Thompson & Horton LLP
ATTORNEYS | COUNSELORS

Houston
Dallas
Austin
Fort Worth

Christopher P. Borreca
Partner

(713) 554-6740 Office
(713) 583-8664 Fax

cborreca@thompsonhorton.com

Thompson & Horton LLP
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, Texas
77027-7554

February 3, 2020

Dr. Curtis Culwell
Executive Director
Texas School Alliance

***Via email: curtis@texasschoolalliance.org***

Re: TSA Federal Update

Dear Dr. Culwell:

The following information is provided relative to the federal activities of the TSA.

## 1. Follow up from Washington DC Visit With Dee Carney

As previously reported last month, Chris Borreca, Thompson & Horton TSA federal consultant, and Dee Carney, HillCo Partners TSA accountability consultant, traveled to Washington D.C. earlier this month to learn more about the flexibility allowed by the Every Student Succeeds Act (ESSA); and to meet with key congressional staff to see if there are opportunities to apply that flexibility to TSA's questions regarding ESSA.

It was a busy two days as they also attended the ***ESSA Turns 4 Summit*** and listened to the architects of ESSA, Senators Lamar Alexander (R-TN), Chairman, and Patty Murray, Ranking Member, of the Senate Health, Education, Labor and Pensions Committee, Congressman Bobby Scott (D-VA), Chairman of the House Education and Labor Committee, Congressman John Kline (R-MN) retired, former Chairman of the House Committee on Education and the Workforce, discuss the intentions of the law and the realities of its first-year of implementation. Recall that TSA provided a great deal of input to Congress when the ESEA was reauthorized in 2015. More specific information on the half day summit can be found here:

https://forstudentsuccess.org/four-years-later-after-the-passage-of-essa-policymakers-education-and-civil-rights-stakeholders-weigh-in/

Also, Chris and Dee met with Dr. Frank Brogan, Assistant Secretary for Elementary and Secondary Education, to learn more about amendments and waivers as they pertain to ESSA, and they met with Chairman Scott and Chairman Alexander's committee staff members to discuss specific ESSA statutory requirements. Dr. Brogan offered a very gracious reception and described possible means of seeking clarifying amendments and possible waivers.

They met individually with education policy staff members from Senator Cornyn and Senator Cruz's office, as well as the staff from the Texas members of the House Education and Labor Committee: Rep. Joaquin Castro (D-Tx 20 includes North East, Northside, and San Antonio ISD), Rep. Van Taylor (R-Tx 3 includes Plano ISD), and Rep. Ron Wright (R-Tx 6 includes Arlington and Fort Worth ISD). Letters of support from TSA for several pending bills were also provided. These letters of support were attached to the report last month. They also met with staff from Rep. Roger Williams' office, (R-Tx 25 includes Killeen and Austin ISD) and discussed issues related to ESSA implementation as well as TSA's support for *H.R. 3665, the School Violence and Mitigation Act of 2019.*

*What's next for TSA's ESSA questions?* In an October 24, 2019 letter to Chief State School Officers, Dr. Brogan reminded the CSSOs that amendments related to the accountability determinations for the 202-2021 school year should be submitted to USDE no later than February 3, 2020. Therefore Dee and Chris will work with TSA leadership on how best to proceed regarding possible ESSA waivers and amendments to the Texas Plan. Meeting requests with TEA, unfortunately, have not met with success, to date.

TSA also submitted comments to the Agency's notice of proposed amendments to the Texas ESSA plan. These are included as **Attachment A**. Finally, Dee and Chris participated in a lengthy phone conversation concerning accountability issues as described in **Attachment C**, the January 2, 2020 email to Christopher Rinkus with the Department of Education.

## 2. Federal Education Funding Set for 20-21 School Year

Before the holiday break, the President signed H.R. 1865, the Consolidated Appropriations Act of FY20 into law. The bill and its provisions fund the federal government for F720 which runs from Oct 1, 2019 thru September 30, 2020. FY20 dollars will be in schools during the 2020-2021 school year. Congress has relied on a series of short-term continuing resolutions to keep government funded and running since September 30, 2019. The final continuing resolution was set to expire at midnight on December 21st meaning the timing of the bill forced an expedited floor vote schedule in both the House and the Senate. The President agreed to sign the funding bill as it provides some funding, $1.4 billion, for the border wall. He is expected to try and shift cash from other funding streams to bolster funding for the wall.

H.R. 1865 provides $1.4 trillion for FY20. The more than 2,000-page bill will appropriate $738 billion in FY20 funding for the defense discretionary spending and $632 billion for non-defense discretionary spending. Specific to education, the bill provides $40.1 billion for K-12 education programs which is an increase of $1.2 billion above the 2019 enacted level and $5.9 billion above the President's budget request. This is the third largest increase for ED since FY11 (the year that ED funding started being cut or frozen). The bill rejects the draconian cuts to critical programs proposed by the Trump Administration as well as their continued efforts to further advance their flawed privatization agenda.

Program Specific Details:

- K12 Programs
  - ESSA Title I: $450m increase to $16.3b
  - ESSA Title II: $76m increase to 2.1b (first increase in 6 years)
  - ESSA Title III: $50m increase to $787 (first increase in 5 years)
  - ESSA Title IV: $40 m increase to $1.2b
  - IDEA State Grants (Part B): $417m increase to $13.9b (3% increase)
  - Impact Aid: $40m increase, to $1.4b
  - 21st Century Community Learning Centers: $28 m increase, to $1.2b
  - REAP: $5m increase to $186m
  - Career and Technical Education State Grants: $20m increase to $1.28b
  - Homeless Youth/Children: $8m increase to $105m
  - School Safety National Activities: $10m increase to $105m

- Early Education
  - Head Start: $550m increase to $10.6b
  - Child Care and Development Block Grant (CCDBG): $550m increase to $5.8b

- Funding and Policy Beyond The Labor-Health-Education Bill
  - STOP School Violence Act Grants: $25m increase to $125m
  - Secure Rural Schools/Forest Counties: The bill reauthorizes and provides two years of funding for the SRS program for FY19 and FY20
  - DC Voucher: Reauthorizes the program for 4 additional years
  - Raises the age for purchasing tobacco products including e-cigarettes to 21 from 18.
  - Provides $12.5m in funding for researching gun violence prevention
  - Adequately funds the Census to ensure it can be properly administered
  - Contains policy language instructing CMS and ED to work together to reduce administrative barriers for providing health services in and in coordination with schools and provide technical assistance to assist with billing and payment administration for Medicaid services in schools.
  - Repeals the Cadillac Tax from the Affordable Care Act

Congress prioritized increased funding for our key formula programs like IDEA and Title I. However, this funding is still short of what districts were receiving in FY11 when adjusting for inflation. Furthermore, while it’s true that IDEA received a 3.2% boost in this bill, which represents a slightly higher percentage increase than what the other key K12 programs received, this increase is only a little better than inflation, which is projected to be 2% in 2020. Effectively, this means that IDEA is only receiving a real increase of 1.2% while the number of children with disabilities districts are educating continues to increase.

Although Congress increased funding for special education grants to state (IDEA Part B) by approximately $400 million for fiscal year (FY) 2020, the federal share of the “excess” cost of educating students with disabilities actually fell from 14.3 percent in FY 2019 to an estimated 13 percent in FY 2020. (The FY 2019 estimate comes from the Congressional Research Service, and the FY 2020 estimate was provided to us by the Department of Education.) This happens when the number of students needing services increases and/or as the intensity of needed services increases.

When Congress enacted the first special education law in 1975, it pledged to provide up to 40 percent of the excess cost of educating students with disabilities but has never come close to this "full funding" percentage. Federal law mandates that school systems provide a free appropriate public education to all students, regardless of the federal contribution. As a result, when the federal share of the costs declines schools need to use more of their state and local funding for special education. If the federal government increased its share of the costs then more state and local education funding would be available to cover other education needs. For FY 2020, Congress would have had to triple the $12.8 billion it provided to reach the full funding. Fully funding IDEA should remain a top advocacy priority for TSA.

## 3. Additional Legislative Efforts to Watch

Legislation directly affecting K-12 is slow-moving and often gets bogged down by politics. Still, a few bills impacting K-12 might finally see the spotlight in the coming year. Whether they will be passed and signed into law is a tossup, but some are more likely than others to be voted on. TSA, in November's Federal Update, described some important pieces of legislation.

