



**Every Student Succeeds Act**  
**A Summary of the Law as it Pertains to Arts Education**  
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After years of debate Congress and President Obama agreed on December 10, 2015 to reauthorize the 1965 *Elementary and Secondary Education Act (ESEA)*, and end the contentious *No Child Left Behind Act (NCLB)*.<sup>1</sup>

The new federal education law is entitled the *Every Student Succeeds Act (S. 1177) (ESSA)*, and, in a major policy change, scales back the role of the federal government in the areas of testing, teacher evaluations, academic standards, and school reforms.

ESSA reauthorizes the following Titles<sup>2</sup>:

- Title I - Improving Basic Programs Operated by State and Local Education Agencies. This is the major source of federal funds for schools. In the 2015-16 school year Ohio received \$558.4 million for Title I Part A and \$18 million for School Improvement
- Title II - Preparing, Training and Recruiting Teachers, Principals or Other School Leaders
- Title III - Language Instruction for English Learners and Immigrant Students
- Title IV- 21<sup>st</sup> Century Schools. This section also includes two new grant programs, *Assistance for the Arts*, to replace *Arts in Education*, and a new grant program Student Support and Academic Enrichment Grant, which includes dedicated funding for a well-rounded education.
- Title V - State Innovation and Local Flexibility
- Title VI - Indian, Native Hawaiian, and Alaska Native Education
- Title VII - Impact Aid
- Title VIII - General Provisions
- Title IX - Education for the Homeless and Other Laws

**What are states required to do under ESSA?** States are still required to adopt challenging academic standards; annually test students in math and English language arts in grades 3-8 and once in high school; test students in science at least once in elementary, middle, and high school; report testing results according to race, income, ethnicity, disability, and English-language learners; test 95 percent of students; and intervene in the lowest performing five percent of schools.

States are still required to develop plans that address school and district accountability and identify and serve struggling schools, and the plans need to be submitted to the U.S. Department of Education (USDOE) for review in order to receive Title 1 grants.<sup>3</sup>

**What has changed?** The law drops the requirement that schools meet adequate yearly progress (AYP) and the definition of highly qualified teachers.

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<sup>1</sup> Klein, Alyson, "Under ESSA, States, Districts to Share More Power," Education Week, January 5, 2016, Corrected February 4, 2016.

<sup>2</sup> Council of Chief State School Officers, "Comparison of Select Elements of ESEA No Child Left Behind v. Every Student Succeeds Act," December 8, 2015, p. 1.

<sup>3</sup> Education Week, "The Every Student Succeeds Act: Explained," December 8, 2015, updated January 4, 2016.

The law permits states to define “lowest performing” schools and identify the consequences for lowest performing schools. The law also permits states to determine the consequences for schools and districts that don’t test at least 95 percent of students, but prohibits the federal government from interfering in state decisions about allowing students to opt out of state testing.<sup>4</sup>

And, in a huge policy change, states can now decide how to evaluate teachers and principals and how much student test scores will factor in those evaluations.<sup>5</sup>

**What’s new?** In addition to adopting challenging academic standards, ESSA requires states to “demonstrate” that the standards are aligned with the entrance requirements for state institutions of higher learning and “relevant” state career and technical education standards.

And, AYP is replaced with state-defined “ambitious” long-term goals and interim progress measures that will continue to apply to all students and subgroups of students.

The law also gives states more control about how test results are used in state accountability systems and ratings, and permits states to include other factors in their accountability systems, such as school climate, teacher engagement, and access to advanced coursework.

The law also enshrines the Preschool Development Grants program to provide preschool for low and middle-income families. The program will be jointly administered by the USDOE and the Department of Health and Human Services, where is it housed along with Head Start.<sup>6</sup>

**What programs are retained?** The law retains the 21st Century Community Learning Centers grant program, which supports after-school programs; Promise Neighborhoods, which is a full-service community schools program; a separate, but different, grant program to support arts education; and a grant program to support gifted education. Funds for another 50 federal grant programs are consolidated into a block grant.

