title III. The DOE questioned the sufficiency of TEA's use of "subjective teacher evaluations" and the determination of proficiency and the exiting from services by a local committee. These approaches may not satisfy the requirement under ESSA that the state use standardized entrance and exit procedures and may even violate other federal law requiring a valid and reliable assessment of the four language domains. The DOE was also concerned with entrance and exit procedures for students with disabilities as well as meaningful consultation in the development of the EL exit and entrance procedures. TEA's response was to go step-by-step in the state plan on the requirements of what it deemed a "standardized process" under the Texas Education Code and the administrative rules. The state plan also addressed meaningful consultation and included a new section regarding how students with disabilities are identified as English learners.

TEA officials have stated in [media interviews](#)⁷ that they expect the state plan to be approved.

⁷ tpr.org/post/revised-texas-education-plan-raises-standards.

Accountability Resources

From the U.S. Department of Education

- Main page: www.ed.gov/essa.
- ESSA Consolidated State Plans: ed.gov/admins/lead/account/stateplan17/plans.html.
- Guidance documents
 - Education for Homeless Children and Youths Program, Non-Regulatory Guidance (July 27, 2016), ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf.
 - U.S. Dep't of Educ. and U.S. Dep't of Health & Human Services, *Non-regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (June 23, 2016), ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf.

From the Texas Education Agency

- Main page:
[tea.texas.gov/About_TEA/Laws_and_Rules/ESSA/Every_Student_Succeeds_Act_\(ESSA\)/](http://tea.texas.gov/About_TEA/Laws_and_Rules/ESSA/Every_Student_Succeeds_Act_(ESSA)/).
- Transition to ESSA:
tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/Transition_to_ESSA/.
- *To the Administrator Addressed Letter Re: 2017-2018 Every Student Succeeds Act – Consolidated Federal Grant Application* (May 19, 2017),
[tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/2017-2018_Every_Student_Succeeds_Act_\(ESSA\)_-Consolidated_Federal_Grant_Application/](http://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/2017-2018_Every_Student_Succeeds_Act_(ESSA)_-Consolidated_Federal_Grant_Application/).
- *To the Administrator Addressed Letter Re: Every Student Succeeds Act* (Mar. 8, 2016),
tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Every_Student_Succeeds_Act/.
- A-F Accountability System Resources
 - A-F, Accountability Resources, tea.texas.gov/A-F/.
 - [2018 Accountability Development Materials](http://tea.texas.gov/2018AccountabilityDevelopment/),
tea.texas.gov/2018AccountabilityDevelopment/.
 - House Bill 22 Overview and Expected Timeline for Implementation,
tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/House_Bill_22_Overview_and_Expected_Timeline_for_Implementation.

For more information on this and other school law topics, visit TASB School Law eSource online at schoollawesource.tasb.org.

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