Here are some more bills, everything from trauma-informed care to STEM funding and teacher pay.

**Resilience Investment, Support, and Expansion from Trauma Act, H.R. 3180**

The RISE from Trauma Act would expand and support trauma-informed care in schools and increase resources for communities to address the impact of trauma on children. Specifically, it would support trauma-informed early childhood care and provide more resources for public school teachers and leaders through grants and partnerships. It supports the growing trend of community schools offering wraparound services and suggests trauma-informed care is receiving national bipartisan attention.

The RISE act was introduced by Reps. Danny Davis (D-Illinois) and Mike Gallagher (R-Wisconsin) in the House, with a sister bill also introduced by lawmakers in the Senate. The bipartisan nature of the legislation suggests it could pass.

**School Resource Officer Assessment Act, H.R. 607**

The SRO Assessment Act would require the U.S. Secretary of Education to conduct a survey of the assignment of school resource officers at all public schools. This is a very straightforward bill and won't require public schools to do anything as it is written now; it just requires the Department of Education to survey schools.

The original version of this bill was introduced in 2018 by Rep. Clay Higgins (R-Louisiana) and passed the House, which at the time had a Republican majority. Its 2019 version was introduced in January to a Democratic majority House, but its history suggests it could make headway. If this iteration passes the House (it would need Democratic lawmaker support), it could head to the Senate, where it would likely pass.

While the federal government has no law on SROs, at least 36 state bills related to school resource officers and their evolving roles in school safety have been enacted in 2019. Most states have some kind of required training and defined roles for these officers, but a handful of states, including Alaska, Arizona, Idaho, Minnesota and others, do not.

With SROs under increased scrutiny as a result of responses to school shootings or highly-publicized negative interactions with students and more states regulating the role than not, a survey of SROs by the Department of Education suggests greater national attention on the subject.

**Building Blocks of STEM Act, S. 737**

This legislation aims to make STEM education and career paths more accessible to female students. It would provide PD for pre-K and elementary school teachers on computer science, as well as develop female-inclusive computer science enrichment programs, including after-school and summer programs.

The bill was introduced by Sen. Jacky Rosen (D-Nevada) in March and has since passed both chambers of Congress with bipartisan support. The legislation could be signed into law by the president.

**Strength in Diversity Act, S. 1418**

This legislation, with sister bills introduced in both chambers, would work to reduce racial and socioeconomic segregation between districts and the schools within them by authorizing one-year grants subject to reauthorization. It would also provide funding for the research and data collection needed to diversify schools.

The bill, introduced by Rep. Marcia Fudge (D-Ohio) and Sen. Chris Murphy (D-Connecticut) only has overwhelmingly democratic support, with cosponsors in the House including Education and Labor Committee Chairman Bobby Scott and supporters in the Senate including Democratic Sens. Cory Booker, Kamala Harris and Bernie Sanders.

While this legislation is not likely to pass on a federal level, similar efforts are being made in state legislatures to even the playing field for students from different backgrounds. Recently, New York City Schools Chancellor Richard Carranza scrapped the use of a single admissions test at the city's specialized high schools he claimed would diversify eight schools, serving a disproportionate number of Asian and white students, "overnight."

**RAISE Act, S. 2510**

Introduced by Sen. Cory Booker (D-New Jersey), this legislation addresses a concern long plaguing districts: teacher pay. The bill would provide a refundable tax credit for elementary, secondary or early childhood educators in schools with a certain poverty rate, increase the tax deduction for the expenses of elementary and secondary school teachers, and provide funding for local educational agencies that maintain or increase teacher salaries. Public school teachers would be eligible for a tax credit up to $10,000 to offset the cost of school supplies.

**Education Freedom Scholarships and Opportunity Act – Cruz, S. 634**

Betsy DeVos continues to push this bill (and its effect upon public schools if passed) in public comments and speeches with virtually no chance of passage this year. Still it is concerning that the Secretary continues to reference it virtually every opportunity she gets. TSA is not on record as opposing this bill and doing so may be worthy of consideration. The bill particulars and the proposed implementation are found at **Attachment B**.

## 4. Supreme Court Case to Watch: Espinoza v. Montana Department of Revenue

On January 22nd, 2020 , the Supreme Court heard oral argument in the latest chapter of the battle over the use of public funding for religious schools, in Espinoza v. Montana Department of Revenue. A ruling could "undermine" public education funding.. Supporters of such funding argue that the government should not be allowed to discriminate against religious families and schools, while opponents warn that requiring the government to allow public funds to be used for religious schools could harm public education. Both of those issues were at the forefront of today's oral argument, as was the question of whether the lawsuit should continue at all. By the time the justices left the bench, it appeared that the outcome could hinge on the votes of Chief Justice John Roberts and Justice Stephen Breyer.

The issue came to the Court in a challenge to a ruling by the Montana Supreme Court that invalidated a tax-credit program on the ground that the scholarships created by the program could be used at religious schools. In 2015, the Montana legislature established the program, which provides a dollar-for-dollar tax credit of up to $150 for individuals and businesses who donate to private scholarship organizations. The organizations then use the donated money to provide scholarships for students who want to attend private schools – which, in Montana, are overwhelmingly religious. But under a rule announced by the Montana Department of Revenue shortly after the program was passed, families could not use the scholarships at religious schools. Doing so, the department explained, would violate the state constitution's ban on aid for churches and religious schools.

Kendra Espinoza, a single mother of two daughters, and two other Montana mothers went to court to challenge the rule. Explaining that they were "counting on" the scholarship money to able to keep their children in a Christian school in Kalispell, Montana, they argued that the exclusion of religious schools from the program would violate the federal constitution. The Montana Supreme Court rejected that argument, holding that the tax-credit program violated the state constitution because families were allowed to use the scholarships at religious schools. Espinoza asked the U.S. Supreme Court to review that ruling, which the justices agreed last June to do.

Arguing for Espinoza and the other parents challenging their exclusion from the tax-credit program, lawyer Richard Komer told the justices that the question before them was whether the federal constitution allows the "wholesale exclusion" of religious schools from a state scholarship program. The answer, Komer continued, is that it does not.

During his time at the lectern, Komer faced a barrage of questions from the court's female justices about whether his clients had a legal right to be in court at all, known as "standing." Justice Ruth Bader Ginsburg was first out of the gate. Now that the program is no longer in place, Ginsburg observed, Espinoza and the other parents are not being treated any differently than the parents of children attending private secular schools. Where, Ginsburg enquired, is the harm? Moreover, Ginsburg continued, the parents in this case are not the taxpayers, so under the Supreme Court's cases they would not have a legal right to challenge the availability of the tax credit.

Justice Sonia Sotomayor chimed in to make a similar point. Is there any Supreme Court case, she asked Komer, in which the justices recognized the legal right to sue of a party who didn't pay taxes or receive them? The parents in this case are, Sotomayor suggested, "like three levels removed": They aren't the taxpayers receiving the credits, they aren't the schools receiving the money from the state, and there is no guarantee that their children will receive scholarships.

Roberts also raised a question about the parents' right to sue. Shortly after Jeffrey Wall, the deputy solicitor general who argued on behalf of the federal government in support of the parents, finished his opening remarks, Roberts jumped in. The injury in this case, Roberts said to Wall, "flows through the schools," because the money goes to the schools, rather than the parents. And there are, Roberts observed, no schools in this case.

Justice Elena Kagan joined the fray as well. No matter what label you put on it, she told Komer, I "am having trouble seeing where the harm is in this case" right now. Whether "you go to a religious school or you go to a secular private school," she noted, "you're in the same boat at this point." There's no actual discrimination happening, she emphasized.

Komer pushed back, arguing that the discrimination occurred when the Montana Supreme Court issued its decision "mistakenly believing" that the state constitutional provision banning aid for religious schools and its application "did not violate the Federal Constitution." The remedy that the Montana Supreme Court decided on – striking down the whole tax-credit program – did not "shield the discriminatory judgment," Komer continued.

