



The Council of Parent Attorneys and Advocates, Inc.
Protecting the Legal and Civil Rights of Students with Disabilities and Their Families

Statement on the Implementation of the Every Student Succeeds Act (ESSA)

Submitted as testimony to the House Education and Workforce Committee

“ESSA Implementation: Exploring State and Local Reform Efforts”

July 18, 2017

The Council of Parent Attorneys and Advocates (COPAA) is committed to the effective implementation of the Every Student Succeeds Act (ESSA). Our longstanding work with the Congress, the Department of Education, our national membership and key partners in the disability, civil rights and business communities has consistently focused on improving the educational outcomes of the 6.4 million school-age children with disabilities and other disadvantaged students. COPAA views ESSA as vital and necessary to helping states provide the resources, training and guidance that schools and districts need so that ESSA’s purpose – to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gapsⁱ may be achieved. COPAA understands that states now have more discretion to carry out the provisions of ESSA, however, as many prominent Members of Congress, witnesses before this committee and leaders of major organizations across the political spectrum have said, ‘with new flexibility comes new responsibility’.ⁱⁱ It is this important balance – between flexibility and responsibility that we wish to address.

When Congress used its authority under the Congressional Review Act to rescind final regulations on ESSA’s accountability provisionsⁱⁱⁱ earlier this year, this action placed the Secretary of Education in the role of full interpreter and arbiter of the statute. While COPAA preferred the situation where final federal regulations prevailed, as compared to a raw-statute-implementation situation, this is now the circumstance under which the law will be carried out. Therefore, we urge Congress to fully support the Secretary in doing what is required – to oversee full implementation of the statute, as it is written. States must be held to every obligation therein.

In February 2016, COPAA’s legal director, Selene Almazan, Esq., testified to the House Subcommittee on Early Education, Elementary and Secondary Education and said:

...states’ provisions that restrict entitlements established by federal statutes are void under the Supremacy Clause of the Constitution. The Supreme Court has applied this principle in cases regarding benefit programs in which the federal government provides funding to states on the condition that they comply with the terms of the federal program, the same arrangement that exists for special education under IDEA. The Court held that the state was not free to adopt a definition that restricted benefits in a way the federal statute did not specifically authorize.^{iv}

To this point, COPAA is appreciative of the most recent feedback from the U.S. Department of Education (ED) provided to states. The current efforts by ED to assure states submit plans consistent with the statute are important and must continue. With only sixteen states having submitted plans, the bulk of ESSA state plans are yet to come. Therefore, it is imperative as ESSA plans are formally peer reviewed that the Secretary uphold the statutory requirements of ESSA, communicate any incongruities found after initial

review, and require strict adherence to the law as written. This will help guide states still developing and finalizing plans to adhere to the requirements of the law.

It's clear from COPAA's review of state plans – both submitted and those still in draft form that states do not understand the full obligations of ESSA, or if they do, are choosing to blatantly ignore its requirements. We have seen very troubling provisions in state plans thus far that:

- reduce or limit expectations of students (e.g. by setting low achievement goals);
- avoid full transparency in the data (e.g. by selecting a high N size or not using data disaggregated by student subgroup for differentiation and identification of schools in need of improvement);
- diminish the importance of honest measures of the academic progress of all children (e.g. proposing low proficiency or graduation rates); or,
- delay interventions when any group of students is struggling academically.

Additionally, ESSA requires that states describe how they will support districts

...to improve school conditions for student learning, including through reducing—(i) incidences of bullying and harassment; (ii) the overuse of discipline practices that remove students from the classroom; and (iii) the use of aversive behavioral interventions that compromise student health and safety.^v

And, the ESSA Conference Report clarifies that the term “aversive behavioral interventions” means seclusion and restraint.^{vi} In 2013-2014, 70,000 students with disabilities were subjected to seclusion and restraint and students with disabilities had more than double the suspension rate of students without disabilities.^{vii} Clearly every state needs to include strategies to work with districts on reducing and eliminating the use of aversive behavioral interventions such as seclusion and restraint in its ESSA plan. We do not see this adequately addressed in any of the plans reviewed so far. Given the number of students subjected to restraint, seclusion, and other means of removal from the learning environment, and the growing occurrence bullying, this is one of the most important provisions of the law and it must be upheld.

ESSA was passed with bipartisan support and is the nation's plan for how to improve public education so all students have an equal opportunity to learn and to succeed. States wanted to be in the driver's seat and now must take seriously the responsibility they've been given under ESSA to reimagine, re-design and rework accountability systems so that all kids count and are making progress according to state designed criteria. When reliable school and student subgroup data show that any students are not; such data need to be used to strategically and meaningfully inform teaching, academic and behavior intervention, professional learning and the allocation of staff and resources. ESSA's accountability provisions were intentionally designed to provide transparency for parents and the public about how all public education students are faring and to help districts identify which schools need intervention and support. The two priorities in the law are complementary and one must not overshadow the other; state ESSA plans must allow for and include both. Therefore, COPAA urges Congress to remain consistent in its request of ED that state ESSA plans follow the law. Our kids deserve and we will settle for nothing less.

COPAA is a national nonprofit organization of parents, attorneys, advocates, and related professionals who work to protect the civil rights and secure excellence in education on behalf of the 6.4 million children with disabilities attending public school across the United States.

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ⁱ P.L. 114-95

ⁱⁱ With Greater Power Under ESSA, State Education Officials Commit to an Era of Greater Responsibility, (2016) the74. Retrieved at: <https://www.the74million.org/article/with-greater-power-under-essa-state-education-officials-commit-to-an-era-of-greater-responsibility>

ⁱⁱⁱ P.L. 113-15

^{iv} Almazan, Selene S., (2016), Testimony before the House Subcommittee on Early Education, Elementary and Secondary Education. Retrieved at: https://edworkforce.house.gov/uploadedfiles/testimony_almazan.pdf

^v P.L. 114-95. Every Student Succeeds Act. § 1111(g)(1)(C)(iii).

^{vi} Every Student Succeeds Act (2015) Conference Report to Accompany S.1777. <https://www.congress.gov/114/crpt/hrpt354/CRPT-114hrpt354.pdf>

^{vii} U.S. Department of Education, “*Data Snapshot: School Discipline*,” Civil Rights Data Collection, March 2014. <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>