**Top 12 Concerns About *Every Student Succeeds Act* (S 1177 & HR 5)**

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1. **PROCESS VIOLATES TENETS OF AMERICAN GOVERNMENT – OF TRANSPARENCY IN THE BILL PROCESS AND DELIBERATIVE DEBATE.**

Process of forwarding conference report echoes the process of (Un) Affordable Care Act “You have to pass it to see what’s in it” – that is. Congress won’t be reading it.

1. **HEAVILY INCENTIVIZES STATES TO MAINTAIN COMMON CORE STATE STANDARDS**: As a requirement of the Act, states must “demonstrate” to the Secretary that they have adopted standards that are aligned to the same definition of “college and career” standards used to force states into adopting Common Core under NCLB waivers.
2. **ASSESSMENT OF NON-COGNITIVE ATTITUDES, BEHAVIORS, and MINDSETS**: Bill will maintain momentum for increasing non-academic data collection of student and family information into statewide longitudinal data systems.
3. **PARENT RIGHTS**: The Salmon Amendment in HR5 that allowed parents to opt out of high-stakes state assessments is no longer included. Students whose parents opt them out of the test, must be included in the 95% participation formula.
4. **EROSION OF STATE POWER OVER EDUCATION**: The state accountability system must be structured as per the federal bill.
5. **FEDERAL CONTROL OF STANDARDS CONTENT**: Bill language appears to require standards that align with career and technical education standards, indicating that the standards must align to the federally approved Workforce Innovation and Opportunity Act.
6. **NO CHECKS ON FEDERAL POWER, FEDERAL GOVERNMENT IS JUDGE AND JURY OF ITS OWN ACTIVITY – NO SUNSET OF LAW**: The framework would only "authorize" ESEA for four more years, as opposed to the typical five, but, there’s no sunset provision in the bill, so it could go on in perpetuity.
7. **EXPANSION OF GOVERNMENT ROLE IN CHILDCARE/DISINCENTIVE TO ACTIVELY SEEK EMPLOYMENT**: Bill is said to expand Head Start to childcare with Child Care Development Block Grant Act of 2014 so that *no work requirements* will be expected of low income parents to access grant money to pay for childcare.
8. **ADVANCES PROFITING BY PRIVATE CORPORATIONS USING EDUCATION DOLLARS THAT SHOULD GO TO CLASSROOMS:** Increasing the education budget to fund private investors to implement government- selected social goals is outside the scope of improving education, and outside the authority of Congress as described in the U.S. Constitution.
9. **INCREASED ESEA SPENDING:** ESSA authorizes appropriations for fiscal years 2017-2020. Spending authority will increase by 2% each year.
10. **EROSION OF LOCAL CONTROL:** The conference report language encourages states to form consortia that, without congressional approval, may be determined illegal.
11. **DATA PRIVACY:** Language in the conference report appears to rein in the Secretary of Education’s power and protect student data by inserting prohibitions of collecting additional student data, but makes no attempt to reverse the harm already done by Secretary Duncan’s modification of the Family Education Rights and Privacy Act (FERPA)

Introduction

Legislators are headstrong in staying the course and passing a 2015 reauthorization of ESEA currently known as the No Child Left Behind Act. They say this law is fundamentally broken and we need to fix it this year. But, the rush to do so, undermines the democratic process of public hearing and deliberation before a vote, which results in the demise of our education system for America’s children.

The bill making process began last spring with two different versions of a reauthorization bill. The conference bill under consideration in the House this week will largely be the Senate version (previously known as the *Every Child Achieves Act*) combined with

House version (previously titled the *Student Success Act*) and the conference report will be titled the Every Student Succeeds Act. Like preceding versions of the ESEA, the bill is written with language that appears to empower worthy goals such as closing student achievement gaps and preparing students for college and careers, eliminating common core and reigning in the U.S. Secretary of Education. Saturday’s WSJ wrote an editorial opining that, “A bipartisan compromise has emerged from the Senate and House that represents the largest devolution of federal control to the states in a quarter-century. It’s far better than the status quo that would continue if nothing passes,” but the reality is, the bill – expands federal control over state standards, affirms cronyism camouflaged as public/private-partnership, and makes state departments of education the enforcers of federal education policies that are detrimental to students, parent rights, local control, and the teaching profession.