Kagan was unpersuaded, countering that the Supreme Court does not "usually grade every line of an opinion." Instead, she said, the justices look at the consequences of the lower court's decision: Here, there is no discrimination because the consequence of the Montana Supreme Court's ruling was that no one got the scholarship money.

Justice Samuel Alito pushed back. Under the Supreme Court's cases, he asked Komer, would it be unconstitutional for a state government agency to do something that it was allowed to do, but for an unconstitutional reason? Komer responded that it would.

A second major question at today's argument followed from the Supreme Court's 2017 ruling in *Trinity Lutheran Church v. Comer*, holding that Missouri's policy of excluding churches from a program to provide grants to resurface playgrounds violated the Constitution. In a footnote in his opinion for the court in *Trinity Lutheran* that Justices Neil Gorsuch and Clarence Thomas did not join, Roberts stressed that the court's decision was limited to the facts before it and did "not address religious uses of funding or other forms of discrimination."

Komer told the justices that his clients' case was "just like *Trinity Lutheran*" and that states cannot discriminate on the basis of religion. Alito and Justice Brett Kavanaugh seemed to agree. Why, Kavanaugh asked Adam Unikowsky, who argued on behalf of Montana, isn't this case a "straight violation" of *Trinity Lutheran*? If you are running a scholarship program in which people are denied or granted funding depending on their religious status, how is that consistent with *Trinity Lutheran*? Kavanaugh also had strong words for Unikowsky about the state's "no aid" clause, describing the clause as "rooted in grotesque religious bigotry against Catholics."

Alito echoed Kavanaugh's thoughts, asking Unikowsky whether there is "any real difference between this and *Trinity Lutheran*?"

Kagan saw things differently. *Trinity Lutheran*, Kagan explained to Wall, involved a completely secular benefit, while here Montana is saying that it doesn't want to subsidize religious education or activity. "That's a far cry from *Trinity Lutheran*," Kagan concluded.

Breyer and Roberts both expressed concern about what the broader implications of a ruling for the parents might be – specifically, whether it might affect government funding for public schools. Both Wall and Komer focused on the narrower question before the justices, with Komer emphasizing that his clients were in the Supreme Court only because Montana offered funding beyond the public schools. "We are not arguing," Komer said, "that the state couldn't just fund public schools."

By the time Komer finished, it seemed all but certain that he had the votes of Alito and Kavanaugh, and it seemed likely that Unikowsky had the votes of Ginsburg, Sotomayor and Kagan. Justice Neil Gorsuch said relatively little, and Justice Clarence Thomas asked no questions at all, but their votes in *Trinity Lutheran* suggest that they are likely to be sympathetic to the parents. This means that the outcome will likely rest on the votes of Roberts and Breyer, whose questions centered largely on the public-school funding issue. A decision in the case is expected by summer.

## 5. Trump USDOE Issues Guidance on Religion in the Schools

President Donald Trump, in a related matter, issued new guidance on prayer in schools January 21, 2020, part of several steps the administration took to mark National Religious Freedom Day, administration officials said.

That guidance does not introduce any new legal requirements, but it does outline existing legal precedents.

Courts have held that students may pray at school alone or in groups, but that prayer may not be organized or sanctioned by the school. And, as with other forms of expression protected by the First Amendment, schools may only intervene if the prayer is disruptive to the learning environment.

That means a student can silently pray at her desk before taking a test or in the cafeteria before eating lunch or with a group of friends around the flagpole before school, as many students do.

The Elementary and Secondary Education Act, in its current and past versions, requires the U.S. Department of Education to provide guidance on prayer in schools every two years, but that guidance hasn't been updated since 2003, a senior administration official said.

"President Trump is committed to making sure that people of faith, particularly children," are not discouraged from constitutionally protected rights to pray, an administration official said in a conference call with reporters.

The new school prayer guidance reiterates requirements under existing law that school districts must annually certify to their state departments of education that they have "no policy prohibiting participation in constitutionally protected prayer," officials said. State education departments must have a process for fielding complaints the right to prayer has been violated, and they must report any complaints or lawsuits over school prayer to the federal Education Department, the guidance says.

The guidance also reiterates that student religious organizations must be given the same access to school facilities as secular groups, which the Education Department previously noted in 1998 guidance that is still in place.

In addition to the prayer guidance, nine federal agencies, including the Education Department, will issue guidance that lifts requirements from an executive order signed by President Barack Obama that faith-affiliated social service programs receiving federal funds must provide notice of alternative providers. It's important to note that Trump already revoked that executive order in 2018.

Also Thursday, the administration will issue a directive that religiously affiliated organizations may receive federal grant money passed through state agencies, even if their states have laws that prohibit public funding for religious organizations. Those laws, known as Blaine amendments, are the subject of the Supreme Court case discussed above

Trump telegraphed his plans for updated prayer guidance at a December "Evangelicals for Trump" event in Miami. And, though it does not introduce new legal requirements, he's likely to mention it at campaign rallies as he seeks to fire up Evangelical Christian supporters who've become a key part of his political base.

"I will be taking action to safeguard students' and teachers' First Amendment rights to pray in their schools," Trump said at the event. "They want to take that right along with many other rights."

That event came shortly after Christianity Today, a popular Christian magazine founded by Evangelist Billy Graham, published an editorial questioning Christians' support of the president.

In his remarks, Trump mentioned the Smith County, Tenn., school district, where two atheist families alleged in a lawsuit that educators promoted school-sanctioned prayer during assemblies and Bible distribution at events.

"All of these activities send a clear message to minority-faith and non-religious students that they are second-class members of the school community while their Christian peers are favored by school officials. Public schools belong to all and all belong in public schools. School officials' blatant promotion of Christianity cannot be reconciled with this principle. Nor can school officials' promotion of religion be reconciled," the suit says, according to the media.

In the groundbreaking 1962 U.S. Supreme Court case *Engel v. Vitale,* justices ruled that the New York State Board of Regents could not set aside school time for an official prayer every day, even though the prayer wasn't tied to a particular religion and students were not required to say it.

"When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain," read the majority opinion in the case. "But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. "

The USDOE proposed regulations are found here:

https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/fedreg-draft-20200116.pdf

http://s3.amazonaws.com/public-inspection.federalregister.gov/2020-00876.pdf

## 6. DeVos Creates New Unit for 'Proactive' Civil Rights Enforcement

The Trump administration is creating a new unit at the Education Department that's meant to help schools and colleges "proactively" comply with federal civil rights laws before they're hit with complaints.

The new Outreach, Prevent, Education and Non-discrimination Center, or OPEN Center, will be housed in the Office for Civil Rights, the department said. The team of lawyers will provide "targeted support" to school districts and colleges about their obligations under federal civil rights laws.

"The OPEN Center underscores OCR's efforts to support all schools and provide technical assistance to help them come into compliance with federal civil rights law prior to the filing of a complaint," DeVos said in a statement. Kenneth Marcus, the assistant secretary for civil rights, said the new effort "is all about strengthening civil rights compliance through voluntary, proactive activities."

Christian Corrigan, who is now senior counsel in the Office for Civil Rights, will serve as the center's acting director, according to the department.

The context: Congressional Democrats have repeatedly criticized the Education Department's approach to civil rights during the Trump administration, arguing that DeVos has scaled back and weakened enforcement.

## 7. Ed-Flex Awarded to Texas

According to the Department of Education, Texas (along with Massachusetts, North Carolina and Vermont) has been approved to participate in Ed-Flex and will develop innovative programs in the area of staff development requirements, teacher certification, and student and staff attendance requirements. Exact details are not known at this time.

Ed-Flex began in 2012 nationally and in 2015 for Texas under the previous administration and law. At that time, Texas was granted flexibility in the area of college and career-ready standards and assessments, and rigorous differentiated systems of recognition, accountability and support for schools. At that time, the USDOE stated that schools that required heightened interventions would engage in in depth analysis exercises to both identify the most serious issues at those and draft an improvement plan to address those findings. TEA was to partner with those schools to coach them through the data analysis, drafting improvement plans, and implementation.

More information about Ed-Flex can be found here:

https://tea.texas.gov/finance-and-grants/essa-program/ed-flex-waivers

As more information is obtained, we will share with TSA.