The \$500 million *School Improvement Grant Program* (SIG) has been consolidated with Title I. To support school improvement states must now set aside 7 percent of their Title I funds. Currently states can use up to 4 percent of Title I for school improvement efforts.<sup>7</sup>

**What are the controversies?** Civil rights groups advocated for stronger accountability provisions in the law to ensure that states were serious about educating all students, including students in poorer schools, those in special education programs, students learning English, and minority students. They also wanted the federal government to have the power to intervene in low performing schools.

Other stakeholder groups are frustrated by some unclear language requiring the federal government to approve state school improvement plans in order to receive Title I funding.

Some stakeholder groups also oppose the testing requirements; capping alternative assessments for special education students at one percent; “personalized learning” and “competency-based learning”, which some say legitimize putting a student in front at a computer screen all day; alternative routes to

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<sup>4</sup> National Conference of State Legislatures, Summary of the Every Student Succeeds Act, Legislation Reauthorizing the Elementary and Secondary Education Act, (No date) p. 3.

<sup>5</sup> Ibid., p. 8.

<sup>6</sup> Ibid., p. 11.

<sup>7</sup> Council of Chief State School Officers, Comparison of Select Elements of ESEA, No Child Left Behind v. Every Student Succeeds Act, December 8, 2015, p. 11.

certification, which some believe is included to support Teach for America and other quickie teacher preparation programs; merit pay for teachers; and increasing funding to expand charter schools, including for-profit charter schools.<sup>8</sup>

**Timeline:** The new law covers fiscal years 2017-2020. Existing state plans with the USDOE will stay in effect through August 1, 2016. Existing state waivers will end on or after August 1, 2016. States must continue interventions in schools identified as priority and focus schools for the remainder of the 2015-2016 school year and during the 2016-2017 school year.

The 2016-17 school year will be a transition period. Ohio expects to release a draft of its state plan in February – March 2017 with final approval before July 1, 2017, which is the beginning of the 2017-18 school year.

The law requires state departments of education to consult with their governor on the development of State plans for Title I, Title II and the consolidated application authority, and provide the public with a chance to review the plan before it is implemented.

Federal rule making for some components of ESSA is already underway. The rules for assessment are already in draft form. The rules for “Supplement not Supplant” did not make it through the negotiated rule-making process, and will be developed by the USDOE. The rules are expected to be finalized in November 2016, but most believe that the USDOE will be developing even more rules.<sup>9</sup>

**Are there opportunities for arts education?** Yes!! ESSA expands opportunities for including arts education programs in state and local ESSA plans to support a well-rounded education, early learning standards, more authentic assessments, and more. But there will be challenges:

- The guidelines and rules still need to be developed. Right now the unclear and contradicting language frustrates many policy leaders in the law.
- The time line to develop the state plan is relatively short.
- There are many players in Ohio, including the governor, lawmakers, the State Board of Education, the ODE, education organizations, local school districts, and parents, etc. who have different agendas and expectations for the law.
- The political environment (national, state, and local) could change drastically as a result of the November election, which could affect the rules and how the law is implemented.
- The State Board of Education has selected a new superintendent, who might have his own ideas about Ohio’s ESSA plan, and new members will join the Board in January 2017.

### **The following is a summary of some of the expanded opportunities in ESSA to support arts education:**

**ESSA Opportunity - Well-Rounded Education:** Remember “core academic subjects” in the *No Child Left Behind Act*? Core academic subjects have been replaced by “well-rounded education” in ESSA. The definition of well-rounded education is included in Title VIII Section 8002, and includes the arts and music!!

Title VIII 8002 Definitions (52) WELL-ROUNDED EDUCATION. “The term ‘well-rounded education’ means courses, activities, and programming in subjects such as English, reading or

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<sup>8</sup> American Journal of Education, Initial Responses to the Every Student Succeeds Act,” December 21, 2015.