1. **PROCESS VIOLATES TENENTS OF AMERICAN GOVERNMENT – OF TRANSPARENCY IN THE BILL PROCESS AND DELIBERATIVE DEBATE**.

Process of forwarding conference report echoes the process of (Un) Affordable Care Act “You have to pass it to see what’s in it” – that is. Congress won’t be reading it.

* + Most recent update of conference report is 1,061 pages developed by a handful of bill sponsors before the whole of the conference committee was selected;
  + Conference bill developed without public input especially of parents, though its paid for by public funds, forwarded to the floor during a holiday season when the public is distracted;
  + Proposed bill will be released to legislators and the public today (Monday, November 30 with the possibility of a HOUSE vote on Wednesday, Dec. 2 or Thursday, Dec. 3) – with no time for public hearing, critical reading and mark up, deliberation and debate; SENATE vote could be as early as Dec. 5 or 7;
  + The rush is highly suspicious, given that NCLB was due for reauthorization in 2007 (five years after it was signed into law) but, the Congress took 13 years to decide to take up the legislation.
  + Appears to be a Speaker Ryan redeux of the same strategies that stoked public anger against Speaker Boehner.

1. **HEAVILY INCENTIVIZES STATES TO MAINTAIN COMMON CORE STATE STANDARDS**: As a requirement of the Act, states must “demonstrate” to the Secretary that they have adopted standards that are aligned to the same definition of “college and career” standards used to force states into adopting Common Core under NCLB waivers. The requirement for the alignment of standards to this definition makes prohibitions against the Secretary meaningless, the statute itself dictates the alignment.

Sec. 1111(b)(1)(D)(i): IN GENERAL.—Each State shall demonstrate that the challenging State academic standards are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards.

The state must adopted content standards and at least three levels of achievement standards, collectively referred to in the Act as “challenging state academic standards.“ The standards must include the same knowledge, skills, and levels of achievement of all public school students in the state.” If the standards must include the same “knowledge, skills, and levels of achievement” for all students, then, by definition they cannot be too high, or possibly be based on non-academic expectations. The term *skills* infers non-cognitive skills-- meaning attitudes, values, and mindsets, which, to date, have no valid and reliable metric.

Bill proponents tout that the bill will reduce testing because states will be allowed to use ACT and SAT in lieu of the 11th grade statewide assessment previously required in NCLB. The reality is these two tests are now being designed to align to Common Core State Standards. ACT and the College Board were members of the exclusive standards development team publicized in 2009 by the National Governors Association press release. Replacing Grade 11 state tests with the ACT or SAT and evaluating school performance based on student performance on these tests heavily incentivizes states to maintain Common Core State Standards. (see Item #5)

In addition, this language gives a license to state boards of education, under the influence of the National Association of State Boards of Education which has been heavily funded by the Bill & Melinda Gates foundation, to retain Common Core State Standards that are promoted as preparing students to be “college and career ready” without ever defining what colleges and what careers students would be prepared to assume.

1. **ASSESSSMENT OF NON-COGNITIVE ATTITUDES, BEHAVIORS, and MINDSETS**: Bill will maintain momentum for increasing non-academic data collection of student and family information into statewide longitudinal data systems. The ESSA requires states to report on student factors beyond standardized test scores into their accountability systems. Bill language includes the following:

Accountability systems must include "not less than one indicator of school quality or student success that (aa) allows for meaningful differentiation in school performance; (bb) is valid, reliable, comparable, and statewide . . . which may include measures of - (I) Student engagement; (II) Educator engagement; (III) Student access to and completion of advanced coursework; (IV) Postsecondary readiness; (V) School climate and safety; and (VI) any other indicator the state chooses that meets the requirements of this clause."

Section 1005 (amending Section 1111) (c)(4)(B)(v)(II)]: For purposes of subclause (I), the State may include measures of—

(III) student engagement;

(IV) educator engagement;

(V) student access to and completion of advanced coursework;

(VI) postsecondary readiness;

(VII) school climate and safety; and

(VIII) any other indicator the State chooses that meets the requirements of this clause.

