



Texas Association of School Boards

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Serving Texas Schools Since 1949

Debunking ESSA Myths

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At the end of 2015, Congress passed the Every Student Succeeds Act (ESSA) in a bipartisan effort to update the Elementary and Secondary Education Act (ESEA). ESSA is a broad law that touches on many different aspects of education and ties federal requirements to federal funding. ESSA includes important laws on some of education's most pressing issues, including assessment, foster care, teacher qualifications, and more. The following seven myths include common misunderstandings on how ESSA has changed the education landscape.

Myth 1: School districts are funded in large part by federal dollars.

School funding in Texas is complicated. In general, funding is provided for schools by local, state, and federal funds. But the federal funding accounts for a much smaller percentage of school revenue than many realize. In fiscal year 2016, Texas received about 6.2 billion dollars from the federal government for education. By comparison, this was less than 11% of the total amount of funding directed to education in that fiscal year. For a full report of revenue and expenditures, refer to the U.S. Department of Education National Center for Education's report [Statistics Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2015–16](#) (Dec. 6, 2018). ESEA is the largest source of federal funding to public schools, followed closely by funding from the Individuals with Disabilities Education Act (IDEA). States and districts both rely heavily on ESEA funding, especially for Title I programs for disadvantaged students, educator development funds, and funding under 21st Century Learning Grants. A loss in federal funding for these programs would mean local and state funds would have to cover the loss, which would likely lead to huge spending cuts and increases in state and property taxes—neither of which is a popular option in Texas. Recently, Texas has felt the effect of the U.S. Department of Education's (DOE) decision to reduce federal funding for Texas's alleged violation of IDEA's requirements. *See Tex. Educ. Agency v. U.S. Dep't of Educ.* 908 F.3d 127, 2018 WL 3993298 (5th Cir. 2018) (upholding reduction of state's special education funding by \$33.3 million due to failure to comply with IDEA's maintenance of state financial support clause). That experience serves as a reminder that when it comes to federal funding, strict compliance with federal requirements benefits both Texas schools and Texas taxpayers.

Myth 2: ESSA requires an A-F accountability system based on STAAR.

ESSA requires the state to create “a system of meaningful differentiation.” 20 U.S.C. § 6311(c)(4)(D). The law’s predecessor, No Child Left Behind (NCLB), was more prescriptive on how and with what labels schools and districts should be measured. Under ESSA, these requirements became more flexible. ESSA requires districts to annually measure academic achievement, student growth, high school graduation rates, progress in English Language proficiency, and one or more indicators of school quality or student success. These factors must be measured for all students and all specified student groups and then the state must identify the lowest-performing five percent of all schools. TEA has chosen to combine ESSA’s requirements into the Closing the Gaps domain of the state accountability system created by the state legislature. The state legislature is responsible for the overall structure of the state accountability system, including the three domains (Student Achievement, Student Growth, and Closing the Gaps) and the A-F ratings that are assigned accordingly. Although TEA must still meet the DOE’s strict requirements in its state plan, only the state legislature can change the three domain A-F accountability system.

Myth 3: ESSA made significant changes to the federal requirements for assessments.

Under ESSA, as under NCLB, students must be tested annually in grades 3-8 in reading and math, and at least once in high school. In addition, ESSA specifies grades in which a science assessment must be given. Media coverage may have exaggerated ESSA’s changes to standardized testing. What ESSA did change is that states may now choose to create innovative assessments from multiple statewide interim assessments that result in a single summative score, or may include, in part, portfolios, projects, or extended performance tasks. 20 U.S.C. § 6311(b)(2). But because the submitted data must meet the other criteria, including comparability and objectivity, innovative assessments have mostly fallen flat in Texas and every other state. For now, standardized testing is the only practical way to comply with ESSA and receive the accompanying federal funding.

Believing that the Texas legislature has the power to do away with standardized testing is also a myth. During nearly every legislative session, legislators file bills that try to reduce or eliminate standardized tests. For example, the 86th Legislature eliminated the grades 4 and 7 writing assessments for students assessed in the year 2021-2022 and thereafter. But because writing is part of language arts, writing remains a federal assessment requirement under ESSA. TEA must now integrate writing into the current reading assessment, which means students will still be assessed in writing. Tex. Educ. Agency, [To the Administrator Addressed Letter Re: Reading Language Arts \(RLA\) Assessment Transition](#), Aug. 12, 2019.