<sup>9</sup> Americans for the Arts webinar “Understanding ESSA”.

language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, arts, history, geography, computer science, music, career and technical education, health, physical education, and any other subject, as determined by the State or local educational agency, with the purpose of providing all students access to an enriched curriculum and educational experience.”<sup>10</sup>

“Well-rounded education” is referenced in other sections of the law, which means that those sections would also apply to the arts and music.

The law requires SEAs to submit a Title I plan to the USDOE. The plan must be developed with timely and meaningful consultation with Governors, members of the state legislature, and state board of education, and other entities, including parents. Plans must coordinate with other federal laws, such as IDEA, Perkins Career and Technical Education Act, NAEP, etc.

The new law also requires local education agencies to include in their implementation plans a description of how they will monitor student progress in meeting state standards, and how they will implement a “well-rounded program of instruction to meet the academic needs of all students.”<sup>11</sup>

Here arts education advocates have an opportunity to press for including arts education programs in Ohio’s Title I plan, and in other areas that reference “well-rounded education”, and monitor how school districts define “well-rounded” to ensure that the arts are included.

**What about a broader definition of the arts?** There seems to be some documented legislative intent for a broader definition of the arts. A US Senate Committee report about the legislative history of the law, defines the arts as “dance, media arts, music, theatre, and visual arts, and other arts disciplines as determined by the State or local educational agency.”<sup>12</sup>

**ESSA Opportunity – Accountability:** ESSA Title I eliminates the requirement that states meet adequate yearly progress (AYP) in state accountability plans, but requires states to establish “ambitious State-designed long-term goals” with measurements of interim progress for all students and subgroups of students on improved academic achievement, graduation rates, progress in achieving English language proficiency for English learners.

A state’s accountability system must include the State Index, which includes academic indicators, and at **least one Measure of School Quality and Student Success**, such as student and educator engagement, access and completion of advanced coursework, postsecondary readiness, school climate and safety, and another state selected indicator. Based on the State Index and the Measures of School Quality states are required to “meaningfully differentiate schools”, with substantial weight given to the Academic indicators.<sup>13</sup>

There has been some discussion about advocating for arts education as a *Measure of School Quality and Student Success* in support of a well-rounded curriculum. Research is available that shows how arts education programs increase student engagement, student attendance, and academic achievement, for districts that select those strategies and measures.

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<sup>10</sup> House Education and Workforce Committee, “Final Bill Text, Every Student Succeeds Act,” p. 298.

<sup>11</sup> Council of Chief State School Officers, Memorandum: Key Arts Education Provisions Under the Every Student Succeeds Act, January 14, 2016, p. 3.

<sup>12</sup> Americans for the Arts webinar “Understanding ESSA”.

<sup>13</sup> Council of Chief State School Officers, Comparison of Select Elements of ESEA, No Child Left Behind v. Every Student Succeeds Act, December 8, 2015, p. 8.

And, here in Ohio, the state will start reporting the number of arts teachers available in a school district per 1000 students, which could be used as a starting point for developing this new measure.

States must also include on their report cards the achievement of not less than 95 percent of all students and subgroups of students. States can determine how this measure is factored into their accountability systems. There is also a provision stating that nothing in the assessment section of Title I preempts state or local law with respect to a parental decision on assessment participation.

Local school districts are required to provide parents, on request and in a timely manner, with information regarding state or local policy, procedures and parental rights regarding student participation in mandated assessments.<sup>14</sup>

**ESSA Opportunity – Assessments:** States are still required to assess students in math and English language arts in grades 3-8 and once in high school, and assess students in science once at the elementary level, once at the middle school level, and once in high school.

However, states have flexibility to design student-centered assessment systems that,

“Title I Section 1111(2)(B)(III)(vi) “...involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding, which may include measures of student academic growth and may be partially delivered in the form of portfolios, projects, or extended performance tasks;”<sup>15</sup>

There might be an opportunity to include in Ohio’s state plan what we have learned through OAAE’s Straight A Fund-supported arts assessment project (the Ohio Arts Assessment Collaborative), which is breaking new ground in arts assessment implementation and research.