As reported in Education Week, “it’s not unreasonable to assume that states could use the “any other indicator’ language to support inclusion of students’ social and emotional skills, girt or growth mindsets in their accountability models. This flaw in the language opens the door to potential for bias especially when unlicensed personnel administer psychological assessments embedded in observation or test tasks. The potential for these types of assessments administered in this manner are not only abusive to students, and potentially damaging to their future, they are potentially damaging to schools that will be held. 1. These new ESSA plans would start in the 2017-18 school year.

<http://blogs.edweek.org/edweek/rulesforengagement/2015/11/new_esea_may_use_non-cognitive_traits_in_accountability_is_that_a_good_idea.html?cmp=eml-enl-eu-news2>

In September of this year, The Walton Family Foundation announced that it's investing in research on the measurement of non-cognitive traits such as grit and persistence in classroom settings. The grants total $6.5 million over three years. They represent a new direction for the organization, which largely has focused its education philanthropy on expanding school choice and charter schools. It's a sign that the field of study, known as *character education* and *social-emotional learning*, is maturing and gathering interest from many corners of the education policy and philanthropy worlds. <http://www.edweek.org/ew/articles/2015/09/30/measuring-grit-character-draw-new-investments.html>

1. **PARENT RIGHTS**: The Salmon Amendment in HR5 that allowed parents to opt out of high-stakes state assessments is no longer included: Students whose parents opt them out of the test, must be included in the 95% participation formula. Under the ESSA accountability system, states must annually measure 95% of their students and every subgroup of students and penalize a school doesn’t meet 95% through the state accountability system.

Sec. 1111(c)(4)(E): ANNUAL MEASUREMENT OF ACHIEVEMENT.—

(i) Annually measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the assessments described under subsection (b)(2)(v)(I).

(ii) For the purpose of measuring, calculating, and reporting on the indicator described in subparagraph (B)(i), include in the denominator the greater of—

(I) 95 percent of all such students, or 95 percent of all such students in the subgroup, as the case may be; or

(II) the number of students participating in the assessments.

(iii) Provide a clear and understandable explanation of how the State will factor the requirement of clause (i) of this subparagraph into the statewide accountability system.

ESSA doesn’t say exactly how much, but it is still prescriptive to the states. In fact, it simply makes the state the enforcer of a federal requirement loathed by parents, students, and teachers.

1. **EROSION OF STATE POWER OVER EDUCATION:** The state accountability system must be structured as per the federal bill. ESEA gives the federal department of education control over assessment content, expanding the assessment to learning environment in addition to student performance. State tests still have to be a part of state accountability systems and encourages the use of next generation computer adaptive testing (CAT),

Sec. 1111(b)(2)(J) ADAPTIVE ASSESSMENTS.—

(i) IN GENERAL.—Subject to clause (ii), a State retains the right to develop

and administer computer adaptive assessments as the assessments described in this paragraph, provided the computer adaptive assessments meet the requirements of this paragraph, except that—

Common Core aligned Smarter Balanced tests are designed to be computer adaptive tests that are encouraged by the conference report, yet no validity and reliability data have been published to date. Next Generation Tests delivered through CAT are vulnerable to problems associated with validity and reliability. For example,

•According to one Pearson analyst, “Implementing a CAT raises interesting and complex considerations for scoring. Multiple implementation scenarios are possible.”

•Although experts seem to agree that computer-adaptive testing works well with multiple-choice questions, or one-word-response questions, but there are differing opinions about how it does with longer answers or with essays. That makes computer-adaptive testing more suited to some subjects than others.

•Competence with technology devices outside of school does not necessarily generalize to competence with computer-based testing formats. Student responses to test questions may be compromised by the students’ facility with the specific type of hardware used in testing.

•To model the characteristics of the test items (e.g., to pick the optimal item), all the items of the test must be pre-administered to a sizable, representative sample and then analyzed. To achieve this, new items must be mixed into the operational items of an exam (the responses are recorded but do not contribute to the test-takers' scores). This presents significant logistical, ethical, and security issues. For example, it is impossible to field an operational adaptive test with brand-new, unseen items. (emphasis added) And each program must decide what percentage of the test can reasonably be composed of unscored pilot test items. , ,

•It is often infeasible to allow test takers to review or revisit items and change their responses. The usual reason for not allowing item review is that the CAT algorithm selects each item in sequence depending on the current ability estimate; therefore, returning to an item that was administered previously and changing the response would change the ability estimate one way or the other and could add instability to the estimate.

