



MEMO

To: State Arts Education Leaders
From: Government Affairs & Arts Education Department
Americans for the Arts
Date: July 18, 2016
Re: ESSA & the Arts Implementation Update

This is a memo to state arts education policy leaders providing an update on federal and state implementation of the Every Student Succeeds Act (ESSA) which contains about a dozen provisions impacting arts education. This memo has three parts: Background, Current Status, Actions to Take.

Background

Since passage of the Every Student Succeeds Act in December 2015, the Government Affairs and Arts Education staff of Americans for the Arts has been tracking developments and relaying updates to members and the arts education sector.

Legislative background: In December 2015, Congress passed bipartisan legislation to reauthorize the Elementary and Secondary Education Act in landslide votes: 85-12 in the U.S. Senate and 359-64 in the U.S. House of Representatives. The new authorization was signed into law by President Obama on December 10, 2015 in a White House ceremony that featured a student speaker who cited his arts education in his remarks. This long overdue authorization spans from FY 2017 through FY 2020, ushering in a new era of federal K-12 education policy with increased local control and state-level accountability, and also new opportunities for arts education.

With the ESSA bill in place, all arts education advocates (state and local) will need to work with their state education leaders to ensure that the arts are a part of their state's education policies. **Once state policy is set, local advocacy will be needed to pursue arts education at the school district and school level.**

Americans for the Arts' key ESSA related resources include:

- Webinars hosted on [ESSA passage](#) in January; on [state level strategies](#) in April; and a [State Policy Symposium](#) managed by Americans for the Arts, with partners AEP-Education Commission of the States and Kennedy Center, in March ([pictures here](#)) that included key ESSA information from representatives of the U.S. Department of Education, the Education Commission on the States, National Association of State Boards of Education and the National Conference of State Legislatures.
- Coverage on *ARTSblog*, starting with our [federal affairs overview](#) of what was in the ESSA legislation, and the 4 minutes when [STEM turned to STEAM](#), an update on selected [state policy advances](#), and additional commentary by MO's [Ben Martin](#), CA's [Joe Landon](#) and [Laura Smyth](#), EdTA's [Jim Palmarini](#), and Ingenuity Chicago's [AmySue Mertens](#), to name a few.
- A [digital hub](#) for resources and knowledge sharing updated regularly as continuing developments occur and Americans for the Arts – [national survey data](#) on arts education.

Other key ESSA resources were published by:

- Council of Chief State School Officers – [guide](#) to state stakeholder engagement
- Education Commission on the States – [report](#) on Well-Rounded Education provisions and a state stakeholder engagement [guide](#)
- Arts Education Partnership – maintains a [webpage](#) with additional ESSA resources

Current Status

As of this memo's writing, there are three dynamics in play: 1) the U.S. Department of Education is proceeding through various regulatory processes to gather feedback and finalize guidance to the states on the ESSA law, 2) the Congress is muddling through an FY 2017 appropriations process that will determine how the new ESSA law is funded, and 3) the states are individually proceeding with numerous pursuits of stakeholder engagement and drafting state accountability regulations, Title I plans, and updating arts standards.

The Education Department has administered the following activities this year:

- January – Conducted public hearings on ESSA in L.A. and Washington, DC (view [AFTA testimony here](#))
- April – Education Secretary King delivered a [speech](#) on Well-Rounded Education at arts school
- May – Americans for the Arts and two dozen arts organizations offered feedback in a U.S. Department of Education “listening session” on ESSA implementation
- June – Published draft regulations on state accountability, to be finalized this Fall
- July – Published new guidance on art within “humanities” as a part of Well-Rounded Education (document not available from Department yet).

The most important aspect of the ESSA implementation is currently a Notice of Proposed Rulemaking (NPRM) for [Accountability and State Plans](#). These draft rules are currently open for review, and comments on them are welcomed by the Department until the August 1, 2016 deadline. **An Americans for the Arts staff summary of the NPRM is attached** that can help you craft comments to the NPRM and aide your pursuit of pro-arts implementation in your state.