Very truly yours,

**Thompson & Horton LLP**

Christopher P. Borreca

CPB/bg
Enclosures

cc: Dee Carney — HillCo Partners — ***Via email: dcarney@hillcopartners.com***

David Thompson (firm) — ***Via email: dthompson@thompsonhorton.com***

January 17, 2020

Mike Morath, Commissioner
Texas Education Agency
1701 N. Congress Avenue
Austin, TX 78701-1494

*Re: Proposed Amendment to State's Every Student Succeeds Act (ESSA) State Plan*

Commissioner Morath,

The 40 member districts of the Texas School Alliance (TSA) appreciate the opportunity to comment on the proposed ESSA amendment to 1) adjust the Closing the Gaps domain graduation rate methodology used in the academic accountability system, and 2) change the methodology used to identify schools for support and improvement.

TSA **agrees** with the proposed Graduation Rate Methodology, as outlined in TEA's "To the Administrator Addressed letter" (TAA) dated December 19, 2019.

TSA also **agrees with and appreciates** the inclusion of a growth metric, and the use of a six-year federal graduation rate to identify campuses for comprehensive support and improvement (CS&I).

Additionally, with regards to the Graduation Rate Methodology, TSA **respectfully requests** the following:

a) Provide <u>written clarification and guidance</u> on how the Graduation Rate Methodology will be applied to any one of the current (or future) P-TECH and /or T-STEM high schools that <u>may not</u> have a four-year adjusted cohort graduation rate (ACGR) as required by ESSA because these specialized schools may *"Within six years, enable students to earn a high school diploma, an associate degree, a two-year post-secondary certificate or industry certification, and complete work-based training."* (Source TEA Pathways in Technology Early College High School (P-TECH) webpage.);

b) Use the <u>"better of" the five-year or six-year graduation rate</u> in the proposed Graduation Rate Methodology; and

c) <u>Retroactively apply the six-year graduation rate.</u> Please note that there are currently campuses that are identified as year two comprehensive support and improvement due to the *<u>original</u>* use of the four-year federal graduation rate. TSA members propose and support the agency submitting to USDE the amendment to **retroactively apply the six-year graduation rate** in order to achieve the goal of having all comprehensive support campuses identified using the same methodology.

TSA **disagrees** with the proposed amendment request to change the escalation of Title I additional targeted support campuses, rather than escalating Title I targeted support and improvement campuses for the reasons listed below:

1. The proposed change does not align with ESSA's stated intent regarding identification of schools. The description in the December 19, 2019 TAA letter states, *"the escalation of Title I additional targeted support campuses to comprehensive support and improvement after three consecutive years, rather than escalating Title I targeted support and improvement campuses."*
    a. ESSA requires that *"The category of targeted support and improvement includes **two types** of schools – those with a:*
        *i. Consistently underperforming subgroup; and*
        *ii. Low-performing subgroup. These schools must also receive additional targeted support." (See Figure 1.)*
    b. ESSA also requires that schools with chronically low-performing student groups be identified as comprehensive support and improvement (CS&I). *(See Figure 1.)*
    c. Currently, Texas' ESSA plan states (and TSA agrees with the current definition) that *"Any Title I campus identified for targeted support and improvement for three consecutive years will be identified for CS&I the following school year. (See Figure 2.)*

2. There is a mismatch between Texas' ESSA plan (approved March 2018) and the 2019 Accountability Manual definition for schools identified for targeted support and improvement.
    a. Texas' ESSA plan identifies a school for targeted support and improvement, i.e. any school with one or more "consistently underperforming" student groups, *"as a school having one or more student groups that do not meet the interim benchmark goals for three consecutive years." (See Figure 3.)*
    b. The 2019 Accountability Manual identifies a school for targeted support and improvement, i.e. "consistently underperforming" student groups, as *"A student group that misses the targets in at least the same **three** indicators, for three consecutive years, is considered "consistently underperforming." (See Figure 4.)*
        i. NOTE: If performance has not improved after three consecutive years of "consistently underperforming" targeted support and improvement status, then the campus is identified as "chronically low-performing" and escalates to CS&I the following year.

3. ESSA allows for greater flexibility in evidence-based interventions than what Texas is currently implementing to improve student outcomes in a school identified for comprehensive or targeted support and improvement schools.
    a. ESSA allows States to *"develop a list of State-approved evidence-based interventions, and may, if they choose, require schools identified for comprehensive or targeted support and improvement to use interventions from that list. In other words, the evidence-based interventions may be selected from a non-exhaustive list of evidence-based interventions if such a list is established by the State." (See Figure 5.)*

**TSA strongly recommends the following solutions for the proposed ESSA amendment:**

1. Align the definitions for targeted support and improvement identification between the State's plan and the 2019 Accountability Manual. This ensures that schools escalating to CS&I (and who are eligible for school improvement funding) are those identified by definition as "chronically low-performing" by missing at least the same **three** indicators, for three consecutive years.

2. Develop a list of *"State-approved evidence-based interventions"* as allowed by ESSA, and may, if the state chooses, require schools identified for targeted support and additional targeted support to use interventions from that list rather than escalate to CS&I. This solution gives back some local control to districts to implement evidence-based interventions in response to the specific educational needs of the campus. *(See the example shown below.)*

| **EXAMPLE INTERVENTION CONTINUUM** | | |
|---|---|---|
| CS&I | Effective Schools Framework (ESF) with TEA oversight | |
| Targeted Support & Improvement | Years 1, 2, and 3 select from State approved intervention list –which could include the ESF | After three consecutive years, escalates to CS&I identification and TEA oversight |
| Additional Targeted Support | Select from State approved intervention list – which could include creating a TIP (vs. including the components of a TIP in the CIP) | No escalation of interventions and remains with local district oversight |

3. 'Reset' the federal identification label if one student group meets that target(s) and another student group misses the target(s).
4. Include a growth measure (i.e. similar to TEA's proposed Graduation Rate Methodology) so that if a campus does not meet the target but shows growth over a number of years, the campus is determined to be on track and no federal label is assigned (i.e. Safe Harbor).
5. Develop sliding scale targets based on the percentage of economically disadvantaged students enrolled at the campus. This methodology could be identical to the sliding cut scores used to determine A-F letter grades for Domain 2B: Relative Performance.
6. Amend targets so they vary by school type. ESSA statute does not prohibit setting targets by school type; and ATAC discussed this idea during the November 2019 meeting. TEA should model what the targets would look like for different school types (Elementary, Middle, HS, K-5, K-8, etc.) and discuss with ATAC during the February 2020 meeting.
7. Remove the "All Students" group when identifying campuses for targeted and additional targeted support, as per ATAC's discussion during their November 2019 meeting.

**Finally, does TEA intend seek an ESSA waiver for the 2019-2020 school year that no more than 1% of the students be assessed using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS)?**

As you know, TEA requested a waiver in December of 2018 because, based on State data for the 2017-2018 school year, TEA concluded that it needed to assess more than 1.0 percent of students using an AA-AAAS in the 2018-2019 school year. The waiver for the 2018-2019 school year was granted on April 1, 2019. We are unaware as to whether TEA will seek another waiver for the 2019-2020 school year. We do know that many TSA district members remain concerned about this requirement within ESSA.

In the letter to USDE seeking the extension for the waiver, the TEA set out its plan for monitoring and providing additional guidance to school districts to make substantial progress toward reducing the percentage of students taking alternative assessments to fewer than 1 percent. Additionally, the TEA letter contained assurances that if Texas was granted the waiver:

- It would continue to meet all other requirements of ESSA and take additional steps to support and provide oversight to each school district that the state anticipates will exceed the 1 percent threshold to ensure that only students with the most significant cognitive disabilities take an AA-AAAS.
- It would monitor and regularly evaluate each such school district to ensure the school district provides sufficient training such that school staff who participate as members of an individualized education program team implement the guidelines established by the state for participation in AA-AAAS so that all students are appropriately assessed.
- It would address any disproportionality in the percentage of students taking an AA-AAAS as identified through the data provided.
- It would verify that each school district that the state anticipates will assess more than 1 percent of its students in any subject using an AA-AAAS has followed the state's guidelines for participation in the AA-AAAS.
- While we know that Texas has made progress in this area, TSA's concern is that we did not see this area addressed in the proposed amendments and question at this time if it would be appropriately noted in the amended state plan. We point this out because simply did not want this important issue to be ignored at this point.