School districts that assess student achievement through projects, performance tasks, portfolios could also evaluate student work based on meeting standards in the arts in addition to other content areas.

**ESSA Opportunity – Standards:** States will also have the authority to select challenging academic content standards in math, English language arts, and science, *and in any other subject that the state determines*. The standards must align with credit bearing, remediation free coursework at institutions of higher education and state CTE standards. The law prohibits the U.S. Department of Education from mandating or incentivizing states to adopt specific standards.<sup>16</sup>

Ohio’s academic content standards in the arts will undergo a five-year review within the next few years, which gives arts education advocates an opportunity to review the standards to ensure that they comply with the ESSA requirement that standards align to college and career readiness standards. There is also an opportunity to consider adding media arts to Ohio’s academic content standards for the arts, because the Senate intent document and the National Standards in the Arts include media arts in the definition of “the arts.”

**ESSA Opportunity – Teachers:** ESSA Title II provides greater flexibility and resources to states and school districts to implement various activities to support teachers, principals, and other educators,

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<sup>14</sup> Ibid., p. 4.

<sup>15</sup> House Education and Workforce Committee, “Final Bill Text, Every Student Succeeds Act,” p. 25.

<sup>16</sup> Council of Chief State School Officers, Comparison of Select Elements of ESEA, No Child Left Behind v. Every Student Succeeds Act, December 8, 2015, p. 3.

including professional development activities, induction and mentoring programs, capacity-building, and funds to support teachers in the arts, library/media, STEM, gifted, etc.

ESSA Title II eliminates the highly qualified teacher provision, but requires teachers working in Title I programs to meet applicable state certification and licensure standards.

Under Title II, SEAs and LEAs are permitted to develop and implement teacher and principal evaluation systems that are based in part on evidence of student achievement, but are not required to use evidence of student achievement in teacher evaluations.<sup>17</sup>

Again, the law provides an opportunity to update Ohio's teacher and principal evaluation frameworks, and examine the use of student test scores in those evaluations.

**ESSA Opportunity – School Improvement:** ESSA requires states to improve student learning based on evidence-based interventions, but does not require the specific strategies included in the *No Child Left Behind Act*, such as closing schools and opening charter schools. School districts must develop comprehensive and research-based plans for schools identified for Comprehensive Support and Improvement and Targeted Support and Improvement.

Title I - *Improving Basic Programs Operated by State and Local Education Agencies*, is a major source of federal funding for schools with high numbers or high percentages of children from low income families. Title I funding is allocated through four statutory formulas that are based on census poverty estimates and the cost of education in each state. In the 2015-16 school year Ohio schools received \$558.4 million for Title I Part A and \$18 million for School Improvement. A list of Ohio school districts and their Title I allocations is available at

<http://education.ohio.gov/getattachment/Topics/School-Improvement/Federal-Programs/FY15-Allocations-for-website.pdf.aspx>

Local education agencies (LEAs) must target Title I funds to schools with the highest percentages of children from low-income families, and focus Title I services on children who are failing, or at risk of failing.

Schools in which children from low-income families make up at least 40 percent of enrollment are eligible to use Title I funds for schoolwide programs that serve all students in the school. Under schoolwide programs LEAs can also consolidate Title I funds with other federal, state, and local funds. States can approve waivers for LEAs with less than a 40 percent poverty rate to operate a schoolwide program. In addition, schools can use Title I funds for preschool programs or dual/concurrent enrollment programs.

Under ESSA, SEAs must develop a new Title I plan in order to receive FY2017 funds. The plan must be developed in consultation with stakeholders, including the governor, members of the state legislature, the state board of education, local education agencies, teachers, principals, and parents, among others. A state may develop an individual program plan or a consolidated plan, but all plans must be submitted to the USDOE.