The “ESSA Arts Ed Working Group” (an informal coalition of national arts education organizations led by Narric Rome of Americans for the Arts and Heather Noonan of the League of American Orchestras) is working to provide feedback on the NPRM for organizations and state leaders to use – due out soon. See **Actions to Take** section.

Some valuable policy research has been published in the last few months that can guide state education policy choices. The Center for American Progress did a [50-state study on school accountability systems](#) which highlights three states including the arts in their accountability systems: Connecticut ([press release](#) and [slides](#)), Kentucky ([summary](#) and [arts scores](#)) and New Jersey ([press release](#) and [framework summary](#)).

A second important study concerns the end of Adequate Yearly Progress (AYP) and discusses how states might construct a [new paradigm to view educational accountability](#) that could include (a) academic outcomes (portfolio and performance based assessments in the arts), (b) curriculum access (including the arts), and (c) engagement (social-emotional learning). Further research in each of these areas is provided through AEP's [ArtsScan](#).

2015-16 School Year: Bill Passage and Initial Rulemaking

August	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July
				USED Rulemaking							
				ESSA passes.	Negotiated rulemaking panel (NPRM) meets.			NPRM sent to Congress for review.			NPRM is open for public comment.
				USED develops drafts regulations.							

2016-17 School Year: Transition

August	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July
USED Rulemaking					States Develop and Submit Plans						
ESEA Waivers null and void.			Final regulations released.		States must continue interventions in identified schools (i.e., focus and priority schools).						
					New President & Secretary						
Competitive grant programs take effect in new fiscal year based on new program structure.											
Formula grant programs take effect.											

2017-18 School Year: New Systems in Place

August	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July
New Accountability Systems Take Effect*											

* It is not clear from the legislation when states will first be required to identify a new set of schools based on their accountability systems under ESSA (i.e., will the identification be based on 2016-17 data or 2017-18 data). We hope to have more clarity on the timeline from the U.S. Department of Education in the coming months.

Actions to Take In July, August and September

- 1) [File a Comment](#) on the NPRM on Accountability and State Plans (**Aug. 1, 2016 Deadline**)
- 2) Identify and participate in your state education department's ESSA stakeholder process—information is usually found on the Department of Education website for your state ([PA example](#)). Your colleagues in [Ohio](#), [Florida](#), [Tennessee](#), [Iowa](#), and [Illinois](#) have been active and can provide examples of their work. Use these state resources and the info in this memo to **broker conversations about arts education with state education policy leaders.**
- 3) View AFTA webinars (to be posted in late August) on ArtsU: Creating State Specific ESSA Resources; Forming ESSA Working Groups, and Incorporating the Arts in State Accountability Systems
- 4) **Attend:** NASAA and Americans for the Arts are teaming up to organize an arts education advocacy forum, which will take place at [NASAA Assembly 2016](#) in Grand Rapids. Set for **Saturday, September 17 1:15pm-3:15pm Eastern**, SAA executives, council members and staff, and State Arts Action Network (SAAN) members are invited to participate in a session designed to help SAAs and state arts advocacy organizations collaborate to lead successful efforts connecting arts education to state ESSA plans and implementation.

Attachment: Americans For The Arts Staff Summary of the NPRM

U.S. Department of Education's Notice of Proposed Rulemaking (NPRM): Accountability, Data Reporting, and State Plans -- Taking Public Comment through Aug 1, 2016

Summary

Simply put, the proposed rule is a mixed bag. Any mention of the arts is completely omitted. Usage of well-rounded appears in five places. Music is mentioned once. Overall, the proposal continues to allow priority for math and reading—they are the only required subjects for assessment. Although the new multiple measures allow for a more holistic way for measuring what is a high quality school, academic indicators continue to remain weighted above school quality, student success, or student growth.

The good news:

- In selecting which multiple measures to use, the proposal specifies that these should be something that research shows will contribute to student achievement or boost graduation rates—something the arts do and can show with research!
- There is also much more built-in stakeholder engagement, from consultation regarding state plans to developing annual report cards. This input gives opportunity to influence final plans and priorities.
- There is also focus for supporting all students.