Thank you again for the opportunity to comment on the proposed ESSA amendment. TSA member districts would be happy to discuss the proposed solutions with you and to serve as a resource to Agency staff as you move through the rule adoption process.

Sincerely,

Steven A. Chapman

Steve Chapman, President, Texas School Alliance
Superintendent, Hurst-Euless-Bedford Independent School District

The Texas School Alliance (TSA) comprises 40 of Texas' largest school districts, serving over 2 million students or nearly 40 percent of the state's total pupil enrollment. Our students represent 44 percent of the state's economically disadvantaged student population, 52 percent of its English Language Learners, and 45 percent of all at-risk students in the state. The organization works on issues that will improve educational quality for Texas students, particularly those in large and urban districts.

**Figure 1. Source: USDE Accountability Under Title I, Part A of the ESSA, Frequently Asked Questions, January 2017, pages 32-33, Identification of Schools.**
https://www2.ed.gov/programs/titleiparta/eseatitleiaccountabilityfaqs.pdf

## D. IDENTIFICATION OF SCHOOLS

**D-1. What schools must be identified by the State for support and improvement?**

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States must identify two broad categories of schools for support and improvement: those that require comprehensive support and improvement, and those that require targeted support and improvement. The category of comprehensive support and improvement includes three types of schools:

(1) Lowest-performing;
(2) Low high school graduation rate; and
(3) Chronically low-performing subgroup.

The category of targeted support and improvement includes two types of schools — those with a:

(1) Consistently underperforming subgroup; and
(2) Low-performing subgroup. These schools must also receive additional targeted support.

(ESEA section 1111(c)(4)(C)(iii), 1111(c)(4)(D)(i), 1111(d)(2)(A)(i), 1111(d)(2)(D), and 1111(d)(3)(A)(i)(II); 34 C.F.R. § 200.19(a), (b))

**Categories and Types of Schools Identified for Support and Improvement under the ESEA**

**Category: Comprehensive Support and Improvement**

| *Types of School* | *Must include only Title I schools?* | *Must be identified based on subgroups?* | *Must be identified with the State's methodology for producing a school's summative determination?* | *Must be identified annually?* | *First year of identification?* |
|---|---|---|---|---|---|
| Lowest-performing school (ESEA section 1111(c)(4)(D)(i)(I); 34 C.F.R. § 200.19(a)(1)) | X | | X | | 2018–2019 |
| Low high school graduation rate (ESEA section 1111(c)(4)(D)(i)(II); 34 C.F.R. § 200.19(a)(2)) | | | | | 2018–2019 |
| Chronically low-performing subgroup (ESEA sections 1111(c)(4)(D)(i)(III) and 1111(d)(3)(A)(i)(II); 34 C.F.R. § 200.19(a)(3)) | X | X | X | | State-determined |

**Category: Targeted Support and Improvement**

| *Types of School* | *Must include only Title I schools?* | *Must be identified based on subgroups?* | *Must be identified with the State's methodology for producing a school's summative determination?* | *Must be identified annually?* | *First year of identification?* |
|---|---|---|---|---|---|
| Consistently underperforming subgroup (ESEA section 1111(c)(4)(C)(iii) and 1111(d)(2)(A)(i); 34 C.F.R. § 200.19(b)(1), (c)) | | X | | X | 2019–2020 |
| Low-performing subgroup (ESEA section 1111(d)(2)(D); 34. C.F.R. § 200.19(b)(2)) | | X | X | | 2018–2019 |

These categories and types of schools must be identified statewide, using a methodology and timeline that results in a group of identified schools that meets all statutory and regulatory requirements. The identification categories, including the types of schools that fall into each, and the frequency of identification are discussed

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**Figure 2. Source: Texas' Final Submitted ESSA Plan – March 6, 2018, page 25**

d. Comprehensive Support and Improvement Schools. Describe the State's methodology for identifying all public high schools in the State failing to graduate one third or more of their students for comprehensive support and improvement.

If a campus does not obtain a 67 percent four-year graduation rate for the All Students group, the campus will be automatically identified for comprehensive support and improvement.

e. Comprehensive Support and Improvement Schools. Describe the methodology by which the State identifies public schools in the State receiving Title I, Part A funds that have received additional targeted support under ESEA section 1111(d)(2)(C) (based on identification as a school in which any subgroup of students, on its own, would lead to identification under ESEA section 1111(c)(4)(D)(i)(I) using the State's methodology under ESEA section 1111(c)(4)(D)) and that have not satisfied the statewide exit criteria for such schools within a State-determined number of years.

Any Title I campus identified for targeted support and improvement for three consecutive years will be identified for comprehensive support and improvement the following school year.

f. Year of Identification. Provide, for each type of schools identified for comprehensive support and improvement, the year in which the State will first identify such schools and the

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Figure 3. Figure 2. Source: Texas' Final Submitted ESSA Plan – March 6, 2018, page 26

TEA will annually identify campuses for comprehensive support and intervention beginning with the August 2018 accountability release, which is based on School Year 2017-2018 performance data.

g. Targeted Support and Improvement. Describe the State's methodology for annually identifying any school with one or more "consistently underperforming" subgroups of students, based on all indicators in the statewide system of annual meaningful differentiation, including the definition used by the State to determine consistent underperformance. *(ESEA section 1111(c)(4)(C)(iii))*

Student group achievement will be monitored annually through the Closing the Gaps domain (see Appendix F). Any campus that has one or more achievement gap(s) between individual student groups and the interim goals outlined in Appendix A will be identified for targeted support and improvement. TEA defines "consistently underperforming" as a school having one or more student groups that do not meet interim benchmark goals for three consecutive years.

h. Additional Targeted Support. Describe the State's methodology, for identifying schools in which any subgroup of students, on its own, would lead to identification under ESEA section 1111(c)(4)(D)(i)(I) using the State's methodology under ESEA section 1111(c)(4)(D), including the year in which the State will first identify such schools and the frequency with which the State will, thereafter, identify such schools. *(ESEA section 1111(d)(2)(C)-(D))*

Any campus that is not identified for comprehensive support will be identified for additional targeted support if an individual student group's overall percentage, based on the weighting outlined on page 27, is at or below the percentage for comprehensive support campuses in that rating year. For example, if the cut point for a campus to be identified for comprehensive support is 25 percent, then any campus with a student group that has an overall percentage of 25 percent or less will be identified for additional targeted support. Identification will begin with the August 2018 school ratings and will occur on

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**Figure 4. Source: TEA 2019 Accountability Manual, page 96**

2019 Accountability Manual

## Targeted Support and Improvement Identification

TEA uses the Closing the Gaps domain to identify campuses that have consistently underperforming student groups. A student group that misses the targets in at least the same **three** indicators, for three consecutive years, is considered "consistently underperforming." Any campus not identified for comprehensive support and improvement that has at least one consistently underperforming student group is identified for targeted support and improvement. Campuses are evaluated annually for identification.

### Minimum Size

In order to be considered when evaluating campuses for targeted support and improvement identification, student groups must meet the following minimum size requirements. When a student group is not evaluated because it does not meet minimum size, the count of consecutive years resets for that student group.

The all students group must have 10 reading *and* 10 mathematics assessment results for evaluation in the Academic Achievement component. Each remaining student group must have 25 reading *and* 25 mathematics assessment results for evaluation in the Academic Achievement component. If a student group does not meet minimum size in Academic Achievement, it is not considered when evaluating the campus for identification. The following student groups are not evaluated to identify campuses for targeted support and improvement: former special education; continuously enrolled; and non-continuously enrolled.

96 Chapter 10—Identification of Schools for Improvement

**Figure 5. Source: USDE Accountability Under Title I, Part A of the ESSA, Frequently Asked Questions, January 2017, page 50, Evidence-based Interventions.**
https://www2.ed.gov/programs/titleiparta/eseatitleiaccountabilityfaqs.pdf

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regard to the exit of students from EL status and services. Further, long-term goals and MIPs, including the student-level targets, established by each State do not change the State and LEA's obligation to assist individual ELs in overcoming language barriers within a reasonable period of time, consistent with requirements under Title VI and the EEOA. Further information on legal obligations under Title VI and the EEOA can be found in the Dear Colleague Letter jointly released by the Department of Education and the Department of Justice in January 2015. Further information on setting long-term goals and MIPs for ELP may be found in "*Resource Guide: Accountability for English Learners under the ESEA*."