Also under ESSA, states must assure that an LEA's Title I plan describes "...how the local educational agency will monitor students' progress in meeting the challenging State academic standards by (A) developing and implementing a well-rounded program of instruction to meet the

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<sup>17</sup> Council of Chief State School Officers, Comparison of Select Elements of ESEA, No Child Left Behind v. Every Student Succeeds Act, December 8, 2015, p. 11.

academic needs of all students.”<sup>18</sup>

ESSA eliminated the School Improvement Grant program (SIG), which supported the national Turnaround Arts initiative, which was successful in reducing disciplinary referrals and increasing classroom attendance in struggling schools.

Under ESSA, states must set aside 7 percent of their Title I Part A funds, or the amount the state had reserved for school improvement in 2016, and the amount it received, whichever is greater. These funds can be used to provide LEAs with technical assistance and support, or states can provide activities directly to LEAs. Currently states can set aside 4 percent of funds for school improvement.<sup>19</sup>

**ESSA Opportunity – STEAM:** ESSA Title IV 4107(3)(C)(vi) includes an opportunity for schools that integrate academic subjects, to integrate subjects, including the arts, into STEM courses to increase participation in STEM, improve attainment of STEM-related skills, and promote a well-rounded education.<sup>20</sup>

Title IV 4107(3)(I) also supports programs and activities that support educational programs that integrate multiple disciplines, such as programs that combine arts and math.<sup>21</sup>

**ESSA Opportunity - Assistance for Arts Education:** ESSA Title IV Section 4642 *Assistance for Arts Education* replaces the current *Arts in Education* program administered by the USDOE. The new grant program provides dedicated federal funding for arts education for disadvantaged students through activities such as professional development for arts teachers, development and dissemination of arts-based educational programming in multiple arts disciplines, and national outreach activities that strengthen partnerships among local education agencies, communities, national centers for the arts, and private cultural institutions, such as museums, libraries, theatres, etc.

ESSA Title IV Section 4642 Assistance for Arts Education “(1) In General -- Awards made to eligible entities to fulfill the purpose described in section 4641(a)(I), shall be used for a program (to be known as the Assistance for Arts Education program) to promote arts education for students, including disadvantaged students and students who are children with disabilities, through activities as

(A) professional development for arts educators, teachers, and principals;

(B) development and dissemination of accessible instructional materials and arts-based.

(C) community and national outreach activities that strengthen agencies, communities, or centers for the arts, including national centers for the arts.”<sup>22</sup>

The authorized funding level is \$20 million, which is less than the current level of \$25 million.

**ESSA Opportunity – Student Support and Academic Enrichment Grant:** ESSA Title IV 4104 Part A includes a new *Student Support and Academic Enrichment Grant* program (SSAEG) which states can award to districts to increase the capacity of states, LEAs, schools, and local communities to provide all students with access to a well-rounded education; improve school conditions for student

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<sup>18</sup> Council of Chief State School Officers, Memorandum: Key Arts Education Provisions Under the Every Student Succeeds Act, January 14, 2016, p. 2.

<sup>19</sup> Ibid., p 9-11.

<sup>20</sup> House Education and Workforce Committee, “Final Bill Text, Every Student Succeeds Act,” p. 177

<sup>21</sup> Ibid.

<sup>22</sup> Ibid., p. 232.

learning; and improve the use of technology in order to improve the academic achievement and digital literacy of all students.

A state must submit a plan describing how its SEA will use funds for state level activities, award grants to LEAs, review existing resources and programs, and coordinate with existing resources. The state must direct 95 percent of the grant to LEAS, and can reserve 1 percent for administration of the grant.

At least 20 percent of the grant at a district level must be used to support a well-rounded education, which can include AP and IB test fee reimbursement, STEM, arts, and computer science. LEAs must use a portion of funds to develop, implement, and evaluate programs and activities, and coordinate with other schools, community-based services and programs, and can partner with institutions of higher education, business, nonprofits, community based organization, or other public or private entities. Activities can include college and career guidance and counseling programs, programs and activities that use music and the arts as tools to support student success through the promotion of constructive student engagement, problem-solving, and conflict resolution; programming and activities to improve instruction and student engagement in science, technology, engineering, and math including computer science; and efforts to raise student achievement through accelerated learning programs.