The bad news:

- There is no attention to encouraging states to report on student access to, or participation in, the arts.

Could go either way, depending on state decisions:

- States have much more flexibility to choose their own interventions. They could opt for a Turnaround Arts model. It could be something else entirely.

Accountability

What we wanted:

- One of our priorities was ensuring accountability for lower-performing schools, including having available intervention opportunities, like the Turnaround schools model. We also pressed for support for the arts as part of a complete education, demonstrating how its inclusion helps reinforce and achieve a high quality school for all students.
 - In the law, the School Improvement Grant (SIG) is eliminated.
 - SIG was a source of funding for Turnaround Arts – serving the lowest performing five percent of elementary and middle schools – which has demonstrated improved academic achievement, reduced disciplinary referrals, and increased classroom attendance.
 - In the law, states continued to be required to improve student learning within the lowest-performing five percent of their schools. Although SIG is eliminated as a separate program, the current four percent set-aside by states from their Title I allocation for school improvement is now increased to a minimum of seven percent, to help target additional funds to these schools, perhaps for arts-based solutions like Turnaround Arts.

- The law also requires the accountability system be state-determined and based on “multiple measures,” including at least one measure of school quality or student success and, at a State's discretion, a measure of student growth. Given that young people with high arts involvement are 4x more likely to be recognized for academic achievement (report: *Living the Arts through Language + Learning*), the arts fit well into this multiple measures category. (See our [summary of research](#) on the role of the arts within these multiple measures.)
- In general, states have much more flexibility to choose their own interventions, but there are mechanisms to try to boost working with stakeholders, including teachers, parents, and elected state officials.

What the proposal says:

- Academic indicators—separate from the multiple measures—need to equally weigh math and reading. So, there could still be some built-in potential “too much” testing in these subjects, as seen under NCLB. However, for school-quality indicators—part of the multiple measures—the proposal specifies that these should be something that research shows will contribute to student achievement or boost graduation rates. That's good news for the arts!
- Schools identified for intervention can't get off the “comprehensive improvement” list by *only* making progress on a school quality indicator—they have to also make progress on an academic indicator. So, there remains opportunity for continued stronger emphasis on math and reading test scores. Also, the state's bottom 5% of Title I schools must be identified at least once every 3 years.
- The proposal reinforces multiple measures—thus presenting a more holistic view of student success. States can also add new measures to their accountability systems over time. In selecting new indicators, they must measure the performance of all students, allow for comparisons, and demonstrate variation. Each state must use the same measures within each indicator for all schools. The only exception to allow variation by grade.
- Throughout, proposal reinforces that school quality and student success are weighted less than academic achievement, academic progress, graduation rate, and progress in English language proficiency.

Data reporting

What we wanted:

- This is a key area for the arts. Despite the impressive and well-documented benefits of arts education, there continues to be acute disparities in access to arts education for students. We wanted requirements for states to report on student access to, and participation in, the arts on an annual basis.
 - The law works to help ensure equitable access to a comprehensive education for all students by including some plan provisions designed to ensure that all children receive a high-quality education, and to close the achievement gap between children meeting the challenging state academic standards and those who are not.
 - Under the law, each local educational agency plan is required to describe how they will monitor students' progress in meeting state standards, and how they will implement “a well-rounded program of instruction to meet the academic needs of all students.”
 - The law also requires that annual report cards be developed in consultation with parents and that they be widely accessible to the public—both are new requirements.

- In general, there are expanded reporting requirements, which the Department estimates in the proposed rule to impose a one-time increased burden of 230 hours per state. The Department also likes to highlight the new requirement for disclosure of per-pupil expenditures—and tie it to the supplement, not supplant controversy, but also to its application for showing disparities.