•Many of the challenges that will arise for testing students with disabilities in an adaptive setting fall into the categories just stated. The implication for this is, for example, that students with learning disabilities defined by deficits in math fluency, dyscalculia, may perform poorly on relatively easy test items that measure basic calculation but perform well on relatively difficult items that measure higher-level mathematical knowledge. The consequences of such idiosyncratic responding in an adaptive setting can be disastrous in terms of arriving at a stable and accurate proficiency estimate.

Bill proponents tout that the bill will reduce testing because states will be allowed to use ACT and SAT in lieu of the 11th grade statewide assessment previously required in NCLB. The reality is these two tests are now being designed to align to Common Core State Standards. ACT and the College Board were members of the exclusive standards development team publicized in 2009 by the National Governors Association press release. The test publishers and vendors will control the states exit certification requirements of students. If students do not perform well on these tests aligned to common core, they will be identified as not-college or career ready, and be referred for intervention.

The reality is, the NAEP, SAT and ACT scores gathered since the implementation of Common Core state standards have flat lined or declined. Since the implementation of common core in 2010, but before full alignment of the SAT test to Common Core standards, scores of college bound seniors have plummeted in mathematics, reading and writing. The writing scores are the lowest since in the history of the writing section of the test, that is, since 2006 and especially since 2013 – three years after CC standards and instruction techniques were introduced. Not only has common core not improved student learning, SAT scores show students are less college ready than before common core. Expansion of student numbers taking the test does not fully explain the downward trajectory. NAEP and ACT scores show the same pattern of results.

So, the federal government is still determining the conditions of what should be state-level decision making, and encouraging the implementation of assessment plans incorporating concepts that have no independent external reviews establishing validity or reliability data to support their use. <http://blogs.edweek.org/edweek/campaign-k-12/2015/11/accountability_and_the_esea_re.html>

1. **FEDERAL CONTROL OF STANDARDS CONTENT**: Bill language appears to require standards that align with career and technical education standards, indicating that the standards must align to the federally approved Workforce Innovation and Opportunity Act.

Section 1003A Direct Student Services. (c)(3)(A)(ii)(II): leads to industry-recognized credentials that meet the quality criteria established by the State under section 123(a) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102);

ESSA continues with its prescriptions: A state’s standards must align with higher-education requirements and with “challenging standards a.k.a. “career and technical education standards”:

"(D) ALIGNMENT.-

In general - Each State shall demonstrate that the challenging State academic standards are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards. [Section 1005 (amending Section 1111) (b)(1)(D), p. 48]

The required higher-education alignment is puzzling, because the entrance requirements of community colleges obviously differ from those of four-year universities. Presumably, states will align their standards to the least demanding higher-education requirements (as Common Core does), especially considering this:

"(B) Same Standards.-Except as provided in subparagraph (E), the standards required by

subparagraph (A) shall-

1. apply to all public schools and public school students in the State; and

with respect to academic achievement standards, include the same

knowledge, skills, and levels of achievement expected of all public school

students in the State.” [Section 1005 (amending Section 1111) (b)(1)(B)]

All these statutory alignment requirements will put downward pressure on the states to keep low-quality, community-college-focused standards like Common Core.

1. **NO CHECKS ON FEDERAL POWER, FEDERAL GOVERNMENT IS JUDGE AND JURY OF ITS OWN ACTIVITY – NO SUNSET OF LAW**: The framework would only "authorize" ESEA for four more years, as opposed to the typical five, but, there’s no sunset provision in the bill, so it could go on in perpetuity. The history of NCLB has taught us that Congress allows schools and school children to languish under dysfunctional education laws rather than defund and end bad legislation. No Child Left Behind Act passed in 2001 was scheduled for should have been reconsidered for reauthorization every 5 years, but, almost 14 years have passed since then president George W. Bush signed No Child Left Behind (NCLB), making it the educational law of the land. A review of a decade of evidence demonstrates that NCLB has failed badly both in terms of its own goals and more broadly. It has neither significantly increased academic performance nor significantly reduced achievement gaps, even as measured by standardized exams. Congress has no past evidence to continue a poorly conceived intervention heavily supported by education lobbyists.

