

## **EVERY STUDENT SUCCEEDS ACT (ESSA) - ILLINOIS**

The Illinois State Board of Education (ISBE) released the first draft of its ESSA State plan last Thursday, August 25. ESSA is the new version of the Elementary and Secondary Education Act, formerly known as No Child Left Behind. The State plan is available on the ISBE website on their ESSA page, and [here](#). They also released, several weeks ago, dates for the second round of the ISBE ESSA Listening Tour. IASB staff has been involved in all meetings leading up to the draft and will continue to participate as the process moves forward. In addition, IASB staff and members presented at every ISBE ESSA Listening Tour meeting during the first round and plans are to do the same for the second round.

## **ESSA - FEDERAL**

The U.S. Department of Education (USDOE) has been busy rolling out proposed rules and Guidance on various issues, and a new competitive grant program.

- Notice of Proposed Rulemaking on accountability, state plans, and data reporting under ESSA – includes provision on foster care transportation obligations (see below)
- Notice of Proposed Rulemaking on assessment under ESSA
- Guidance on transgender students (see below)
- Guidance on Foster Care provisions in ESSA (see below)
- Guidance on Carl D. Perkins Career and Technical Education programs regarding gender equity
- Guidance on new provisions in ESSA for supporting homeless youth (see below)
- Guidance on ensuring equity and providing behavioral supports to students with disabilities
- Guidance on education of children with disabilities attending public virtual schools
- President Obama’s Testing Action Plan – the USDOE announced on August 5, a grant competition “to help states get the resources they need to innovate and improve the quality of assessments, enhance reporting for parents, educators and other stakeholders, and reduce redundant and ineffective tests in the state and their districts that builds on the plan released in October that sets forth principles and steps to restore the balance on testing in the nation’s classrooms.”

In many of these instances, stakeholders are concerned about the USDOE overstepping their authority especially when it comes to proposed rules on

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**Susan Hilton**  
Director  
Governmental  
Relations

217/528-9688,  
ext. 1135  
[shilton@iasb.com](mailto:shilton@iasb.com)

ESSA. The language of ESSA was explicit in limiting the USDOE's authority to create burdens on districts without laws supporting those burdens, but the USDOE has in many opinions ignored that directive.

### **RULEMAKING ON FOSTER CARE TRANSPORTATION**

As mentioned above, this provision is part of the Notice of Proposed Rulemaking on Accountability, State Plans, and Data Reporting. This provision says that states must ensure that districts provide transportation to and from the school of origin for children in foster care, "even if the Local Educational Agency (LEA) and local child welfare agency do not agree on which agency or agencies will pay any additional costs incurred to provide such transportation." The proposed rule is inconsistent with ESSA's actual language and could hinder any compromise that districts might reach with welfare agencies about costs. The result would be a shift of the entire transportation cost to LEAs.

### **TRANSGENDER**

Back in mid-May, the USDOE released Guidance for districts on transgender students basically stating that, pursuant to Title IX's prohibition on sex discrimination, transgender students must be allowed to use the restroom or locker room of the gender they most identify with. There is currently no clear law on this issue and it has become a controversial national conversation.

Shortly after the USDOE issued its Guidance, eleven states filed suit in the U.S. District Court for the Northern District of Texas against the United States of America, USDOE, and other federal agencies primarily alleging that the Guidance improperly imposed a new interpretation of Title IX. On August 21, the District Court issued a preliminary injunction, which prohibits the Defendants from enforcing the Guidance. The District Court declared that the injunction should apply nationwide.

A lawsuit was filed in Virginia, before the USDOE Guidance was released, by a student against a district not allowing her to use the male facilities she identified with. The original case found for the district, the student appealed to the Fourth Circuit Court of Appeals in the southeastern part of the nation. The Circuit Court found for the student. The U.S. Supreme Court has decided to consider this case and has filed a stay on any action on this situation. If the Supreme Court takes the case, there may finally be clear guidance on this issue. If they do not, then the Circuit Court decision stands and the district must comply with the student's requirements.