(ESEA section 1111(c)(4)(A)(ii); 34 C.F.R. § 200.13(c)(4))

**Evidence-based Interventions**

**E-22. What are the evidence requirements that apply to one or more of the interventions to be included in a comprehensive or targeted support and improvement plan and implemented in an identified school?**

One or more of the interventions that are implemented to improve student outcomes in a school identified for comprehensive or targeted support and improvement must:

- Meet the definition of "evidence-based" under ESEA section 8101(21) (see the Department's non-regulatory guidance, "*Using Evidence to Strengthen Education Investments*," with suggested criteria for the four levels of evidence provided in the definition);
- Be supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served; and
- Be supported, to the extent practicable, by the strongest level of evidence (*e.g.*, strong evidence, as opposed to moderate evidence or promising evidence) that is available and appropriate to meet the needs identified in the needs assessment for the school.

(ESEA section 1111(d)(1)(B), (2)(B); 34 C.F.R. §§ 200.21(d)(3)(i)-(iii), 200.22(c)(4)(i)-(iii))

In addition, States may develop a list of State-approved evidence-based interventions, and may, if they choose, require schools identified for comprehensive or targeted support and improvement to use interventions from that list. In other words, the evidence-based interventions may be selected from a non-exhaustive list of evidence-based interventions if such a list is established by the State. Or, if the State establishes an exhaustive list of evidence-based interventions from which LEAs and schools must choose, the evidence-based intervention would need to be selected from that list by each LEA or school (34 C.F.R. §§ 200.21(d)(3)(iv), 200.22(c)(4)(iv)). Similarly, an LEA could also choose to use an evidence-based intervention determined by the State in a school identified for comprehensive support and improvement, consistent with State law, as described in ESEA section 1111(d)(1)(3)(B)(ii) and 34 C.F.R. § 200.23(c)(3). See question E-25 for more information about these optional authorities for States to develop a list of evidence-based interventions or State-determined interventions.

Finally, in any high school identified as a low graduation rate high school that predominately serves students returning to education after having exited secondary school without a regular high school diploma or students who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements, as established by the State, one or more of the interventions may include differentiated improvement activities that utilize evidence-based interventions (ESEA section 1111(d)(1)(C)(i); 34 C.F.R. § 200.21(d)(3)(vi)). It is important to note that, although the statute and regulations explicitly permit differentiated improvement activities for these specific high schools, an LEA may and, in fact, should, create differentiated improvement plans for each of its identified schools, which should be based on the school's needs assessment and designed to address the identified needs.

**E-23. What does it mean for an intervention to be supported, to the extent practicable, by evidence**

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Attachment B

# How Education Freedom Scholarships Can Expand Private and Home Education Options

September 26, 2019 Fact Sheet

## Problem:

- American education needs to evolve to leverage the unique learning styles and cultivate the talents of every child. At a time when students must develop the skills needed to succeed in an ever-changing world, nearly one-fourth of our 15-year-olds cannot read a basic, grade-level text, according to the National Assessment of Educational Progress.
- Parents are children's first, primary, and most influential teachers. Yet, too often, only affluent, well-connected parents can choose their children's learning environment. All families should be empowered to choose an education setting where their children can reach their full potential.
- Consistent with our country's rich diversity, families should be free to select the education setting whose mission, instructional approach, or faith values best match the student and family.

## Demand:

1. Today, over half a million families are participating in private school choice programs in 26 States, Washington, D.C., and Puerto Rico, and even more Americans support these programs.
   - The Harvard Kennedy School's 2019 Education Next survey found support for private school choice programs continues to grow. The most popular form of school choice—tax credit scholarships for low-income students to attend a private school—was supported by 58% of respondents. An American Federation for Children survey shows support is even higher among minority and millennial voters.
2. Yet, in many States, thousands of students are on tax credit scholarship waitlists.
   - In Florida, 14,000 students will be freed from scholarship waitlists following Governor DeSantis signing into law the Empowerment Scholarship Program.
   - However, in Pennsylvania, more than 50,000 students remain on scholarship waitlists following Governor Wolf vetoing a scholarship program expansion.
3. The number and percentage of school-age students whose families choose home education has doubled in the past 15 years, according to the National Center for Education Statistics.

## Solution:

- The Education Freedom Scholarships (EFS) proposal creates a $5 billion annual federal tax credit for businesses and individuals who voluntarily donate to scholarship granting organizations (SGOs). Those SGOs provide scholarships to empower families to choose the right education option for their elementary and secondary students, which may be an independent or faith-based private school or a home education.
- States, not the Federal Government, identify SGOs and determine how to structure scholarship programs, including eligible students, education providers, and education expenses.
- EFS prohibits religious discrimination and protects parental rights in scholarship use.

## States could empower families to use scholarships to pay for:

- Tuition and fees at a private school, including independent and faith-based private schools;
- Summer and after-school education programs offered by private schools;
- Tutoring offered by private school teachers to public and private school students;
- Advanced Placement, International Baccalaureate, and honors courses;
- Academic enrichment courses like art, music, or world languages;
- Online courses offered by private schools and teachers to students, regardless of geography;
- Special education and related services for students with disabilities or unique learning needs;
- Remedial education services to assist students who are struggling academically;
- Educational technology to enhance instruction and support student learning;
- Internship, corporate work-study, and apprenticeship programs; and
- Home education expenses, including curriculum and other instructional materials.

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# How Education Freedom Scholarships Can Expand Preschool Options

September 16, 2019 Fact Sheet

*Expanding access to high-quality early learning opportunities for preschool children*

## Problem:

- The benefits of participating in high-quality early learning opportunities have been well documented, especially for vulnerable children and dual-language learners.
- However, high-quality early learning opportunities are not available to all children and families and states struggle to fund opportunities.

## Solution:

- The Education Freedom Scholarships (EFS) proposal creates a $5 billion annual federal tax credit for voluntary donations to state-based scholarship programs.
- With EFS, states can seize the opportunity to empower families with preschool age children to access high-quality early learning opportunities, while relieving some of the financial pressure many families experience.

## How EFS Can Expand Early Learning and Preschool Options:

- EFS can be used for preschool age children if the State includes preschool or prekindergarten in its definition of elementary education.
- States can design their programs to complement and expand existing public and private preschool programs and services. Scholarships can be focused, for instance, on expanding access to high-quality early learning opportunities and programs.
- The scholarships could cover allowable education expenses including, but not limited to:
  - Tuition and fees at a preschool of a family's choice;
  - Transportation to a preschool provider;
  - Homeschool, cooperative or community-based preschool education expenses, including specialized preschool curriculum and educational materials;
  - Programs and services that support transition to kindergarten; and
  - Programs and services that complement and expand existing special education programs and services for preschool children with disabilities, including access to high-quality inclusive programs.

## Looking Forward:

- High-quality early childhood interventions have positive effects on test scores. Importantly, positive effects are also sustained in the long-term, improving high school graduation, years of education completed, and earnings, and reducing crime and teen pregnancy according to a report recently published by the Society for Research in Child Development.
- Empowering preschool children with expanded access to high-quality early learning opportunities through Education Freedom Scholarships can help provide all children the

foundation to succeed in school, work, and life.

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# Fast Facts: Education Freedom Scholarships

February 28, 2019 Fact Sheet

*"All students should have the freedom to pursue an education that develops their talents, unleashes their unique potential, and prepares them for a successful life."*

*Secretary Betsy DeVos*

## A Historic Investment in America's Students

- Education Freedom Scholarships will provide for a $5 billion annual federal tax credit for voluntary donations to state-based scholarship programs.
- This proposal would empower students and families to choose the best educational setting for them – regardless of where they live, how much they make, and how they learn.
- Families receive and control the use of scholarships for their child's elementary and secondary education, which may include career and technical education, apprenticeships, and dual and concurrent enrollment.
- Privately funded scholarships improve the educational experiences of students across the country, without taking a single dollar away from public schools and the students who attend them.
- Individual and business taxpayers nationwide contribute to student scholarships through state-identified Scholarship Granting Organizations (SGOs). Such contributions are eligible to receive a non-refundable, dollar-for-dollar federal tax credit, but no contributor will be allowed a total tax benefit greater than the amount of their contribution.