In addition, the same language prohibiting the federal government from interferences in state powers in this bill existed in NCLB, but that language did not inhibit Secretary of Education Arne Duncan from ignoring prohibitions and implementing incentives, such as a quid pro quo for the NCLB waiver, to advance the common core state standards initiative which he laid out in his Nov 2010 address to UNESCO, but, failed to tell the American public.

1. **EXPANSION OF GOVERNMENT ROLE IN CHILDCARE/DISINCENTIVE TO ACTIVELY SEEK EMPLOYMENT**: Bill is said to expand Head Start to childcare with Child Care Development Block Grant Act of 2014 so that *no work requirements* will be expected of low income parents to access grant money to pay for childcare, and encourages blending of public/private partnerships.

SEC. 9212. PRESCHOOL DEVELOPMENT GRANTS (h)(1):

(D) if applicable, the degree to which the State used information from the report required under section 13 of the Child Care and Development Block Grant Act of 2014 to inform activities under this section, and how this information was useful in coordinating, and collaborating among, programs and funding sources;

(E) the extent to which activities funded by the initial grant led to the blending or braiding of other public and private funding;

In addition, The Preschool Development Grants in the conference report will  spend another $250 million on a 46th federal preschool program and  it is wrong for the following reasons (For more detail, please see the full one page summary [HERE)](http://truthinamericaneducation.com/wp-content/uploads/2015/12/ESEA-ESSA-Pre-K-Summary.pdf" \t "_blank):

         The grants require alignment to Head Start and the Child Development Block Grants that in turn require [in eleven different places in the [current Head Start statute](http://eclkc.ohs.acf.hhs.gov/hslc/standards/law/HS_Act_2007.pdf" \t "_blank), such as Section 642B(a)(2)(B)(iii)] national preschool standards. These standards are being correlated and aligned to the K-12 Common Core by [national organizations](https://www.sourceforlearning.org/news.cfm?newsid=68" \t "_blank) and [states like California](http://www.cde.ca.gov/sp/cd/re/documents/psalignment.pdf" \t "_blank).  They include very controversial and [subjective psychosocial standards like gender identity](http://eclkc.ohs.acf.hhs.gov/hslc/hs/sr/approach/pdf/ohs-framework.pdf" \t "_blank) (p. 27), creating a “Baby Common Core.”  (See more details on the problematic language fro the original Senate language [HERE](http://edlibertywatch.org/2015/06/more-dangerous-federal-control-with-new-preschool-grants-within-the-every-child-achieves-act-2/" \t "_blank)).

         The language prohibiting federal interference in “early learning and development guidelines, standards, or specific assessments, including the standards or measures that States use to develop, implement, or improve such guidelines, standards, or assessments” on page 968 of the [conference report](http://edworkforce.house.gov/uploadedfiles/every_student_succeeds_act_-_conference_report.pdf" \t "_blank) is useless -- programs are *already required* to adhere to Head Start, which demands federal content standards (see above). In addition, preschool programs in other sections of the bill such as Section 1006 (amending Section 1112)(c)(7) also demand adherence to Head Start’s performance standards that include these national “Baby Common Core” Standards.

         [A research compilation](http://edlibertywatch.org/2015/11/compilation-analysis-of-early-childhood-research-regarding-effect-fade-out-academic-emotional-harm/" \t "_blank) containing approximately 30 studies of Head Start and state preschool programs documents overwhelming evidence of ineffectiveness; fade out of beneficial effects in the early grades; or actual academic or emotional harm.  The most recent study is from Tennessee, Senator Alexander’s home state, in September of this year.

1. **ADVANCES PROFITING BY PRIVATE CORPORATIONS USING EDUCATION DOLLARS THAT SHOULD GO TO CLASSROOMS**: While it is well known how test and education materials publishers and private foundations such as the Bill & Melinda Gates Foundation and the Eli Broad Foundation have provided grants to education non-government organizations to advance private entities ‘education reform agenda, the draft bill language allowed states to use Title II funds (now meant for class size reduction and teacher quality initiatives, for social impact bonds, which is another profiteering scheme to loot tax payer dollars meant for education of children.