What the proposal says:

- In terms of data provided by testing, states must annually measure the achievement of at least 95 percent of all students, but those calculations are based only on assessments (separately) in reading and math. In fact, reading and mathematics continue to be the only subjects required for assessment.
- If states fail to reach the participate rate, these are the options: (1) assign a lower summative rating to the school; (2) assign the lowest performance level on the state's Academic Achievement indicator; (3) identify the school for targeted support and improvement, or (4) another equally rigorous state-determined action, as described in its state plan, that will result in a similar outcome for the school and lead to improvements in the school's assessment participation rate so that it meets the 95 percent participation requirement in the future.
- The proposal makes clear that “super” subgroups (combining different groups of students for accountability purposes) are prohibited.
- States get to determine the sample size they want to use (n size), but the proposal requires states to justify an n size of more than 30.
- The proposal requires a single rating from among at least three distinct rating categories for each school.

State plans

What we wanted:

- We were glad to see the expanded stakeholder engagement in developing state plans, and the encouragement to states to describe plans for offering of a variety of well-rounded education experiences to students. We also were glad to see the use of well-rounded education as a tool to meet challenging state academic standards.

What the proposal says:

- It restates that states must describe their strategies, timelines, and how they will use funds to ensure equitable access to a well-rounded education and rigorous coursework—but in their list of those subjects, it omits the arts!
- It gives no further explanatory of “timely and meaningful consultation,” other than saying it includes “notification” and “outreach” and “takes a substantial amount of time.” It otherwise completely leaves that to the states. But it does say that the Secretary has the authority to establish a deadline for submission of a state plan, and states must choose one of two options: March 6 or July 5, 2017, but even there it allows for a one-time extension for educator equity data reporting.
- It gives a mechanism for a preliminary written determination by the Secretary. If revisions are needed and not provided within 45 days of receipt, the proposal gives full authority to the Secretary to issue a final written determination. So, there is still some federal authority built-in.
- The proposal requires SEAs to periodically review and revise their state plans at least every four years.

- It sets five overarching components that must be addressed in the state plan: (1) consultation and coordination; (2) challenging academic standards and academic assessments; (3) accountability, support, and improvement for schools; (4) supporting excellent educators, and (5) supporting all students.

Use of “Arts” and “Well-Rounded” in Notice of Proposed Rulemaking

- There is no mention, anywhere, of “arts”
- As already flagged, in the well-rounded section, “arts” is omitted in the list: “Equitable access to a well-rounded education and rigorous coursework in subjects such as English, reading/language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, history, geography, computer science, music, career and technical education, health, physical education, and any other subjects in which female students, minority students, English learners, children with disabilities, and low-income students are underrepresented;” – this also is the only mention of music.
- “Well-rounded” appears in 5 places:
 1. Proposed § 299.19 would require each SEA to describe how it will ensure that all children have a significant opportunity to meet the State's challenging academic standards and attain a regular high school diploma. In proposed § 299.19(a)(1), each SEA would describe its strategies, rationale, timelines, and funding sources that address the continuum of a student's education from preschool through grade 12, equitable access to a **well-rounded** education and rigorous coursework, school conditions to support student learning, effective use of technology, parent and family engagement, and the accurate identification of English learners and children with disabilities.
 2. Because these skills and abilities increase over the course of a child's schooling, it is essential for States to consider equitable access across a student's educational experience, beginning in preschool and ensure that all subgroups of students have access to a **well-rounded** education, including accelerated and advanced coursework.
 3. This will help each State identify inequities that may hinder a student's educational success at any point in terms of access to the **well-rounded** education necessary for them to meet the State's challenging academic standards and earn a high school diploma.
 4. § 299.19 Supporting all students. (a) **Well-rounded** and supportive education for students. (1) In its consolidated State plan, each SEA must describe its strategies, its rationale for the selected strategies, timelines, and how it will use funds under the programs included in its consolidated State plan and support LEA use of funds to ensure that all children have a significant opportunity to meet challenging State academic standards and career and technical standards, as applicable, and attain, at a minimum, a regular high school diploma consistent with § 200.34, for, at a minimum, the following:

5. Equitable access to a **well-rounded** education and rigorous coursework in subjects such as English, reading/language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, history, geography, computer science, music, career and technical education, health, physical education, and any other subjects in which female students, minority students, English learners, children with disabilities, and low-income students are underrepresented;



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