## A Locally-Driven and Customizable Approach

- This proposal gives those closest to students the freedom to decide what's best for them. No family is forced to accept a scholarship, no taxpayer is forced to contribute, no organization is forced to participate, and no state is forced to participate.
- Each participating state will determine how it will structure its program, including eligible students, education providers, and education expenses.
- Some of the ways states can expand students' access to educational opportunities include:
  - Advanced, remedial, and elective courses;
  - Apprenticeships and industry certifications;
  - Concurrent and dual enrollment;

  - Private and home education;
  - Special education services and therapies;
  - Transportation to education providers outside of a family's zoned school;
  - Tutoring, especially for students in low-performing schools; and
  - Summer and afterschool education programs.
- This is not a new federal program. The proposal establishes a federal tax credit to support state-designed and controlled programs.

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# How EFS Can Expand Public Education Options

February 28, 2019 Fact Sheet

*Breaking down barriers between zip code and opportunity by expanding access to public education options.*

## Problem

- Most students in America are limited to attending a public school that is assigned to them. Although many families choose their public school by deciding where to live, only 14 percent of students are enrolled in a public school outside of their zoned school according to the National Center for Education Statistics.
- The most vulnerable students in America do not have the freedom to pursue education opportunities in the same ways the rich, powerful, and connected families always have.

## Solution

- The Education Freedom Scholarships (EFS) proposal creates a $5 billion annual federal tax credit for voluntary donations to state-based scholarship programs, empowering elementary and secondary students and families to choose the right education options for them – regardless of where they live, how much they make, and how they learn.

## How EFS Can Expand Public Education Options

- States can design their programs to work hand-in-hand with existing public education options to enhance individual students' education experiences, not replace them.
- The scholarships can be focused on expanding access to education programs and services for public school students enrolled in:

  - District public schools, perhaps focusing on low-performing schools, or those in specific regions, such as urban or rural areas;
  - Out-of-district public schools;
  - Magnet schools;
  - Public virtual schools; and
  - Public charter schools.
- The scholarships could cover allowable education expenses as defined by States, including, but not limited to:
  - Advanced courses, like Advanced Placement or International Baccalaureate;
  - Elective courses, like art, music, or world languages;
  - Credit recovery or other remedial courses;
  - Tutoring services;
  - Special education services and therapies not required by a student's Individualized Education Program;
  - Purchasing educational technology, including learning software or hardware.
  - Transportation to education providers outside of a family's zoned school;
  - Open or dual enrollment allowing high school students to earn college credit; and
  - Fees for summer education programs and specialized after-school education programs.

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# How EFS Can Expand Career Training Options

February 28, 2019 Fact Sheet

*Expanding career training options for students and closing the skills gap for employers.*

## Problem

- The United States is in the midst of a profound workforce skills gap—about 7 million jobs remain unfilled today. According to the Georgetown University Center on Education and the Workforce, in 2018 alone, the U.S. workforce required at least 4.7 million new workers with postsecondary certificates.
- Too many students lack experiences that allow for career exploration, adult mentorship, and sound advice on postsecondary options that match their career interests and prepare them for jobs that will close the skills gap.

## Solution

- The Education Freedom Scholarships (EFS) proposal creates a $5 billion annual federal tax credit for voluntary donations to state-based scholarship programs, empowering students to pursue their career goals.

- State leaders can take a bold step toward the creation of an enhanced talent development pipeline by aligning state-based scholarship programs to the vision and strategies in state workforce development plans, including their *Strengthening Career and Technical Education for the 21st Century Act (Perkins V)* and *Workforce Innovation and Opportunity Act (WIOA)* State Plans.

## How EFS Can Expand Career Training Options

- States can design their programs to provide more students with access to authentic career-based experiences that their family's zoned school might not offer.
- The scholarships can be targeted to **students interested in**:
  - Concurrent or dual enrollment in high-demand career pathways, or to help ease a student's transition from secondary to postsecondary institutions;
  - Apprenticeship pathways, including pre-apprenticeships, industry-recognized apprenticeships, and registered apprenticeships; and
  - Industry certifications.
- The scholarships can cover **allowable education expenses** including, but not limited to:
  - Tuition for dual or joint enrollment courses online or in-person at local community colleges or short-term job training programs like a coding boot camp or accelerated training program;
  - Books and fees required by a technical program or community college of choice;
  - Industry-based exams and certification fees necessary for an in-demand occupation;
  - Transportation to an apprenticeship training center or worksite, magnet school, career and technical education academy, or public or private school of a family's choice; and
  - Tools, supplies, and personal protective equipment required for in-person or online career and technical education programs such as steel-toed boots, welding gloves, a computer, or scrubs.

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# How EFS Can Expand Special Education Options

February 28, 2019 Fact Sheet

*Expanding access to individualized learning opportunities for children with disabilities.*

## Problem

- Children and students with disabilities deserve to benefit from both high expectations and appropriate supports, so that they are challenged to reach their full potential.

- Too often though, the individualized services and learning opportunities they need can be limited by existing programs and practices that prioritize the needs of the “system” over the needs of the child.
- The pursuit of individualized learning environments and programs often puts financial pressure on families, which may be acutely felt by the families of children with disabilities.

## Solution

- The Education Freedom Scholarships (EFS) proposal creates a $5 billion annual federal tax credit for voluntary donations to state-based scholarship programs.
- This is a vital opportunity states can seize to empower children with disabilities and their families to access individualized learning opportunities, while relieving some of the financial pressure many families experience.

## How EFS Can Expand Special Education Options

- States can design their programs to complement and expand existing special education programs and services, and scholarships can be focused on expanding access for children with disabilities to individualized supports, services, instruction, interventions, and therapies.
- The scholarships could cover allowable education expenses including, but not limited to:
  - Educational therapies and services from a licensed or accredited practitioner or provider, including behavior therapy, occupational therapy, physical therapy, recreational therapy, social group therapy, speech therapy, vision therapy, and more;
  - Tuition and fees at a private school of a family’s choice;
  - Homeschool education expenses, including specialized curriculum and educational and therapeutic materials;
  - Programs and services that support transition to postsecondary education or employment;
  - Programs and services that support the early childhood needs of children with disabilities, including Developmental Delay;
  - Assistive technology, including adaptive and rehabilitative devices such as prosthetics, communication boards, power lifts, refreshable Braille displays, assistive listening devices, and more;
  - Cost of a paraprofessional or educational aide; and
  - Educational and psychological evaluations to identify a child’s unique strengths, interests, and needs.

**Attachment C**

| | |
|---|---|
| **From:** | Dee Carney |
| **To:** | Rinkus, Christopher |
| **Cc:** | Betsy Maggard; Dalton, Ashley; Chris Borreca |
| **Subject:** | RE: Follow Up - Texas School Alliance Questions for tomorrow''s call |
| **Date:** | Thursday, January 2, 2020 1:40:34 PM |
| **Attachments:** | ESSA waiver requests re double testing of students.pdf |
| **Importance:** | High |

Hi Chris Rinkus,

Thank you for making time to speak with us tomorrow about the Texas School Alliance's (TSA) questions regarding ESSA waivers and amendments.

We will be a good steward of your time and thought the information below might be helpful in setting the stage for tomorrow's phone call.

We look forward to learning from you,

Dee Carney
on behalf of the Texas School Alliance

Dee Carney
HillCo Partners
823 Congress Avenue, Suite 900
Austin, Texas 78701
512.480.8962 Office
512.461.1559 Cell
dcarney@hillcopartners.com

**Who is TSA?** The Texas School Alliance comprises 40 of the largest school districts in Texas; we represents 2.7 million students, including 44% of the state's economically disadvantaged students and 52% of ELs. (*To learn more about TSA, please visit our website at …http://texasschoolalliance.org/*)

**Brief background summary:** Each TSA district has a superintendent, a CAO, a CFO, and an Accountability expert as key members of the superintendent's leadership team; because in Texas, the state and federal accountability systems are just as complicated and important as school finance. In September 2019, after the Texas Education Agency (TEA) released the inaugural A-F campus letter grade ratings and TSA districts reviewed their data, the TSA accountability experts identified specific questions regarding Texas' ESSA plan, waivers and amendments. TSA accountability experts met with TEA in November to discuss a variety of accountability questions… including possible ESSA amendments/waivers. But we still have questions.