Myth 4: ESSA allows parents to opt out of standardized testing.

Contrary to statements on some anti-testing websites, ESSA does not include a federal right to opt out of standardized assessments. These websites are likely referring to a provision in ESSA that requires districts to provide information to parents regarding the assessment, which may include the district's opt-out policy "where applicable." 20 U.S.C. § 6312(e)(2)(A). Although districts must provide parents with information regarding their children's participation in the assessment, Texas Education Code section 26.010 states that a parent is not entitled to remove a child from a class or other school activity to avoid a test. In sum, Texas's opt-out policy is simple: Texas does not allow students to opt-out of standardized testing. Students that do not take the standardized test will have a test submitted on their behalf with a notation equivalent to a zero score.

Myth 5: Students who are homeless or in foster care must stay in their school of origin under ESSA.

School officials that assist students who are homeless or in foster care are aware that students have rights when it comes to being able to attend the school that they were in at the time that they became homeless or were placed in foster care. But this right is not an absolute requirement. Under ESSA, a student in foster care should remain enrolled in the student's school of origin "unless a determination is made that it is not in the child's best interest," based on the factors relating to best interest, including appropriateness of the current setting and proximity to the school of origin. 20 U.S.C. § 6311(g)(1)(E). For students who are designated homeless under the McKinney-Vento Homeless Assistance Act, ESSA created a presumption that staying in the school of origin is in the child's best interest, but the parent or guardian still has final decision-making power. 42 U.S.C. §§ 11431-11435. Districts have a duty to students who are homeless or in foster care to consider the school of origin, but ultimately ESSA requires that these students be admitted into the school that would be best for the individual student.

Myth 6: District officials can give a neutral recommendation and still comply with ESSA's prohibition on aiding and abetting.

ESSA requires states and districts to have laws and policies that prohibit school employees, contractors, or agents from assisting another school employee, contractor, or agent in obtaining a new job if they know or have probable cause to believe, the other engaged in sexual misconduct regarding a minor or student in violation of the law. 20 U.S.C. § 7926(a). But what does it mean to "assist in obtaining a new job"? ESSA clarifies that assisting does not include the routine transmission of administrative and personnel files. 20 U.S.C. § 7926(a). But can a district give a neutral recommendation? Conservatively, TASB Legal Services believes "assist in obtaining a new job" may include providing a neutral recommendation. While a definitive answer to this issue is not clear, we recommend that districts do everything possible to ensure that perpetrators are not reemployed at other schools. Note that Texas law imposes

stiff penalties in order to combat the problem of inappropriate relationships between educators and students. Not only is it imperative for student safety to avoid “passing the trash,” but an educator’s license may be suspended or revoked for violating the state law’s prohibition on aiding and abetting. Tex. Educ. Code § 21.0581.

Myth 7: Because of ESSA, teachers and paraprofessionals no longer have to be highly qualified.

Under NCLB, teachers and paraprofessionals in Title I, Part A programs were required to be “highly qualified” under federal standards. For teachers, “highly qualified” included a bachelor’s degree, full state certification, and demonstrated competency in each core academic subject taught (usually demonstrated by assessment). ESSA repealed the “highly qualified” requirement. See PL 89-10, Every Student Succeeds Act, Title I Section 1006 (repealing 20 U.S.C. § 6319). ESSA simplified this requirement, mandating that teachers meet state certification and licensure requirements. 20 U.S.C. § 6312(c). For paraprofessionals, however, the repeal was more circular. Although the term “highly qualified” was repealed, ESSA, through state assurances, requires paraprofessionals working in a Title I, Part A program, to meet “qualifications that were in place the day before December 10, 2015” (the day ESSA was signed into law). 19 Tex. Admin. Code § 231.641. That standard includes completion of two years of higher education, an associate’s degree, or certain knowledge and ability requirements measured through formal state or local assessment. TEA’s [Guidance for the Implementation of Paraprofessional Requirements Under Title I, Part A](#) (July 1, 2008). 19 Tex. Admin. Code §§ 230.57-.59. So, although ESSA does not require teachers and paraprofessionals to be “highly qualified,” they still must meet high qualification standards, which makes this more of a half-truth than a myth.

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