(40) PAY FOR SUCCESS INITIATIVE.—The term ‘pay for success initiative’ means a performance-based grant, contract, or cooperative agreement awarded by a public entity in which a commitment is made to pay for improved outcomes that result in social benefit and direct cost savings or cost avoidance to the public sector. Such an initiative shall include—

‘(A) a feasibility study on the initiative describing how the proposed intervention is based on evidence of effectiveness;

(B) a rigorous, third-party evaluation that uses experimental or quasi-experimental design or other research methodologies that allow for the strongest possible causal inferences to determine whether the initiative has

met its proposed outcomes;

(C) an annual, publicly available report on the progress of the initiative; and

(D) a requirement that payments are made to the recipient of a grant, contract, or cooperative agreement only when agreed upon outcomes are achieved, except that the entity may make payments to the third party conducting the evaluation described in subparagraph (B).

(Goldman Sachs is a leading investor in the social impact bond, *an innovative financing tool that leverages private investment to support high-impact social programs*. To date, GS has been the lead investor in four social impact bonds, partnering with nonprofits and civic leaders on programs that provide essential services to underserved communities. <http://www.goldmansachs.com/what-we-do/investing-and-lending/impact-investing/social-impact-bonds/index.html?cid=PS_01_47_07_00_00_00_01sSocialImpact>

Increasing the education budget to fund private investors to implement government- selected social goals is outside the scope of improving education, and outside the authority of Congress as described in the U.S. Constitution.

1. **INCREASED ESEA SPENDING**. ESSA authorizes appropriations for fiscal years 2017-2020. Spending authority will increase by 2% each year. Proponents say the cost associated with this legislation is within the newly passed budget, but, the question is whether any money should be controlled by the federal government to advance an unconstitutional agenda. Given that NO federally funded program has delivered on its promises to enhance student learning and close achievement gaps, Congress has no moral authority to authorize more spending on ineffective programs.
2. **EROSION OF LOCAL CONTROL:** The conference report language encourages states to form consortia that, without congressional approval, may be determined illegal. Sec. 2002(3)(B) encourages partnerships and arrangements that compromise local and state control over public education. In particular, consortium of states diminishes state sovereignty over education of its citizens.

Sec. 2002(3)(B): may be a nonprofit organization, State educational agency, or other public entity, or consortium of such entities (including a consortium of States);

Assessment consortia funded under Race To The Top Grants, acted to meet the requirements of the grant award without getting approval of their consortium before beginning their work. Not having approval of their consortia by Congress violated the Interstate Commerce Act. The Smarter Balanced Assessment Consortium agreement is being challenged in courts throughout the country including Missouri, West Virginia, and North Dakota. In spring 2015, a Missouri court ruled in Sauer v Nixon that the Smarter Balanced Assessment Consortium is an illegal state compact <http://www.fredsauermatrix.com/common-core-lawsuit-sauer-vs-nixon/>. This fall, an appeals court dismissed the appeal by the governor. The conference report creates a climate for future lawsuits under the same act.

1. **DATA PRIVACY:** Language in the conference report appears to rein in the Secretary of Education’s power and protect student data by inserting prohibitions of collecting additional student data, but makes no attempt to reverse the harm already done by Secretary Duncan’s modification of the Family Education Rights and Privacy Act (FERPA) or prohibit private international corporations, such as PEARSON from collecting and warehousing personally identifiable student data.

Sec. 1111(e) PROHIBITION.—

(1) IN GENERAL.—Nothing in this Act shall be construed to authorize or permit the Secretary—

D) to require data collection under this part beyond data derived from existing Federal, State, and local reporting requirements.

FERPA allows designated agents access to personally identifiable student data without parents or emancipated students’ knowledge of its collection, assurance of who has access to it or state of the art protection of breaches and guarantee of compensation if personal identity information is compromised. Congressman Chaffetz’s recent hearing on the unacceptably poor management of student data security by the U.S. Department of Education should cause legislators to prohibit the Secretary from collecting any student data until policies requiring parent permission and data security measures are in place.