Other activities to be funded include Healthy Students (at least 20 percent of funds), which includes bullying and drug abuse prevention, and technology (at least one activity, and a limitation is placed on the purchase of technology infrastructure.)

The authorized funding level for FY17 is \$1.65 billion, but drops to \$1.6 billion in FY18-20. The money will be distributed through a formula to states and school districts, but President Obama has recommended that the grants be competitive, and dropped the level of funding to \$500 million in the administration's FY17 budget proposal. Lawmakers were disappointed with the President's recommendations, and House and Senate appropriations committees might raise the amount.<sup>23</sup>

Again, this is an opportunity for school districts to access federal funds to support arts education, but it will be up to arts education advocates to press the state to reserve some of the 20 percent of this fund for arts education programs.

**ESSA Opportunity – 21<sup>st</sup> Century Community Learning Centers Part B:** ESSA Title IV Part B reauthorizes the 21<sup>st</sup> Century Community Learning Centers. This grant program provides about \$1 billion annually for afterschool programs, out-of-school programs, and expanded learning opportunities, including programs in the arts, in lower performing school districts and high poverty areas. The amount of funding is reduced compared to current levels.<sup>24</sup>

Arts education programs have been supported through 21<sup>st</sup> Century Community Learning Centers before. This is just another opportunity for communities to work with arts organizations and schools to expand student access to the arts.

**ESSA Opportunity – Pre-School Grant Program:** ESSA Section 9212 includes a competitive pre-school development grant program, called *Preschool Development Grants*, which Congress also

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<sup>23</sup> National Conference of State Legislatures, Summary of the Every Student Succeeds Act, Legislation Reauthorizing the Elementary and Secondary Education Act, (No date) p. 8.

<sup>24</sup> National Conference of State Legislatures, Summary of the Every Student Succeeds Act, Legislation Reauthorizing the Elementary and Secondary Education Act, (No date) p. 10.



funded last year. Funds are authorized through the Department of Health and Human Services (HHS), and HHS and the USDOE jointly administer the program. States are required to provide a 30 percent match for this grant. The program is authorized at \$250 million for FY 2017-2020.

The grant program includes the “arts” within the definition of “Essential Domains of School Readiness,” and allows local preschool programs to coordinate with local arts organizations.

Grantmakers in the Arts are to be thanked for working so hard at the federal level to ensure that arts education organizations are part of state plans for Early Childhood Education.<sup>25</sup>

Currently there are about five standards for the arts in *Ohio’s Early Learning and Development Standards* under the Learning Approaches domain and the strand for creativity, and the topic, “Expression of Ideas and Feelings Through the Arts.” Now that the arts are included in the Essential Domains of School Readiness as part of ESSA, arts education advocates should press for more alignment between *Ohio’s Academic Content Standards in the Arts* and *Ohio’s Early Learning and Development Standards*.

### **ESSA Opportunity – Promise Neighborhood**

Funding for grants to support President Obama’s Promise Neighborhood initiative are authorized in Section 4624. This program is designed to improve educational outcomes and transform communities, through activities including extended learning time and partnerships between schools and community resources, including arts education.<sup>26</sup>

### **Next Steps:**

The state and local school districts will be developing new plans in 2017 to implement ESSA, and, for the first time, there will be an emphasis on providing a well-rounded education, which includes the arts and music. Now is the time to advocate including strategies that support arts education in state and local ESSA plans.

At the state level, receive updates about Ohio’ statewide ESSA plan at <http://education.ohio.gov/Topics/Every-Student-Succeeds-Act-ESSA>.

At the local level be sure to connect with school district Title I, Title II, and Title IV coordinators, building principals, curriculum specialists, and others who will be developing local ESSA plans. Recommend that school districts include arts education programs in Title I plans; that Title II professional development grants support arts educators; and that the state and school districts support the arts through grants, including the new *Student Support and Academic Enrichment Grants*.

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