



March 5, 2015

The “Student Success Act” (HR 5)
Providing for the Reauthorization of the Elementary and Secondary Education Act

Summary:

On February 3, 2015, the Chairman of the House Committee on Education and the Workforce, John Kline (R-MN-02), along with Rep. Todd Rokita (R-IN-04) introduced the “Student Success Act” (HR 5) to reauthorize the Elementary and Secondary Education Act (ESEA) (PL 89-10) for six years; covering fiscal year (FY) 2016 through FY 2021. The bill focuses on eliminating and defunding key aspects of the No Child Left Behind Act (NCLB) (PL 107-110), instead focusing on providing more flexibility for local education agencies (LEAs) and state education agencies (SEAs) to set standards outside of the Department of Education’s Common Core requirements or other common standards and assessments advocated by the Department.

The “Student Success Act” authorizes \$23.3 billion each year for grants for disadvantaged students, teacher preparation, programs to support parental engagement with schools, children with disabilities, construction and facilities maintenance. Title I programs would receive \$16.2 billion of that to set accountability requirements and authorize federal aid to schools with large populations of low-income or disadvantaged children. The bill also authorizes funds for programs that provide assistance for teacher training, school choice programs, homeless students, after school tutoring and other programs.

Key Provisions of the “Student Success Act”

Title I Grants

- Increases Title I grant funding by \$1.8 billion over FY 2015 Omnibus appropriations;
- Aims to increase flexibility for SEAs to set academic standards and determine how to allocate federal funding for special populations (migrant and delinquent students); and
- Allows LEAs to move per pupil allocations of federal aid from school to school.

Funding Flexibility and Accountability Systems

- Requires LEAs to reserve at least 3% of their allocations under Title I to pay for academic tutoring or “public school choice programs” to help students transfer;
- Continues requirement that federal funding supplement, not supplant state funding;
- Eliminates “maintenance of effort” requirement that conditions federal funding on state spending must be at least 90% of the amount spent in the previous year; and
- Eliminates the requirements created by NCLB called “Adequate Yearly Progress,” and that all students must be proficient in mathematics and science by a specified date; instead allowing the

state to develop statewide accountability systems to prepare students for post-secondary education or work.

Assessment Standards

- Prohibits the Department of Education from encouraging those standards to include “so called Common Core Standards” as developed by the National Governors Association and the Council of Chief State School Officers;
- Requires the following criteria for testing be met; in mathematics and reading, annual testing in grades 3 through 8 and once in high school; for science at least once in each of three grade spans – grades 3 through 5, grades 6-9 and grades 10-12; and
- States could develop assessments in other subjects at their discretion provided there are “reasonable adaptations” for students with disabilities and would also allow for assessments to be given on computers.

Teachers and Grant Programs

- Removes the requirement that all teachers in Title I schools be “highly qualified,” a designation determined by credentials and subject matter expertise; instead it requires teachers to be “effective” – a term not defined within the bill itself;
- States would be required to spend at least 10% of the funding on matching grants to non-school entities, including for-profit businesses, to support supplemental student activities, such as after-school programs, adjunct teachers and expanded learning hours; and
- Eliminates more than 65 elementary and secondary education programs, including school improvement grants designed for the least performing schools; on the grounds that they have been “deemed ineffective, are too small to meaningfully improve student achievement, or have never been funded;” (Source: House Committee on Education and the Workforce).

Workforce Reduction

- Requires the Department of Education, within one year of enactment, to reduce its workforce by the number of full time employees (FTEs) who work for or support programs eliminated by the bill; the Congressional Budget Office (CBO) estimates FTE reductions of 15 to 25 per year and discretionary spending reductions of \$10 million per year from FY 2016 through FY 2020; and
- Requires the Department to hire an economist to examine and report to Congress on cost savings achieved by the proposed reduction of federal involvement on education programs.

Charter Schools

- Reauthorizes the Charter School Program and continues to allow students in underperforming schools to transfer to a public charter school;
- Incorporates language from the “Success and Opportunity Through Quality Schools Act (as introduced in the 113th Congress as HR 10); which expands educational authorities that can administer charter schools to include the governor and state charter boards.
- Authorizes \$300 million annually from FY 2016 through FY 2021 for the Charter Schools Program; an increase of \$50 million over FY 2015; and
- Authorizes \$92 million per year from FY 2016 through FY 2021 for magnet schools.