### **GUIDANCE ON FOSTER CARE**

Under ESSA, new provisions will impact the transportation and treatment of students in foster care and take effect December 10, 2016. The USDOE released Guidance on this topic on June 23. According to the USDOE, the Guidance "aims to assist state and local partners in understanding and implementing the law and inform state and local collaboration between

educational and child welfare agencies.” Additionally, the USDOE reports that the Guidance “offers clarity in the form of questions and answers, touching upon: educational stability requirements; procedures for jointly determining which school is in a child’s best interest; procedures for jointly determining transportation to maintain children in their original schools; transfer of relevant records; and protecting student data and privacy.”

### **HOMELESS YOUTH**

On July 27, the USDOE released Guidance on the new provisions in ESSA for supporting homeless youth, which takes effect October 1, 2016. ESSA reauthorized the *McKinney-Vento Education for Homeless Children and Youths Act*, which protects and serves homeless students. Among other changes, the amended McKinney-Vento Act includes new requirements focused on:

- Identification of homeless children and youths;
- Making sure that preschool-aged homeless children have access to and receive supportive services;
- Ensuring coordination with other service providers, including public and private child welfare and social service agencies; law enforcement agencies; juvenile and family courts; and many others.
- Providing professional development and technical assistance at both the State and local levels;
- Removing enrollment barriers;
- Providing school stability, including the expansion of school of origin to include preschools and receiving schools and the provision of transportation until the end of the school year, even if a student becomes permanently housed;
- Protecting privacy of student records, including information about a homeless child or youth’s living situation;
- Improving the dispute resolution process for decisions relating to the educational placement of homeless children and youth;
- Increasing the emphasis on college and career readiness; and
- Establishing a new authority for local liaisons to verify the eligibility of homeless children, youths, and families for Housing and Urban Development (HUD) homeless assistance programs.

### **U.S. DEPARTMENT OF LABOR OVERTIME RULES**

On May 18, the Department of Labor published the final rule changing overtime regulations under the Fair Labor Standards Act despite significant opposition from a coalition of business and public employer groups. As mentioned in previous *Federal Legislative Report’s* (114-08 and 114-09), teachers and administrators are exempt from the rules and are not eligible for overtime compensation. Any employee whose duties relate to general business operations,

including secretaries and maintenance workers, could qualify. This rule takes effect on December 1, 2016.

### **FISCAL YEAR 2017 APPROPRIATIONS**

As was anticipated, Congress did not complete its appropriations work before it adjourned for summer recess this August. The likely scenario is that a short-term Continuing Resolution will be passed to get them through the start of the federal fiscal year, which begins October 1, past the election and through the lame duck session until the 115<sup>th</sup> Congress convenes.

### **CARL D. PERKINS CAREER AND TECHNICAL EDUCATION ACT (CTE)**

A bipartisan group of House Education and the Workforce Committee members introduced a bill in late June to reauthorize the CTE, which has not been updated since 2006. The legislation, *Strengthening Career and Technical Education for the 21<sup>st</sup> Century Act* (H.R. 5587), passed the Committee unanimously in early July. H.R. 5587 is supposed to address the concerns education advocates and business leaders have expressed in regard to the importance of aligning career and technical education programs with current and future workforce demands to help prepare students for both college and careers. The bill would align CTE with provisions for college- and career-readiness in ESSA; encourage greater public/private partnerships among school districts, employers and institutions of higher education; increase opportunities for apprenticeships and credentialing; retain current formula grant funding; and, strengthen support for career guidance and academic counseling, as well as professional development for educators.

The Senate Health, Education, Labor, and Pensions Committee has also been holding bipartisan conversations on the reauthorization of Perkins, but has not introduced a bill to date.

### **CONGRESSIONAL SCHEDULE**

Congress is currently on summer break and will not return until after Labor Day. This is a good time to connect with your member of Congress on these issues.