Impact Aid Programs

- Modifies Impact Aid programs that reimburse school districts that are near, or serve students from, military bases, federal land and Indian reservations as these installations do not pay taxes to support local schools.

Homeless Education

- Reauthorizes and modifies provisions of the 1987 McKinney-Vento Homeless Assistance Act (PL 100-77) to authorize \$65 million annually from FY 2016 through FY 2021 for grants to support the education of homeless students;
- Sets a floor for state allocations of funds for homeless education, either \$150,000 or 0.0025% of the amount appropriated for a fiscal year, whichever is greater;
- States are mandated to distribute 50% of grant monies to LEAs; with states receiving more than the minimum funding distributing at least 75% of grant monies on sub-grants. Remaining funds would be used to help conduct the activities of the coordinator for Education of Homeless Children and Youths;
- The bill also implements provisions to require the coordinators make publicly available information gathered on the number of homeless children identified in the state; and for states to use grants to provide services and activities to help identify such children; and
- LEAs must coordinate programs and services for homeless children with disabilities.

Budget Impact

- The “Student Success Act” (HR 5) would result in \$87.7 billion in discretionary spending outlays from FY 2016 through FY 2020, and an additional \$52 billion after FY 2020, should the necessary funds be appropriated (Source: CBO); and
- Have zero impact on mandatory spending or revenues (Source: CBO).

Recommendations:

While ACCSES supported the provisions for annual assessments in grades 3-8 and again in high school for reading and math, the disaggregation of data by student categories under current law, the 95% student participation rate for all students as well as for student subgroups in annual assessments, the use of universal design for learning principals in assessment design as defined in the Higher Education Act and the “parents right to know” provision, requiring that parents be informed that they may request information regarding qualifications of the student’s classroom teacher, we concurred with others in the disability community that the bill falls short in several significant areas.

In order to better serve students with disabilities, ACCSES recommended the following changes be adopted:

- Limit the Alternate Assessment based on Alternate Achievement Standards to 1% of students assessed;
- Ensure that parents are involved in the decision that their child will take an alternate assessment and are informed about any effects that taking the alternate assessment may have on their child’s academic preparation to earn a regular diploma;
- Remove the phrase “to the extent practicable” when talking about students who take an alternate assessment being included in the general education curriculum;
- Use the term “*provide* access to and ensure progress in the general education curriculum for the grade in which the student is enrolled” instead of “*promote* access to the general education curriculum;”
- Ensure that students in every state who take the Alternate Assessment based on Alternate Achievement Standards are not precluded from attempting to complete the requirements for a regular diploma;

- Require states to set high school graduation rate goals and annual targets for all students and student categories and require support to be provided if one or more categories do not meet annual targets;
- Remove the exception to the definition of regular high school diploma that allows students taking the alternate assessment on alternate achievement standards to be counted as graduates with a regular diploma, even if a student does not actually earn a regular high school diploma;
- Require SEAs and LEAs to intervene when schools or districts identify achievement gaps between students with disabilities and the general population of students;
- Ensure that students with disabilities must be kept on track to graduate high school and have access to the general curriculum;
- Provide support to states and school districts to ensure that teachers have the skills and knowledge necessary to instruct diverse learners;
- Prohibit the use of restraint and seclusion in non-emergencies that do not threaten physical safety;
- Create grant programs that provide SEAs and LEAs with support to implement school-wide positive behavioral interventions and supports;
- Prohibit the elimination of maintenance of effort provisions.

Background:

On January 8, 2002, the “No Child Left Behind Act” (PL 107-110) was signed into law. It amended the Elementary and Secondary Education Act of 1965 (ESEA) to revise, reauthorize, and consolidate various programs and improve academic achievement of the disadvantaged. It established requirements for yearly testing and assessment of student performance, state standards for assessment and Adequate Yearly Progress (AYP) and increased qualifications of teachers and paraprofessionals, amongst other provisions. For those students at public schools failing to meet AYP standards within certain periods, it allowed public school transfer options for all students and supplementary educational services for low-income children who remain at such schools.

Requires each state to define AYP in a specified manner, which includes separate measurable annual objectives for continuous and substantial improvement for the achievement of all public elementary school and secondary school students in the state, and for the achievement of specific groups; including students with disabilities. Finally, it created an annual academic standards-based assessments in mathematics and reading or language arts in grades 3 through 8.

In 2011, President Obama began allowing states temporary waivers for various accountability and spending requirements under the law. In exchange, states must abide by requirements of the Administration that include the establishment of college and career preparation standards, implementation of teacher and principal evaluations and reporting on new performance measures. To date 45 states have requested such waivers, with 43 states plus the District of Columbia and Puerto Rico being granted waivers. California, Montana, Nebraska, North Dakota and Vermont have not requested waivers.

Current Legislative Status:

The House began debate on the bill on February 26, with 127 amendments submitted for consideration by the Committee on Rules; however, only 44 were accepted for debate under the final rule (H. Res. 121), not including the Manager’s Amendment. The Manager’s Amendment, introduced by Education

and Workforce Chairman Kline, was a self-executing rule that was considered as adopted when the chamber voted to approve the overall rule for debate.

#18 MANAGER'S AMENDMENT: Among other provisions, clarifies that students with significant cognitive disabilities that take alternate assessments would still be able to obtain a regular secondary school diploma [Chairman John Kline (R-MN-02)].

While eight amendments of specific interest to the disability community were submitted to the Rules Committee, only one was accepted as part of the final rule for debate on the floor.

- #2: Requires that The Student Success Act shall not go into effect until the Secretary of Education determines that its enactment will not reduce the college and career readiness of racial or ethnic minority students, students with disabilities, English learners, and low-income students and provides written notification to Congress on such determination [Rep. Bennie Thompson (D-MS-02)]; and
- #23: Democratic Substitute bill that would add funding for certain achievement and accountability programs and STEM programs. It also would increase the authorization level for magnet schools to \$300 million a year, from about \$92 million. Like Kline's amendment, the substitute would address alternative assessments for students with disabilities and require specific background checks for school employees and contractors who have unsupervised access to students [Ranking Democrat Bobby Scott (D-VA-03)].

The other amendments included:

- #14: Ensures rigorous assessments of students with disabilities by delaying elimination of 1% cap on alternative assessments for students with significant cognitive delays until the Secretary of Education determines that removing the cap will not result in overreliance on the use of less rigorous alternate assessments for students with disabilities [Rep. Danny Davis (D-IL-17)];
- #29: Ensures accountability for students with disabilities by requiring that the Secretary of Education disapprove State plans that fail to improve academic achievement or fail to improve graduation rates for students with disabilities [Rep. Donald Payne Jr (D-NJ-10)];
- #39: Authorizes a parent option program permitting the use of Federal funds distributed under the Individuals with Disabilities Education Act (IDEA) to cover some or all of the costs of their child's attendance at a private school [Rep. Ted Yoho (R-FL-03)];
- #47: Ensures rigorous assessments of students with disabilities by delaying elimination of 1% cap on alternative assessments for students with significant cognitive delays until the Secretary of Education determines that removing the cap will not result in overreliance on the use of less rigorous assessments for students with disabilities [Rep. Frederica Wilson (D-FL-24)];
- #58: Ensures continued State investment in preparing all students for college and career by delaying elimination of maintenance of effort requirements until the State Educational Agency determines that doing so does not decrease spending on or reduce college and career readiness of racial and ethnic minority students, students with disabilities, English learners, and low-income students [Rep. Terri Sewell (D-AL-07)]; and
- #116: Ensures that the enactment of the Student Success Act would not result in a lowering of academic standards for students with disabilities through an overreliance on alternate assessments aligned to alternate achievement standards [Rep. Jared Polis (D-CO-02)].

Outlook:

Whether or not the House will again take up debate on the “Student Success Act” is unclear at the moment. The House maintains that it wishes to move forward with consideration; however, sources report that even with the inclusion of amendments to make the legislation more moderate; there were insufficient votes to ensure final passage of the bill.

Also in play is the bipartisan Senate legislation being developed by Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) that could get the 60 votes that would be needed for passage. The bipartisan bill is being introduced in segments by various members of the HELP Committee and a full analysis will be forthcoming as more aspects of the legislation take shape.