In order to learn more about the flexibility afforded by ESSA, Chris Borreca and I attended the 'ESSA turns 4 Summit' and spoke with key members of the Texas delegation about the TSA's ESSA questions; and then we met with Dr. Brogan who recommended that we speak with the true ESSA expert… you!

**What are TSA's ESSA questions?** Please see the topics listed below.

1. **Graduation Rate Methodology**: a) High Performing HS, b) P-Tech HS that will not have a 4-year grad rate, and c) Dropout Recovery HS. *(Note: Since our meeting with Dr. Brogan, the TEA published its ESSA waiver for public comment. TSA still has a few questions.)*
2. **Double Testing Accelerated Middle School Students:** USDE denied Texas waiver in August 2019. *Please see the 1st attachment that shows 9 states with approved ESSA waivers.*
3. **Texas ESSA Performance Targets:** Academic Achievement Targets are set based on ALL student results; not just Title I campus results and not by school type results. *Please see the screenshots below.*

Screenshot #1 – Texas ESSA Methodology by school type

APPENDIX - ESSA

## Calculating a Closing the Gaps Domain Score

To calculate the Closing the Gaps domain score, weight each component for which the district or campus has at least the minimum number of evaluated indicators based on the following table.

Component points are rounded to one decimal place. Total points for each component are determined by multiplying the percentage of evaluated indicators met by the corresponding weight and rounding to one decimal place. The Closing the Gaps domain score is the sum of the total points rounded to the nearest whole number.

| Closing the Gaps Component Weights | | |
|---|---|---|
| **Campus Types** | **Closing the Gaps Domain Component** | **Weight** |
| Elementary and Middle Schools | Academic Achievement STAAR Meets Grade Level on R & M | 30% |
| | Academic Growth Status STAAR R and M | 50% |
| | English Language Proficiency | 10% |
| | Student Achievement Domain Score: STAAR Component Only | 10% |
| High Schools, K-12s, AEAs, and Districts | Academic Achievement STAAR Meets Grade Level on R & M | 50% |
| | Federal Graduation Status or Academic Growth Status[1] | 10% |
| | English Language Proficiency | 10% |
| | College, Career, and Military Readiness or Student Achievement Domain Score: STAAR Component Only[2] | 30% |

[1] If Federal Graduation Status is not available, Academic Growth Status is used.
[2] If College, Career, and Military Readiness is not available, Student Achievement Domain Score: STAAR Component Only is used.

Screenshot #1 – Texas ESSA Performance Targets

## 2019 Closing the Gaps Performance Targets

| Subject | All Students | African American | Hispanic | White | American Indian | Asian | Pacific Islander | Two or More Races | Special Educ. | Econ. Disadv. | EL (Current and Monitored) | Special Ed (Former) | Cont. Enrolled | Non-Cont. Enrolled |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Academic Achievement (Percentage at Meets Grade Level or above)** | | | | | | | | | | | | | |
| ELA/Reading | 44% | 32% | 37% | 60% | 43% | 74% | 45% | 56% | 19% | 33% | 29% | 36% | 46% | 42% |
| Mathematics | 46% | 31% | 40% | 59% | 45% | 82% | 50% | 54% | 23% | 36% | 40% | 44% | 47% | 45% |
| **Subject** | **Academic Growth Status (Elementary and Middle Schools)** | | | | | | | | | | | | | |
| ELA/Reading | 66% | 62% | 65% | 69% | 67% | 77% | 67% | 68% | 59% | 64% | 64% | 65% | 66% | 67% |
| Mathematics | 71% | 67% | 69% | 74% | 71% | 86% | 74% | 73% | 61% | 68% | 68% | 70% | 71% | 70% |
| | **Federal Graduation Status (High Schools, K-12s, and Districts)[1]** | | | | | | | | | | | | | |
| | 90% | 90% | 90% | 90% | 90% | 90% | 90% | 90% | 90% | 90% | 90% | n/a | n/a | n/a |
| | **Student Achievement Domain Score: STAAR Component Only (Elementary and Middle Schools)** | | | | | | | | | | | | | |
| | 47% | 36% | 41% | 58% | 46% | 73% | 48% | 55% | 23% | 38% | 37% | 43% | 48% | 45% |
| | **College, Career, and Military Readiness Performance Status (High Schools, K-12s, and Districts)** | | | | | | | | | | | | | |
| | 47% | 31% | 41% | 58% | 42% | 76% | 39% | 53% | 27% | 39% | 30% | 43% | 50% | 31% |
| | **English Language Proficiency Status[2]** | | | | | | | | | | | | | |
| | | | | | | | | | | | 36% | | | |

[1] Ever ELs (EL [Ever HS]) are evaluated in the federal graduation rates. Ever ELs (EL [Ever HS]) are students reported in TSDS PEIMS as ELs at any time while attending grades 9-12 in a Texas public school.
[2] English Language Proficiency Status evaluates current ELs only.

Source: TEA 2019 Accountability Manual, pg. 45

Screenshot #3 – Texas Academic Achievement ESSA Performance by EcD and Non-EcD

## 2019 Academic Achievement Economically Disadvantaged vs. Non

Texas Education Agency
2019 Closing the Gaps
STATE

Status And Data Table

| | All Students | All Students | African American | African American | Hispanic | Hispanic | White | White | American Indian | American Indian | Asian | Asian |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Non-Eco Dis | Eco Dis | Non-Eco Dis | Eco Dis | Non-Eco Dis | Eco Dis | Non-Eco Dis | Eco Dis | Non-Eco Dis | Eco Dis | Non-Eco Dis | Eco Dis |
| **Academic Achievement Status** | | | | | | | | | | | | |
| ELA/Reading Target | 44% | 44% | 32% | 32% | 37% | 37% | 60% | 60% | 43% | 43% | 74% | 74% |
| Target Met | Y | N | Y | N | Y | Y | Y | N | Y | N | Y | N |
| % at Meets GL Standard or Above | 65% 28 | 37% | 52% 21 | 31% | 56% 19 | 37% | 70% 26 | 44% | 59% | 37% | 83% 22 | 61% |
| # at Meets GL Standard or Above | 84746 | 760135 | 56982 | 96620 | 234678 | 504402 | 43641 | 115681 | 2758 | 2235 | 85030 | 25402 |
| Total Tests (Adjusted) | 1308899 | 2046068 | 110173 | 315426 | 419651 | 1381665 | 626818 | 264208 | 4710 | 6099 | 101998 | 41428 |
| Math Target | 46% | 46% | 31% | 31% | 40% | 40% | 59% | 59% | 45% | 45% | 82% | 82% |
| Target Met | Y | N | Y | Y | Y | Y | Y | N | Y | N | Y | N |
| % at Meets GL Standard or Above | 67% 24 | 43% | 51% 19 | 32% | 59% 16 | 43% | 70% 24 | 46% | 61% | 41% | 89% 16 | 73% |
| # at Meets GL Standard or Above | 68012 | 699564 | 43127 | 81453 | 18878 | 478239 | 34968 | 101279 | 2190 | 2017 | 70608 | 22935 |
| Total Tests (Adjusted) | 1021791 | 1640366 | 84270 | 252401 | 321832 | 1099800 | 496123 | 220112 | 3581 | 4936 | 79092 | 31579 |
| Total Indicators | | | | | | | | | | | | |

Source: TEA ATAC, November 2019

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**From:** Rinkus, Christopher <Christopher.Rinkus@ed.gov>
**Sent:** Monday, December 30, 2019 12:17 PM
**To:** Chris Borreca <cborreca@thompsonhorton.com>
**Cc:** Dee Carney <dcarney@hillcopartners.com>; Betsy Maggard <bmaggard@thompsonhorton.com>; Dalton, Ashley <Ashley.Dalton@ed.gov>
**Subject:** Re: Follow Up

11am ET on Friday works and you can reach me at 202 453 5796. Talk soon

On Dec 30, 2019, at 1:05 PM, Chris Borreca <cborreca@thompsonhorton.com> wrote:

Hi Chris,

Thank you so much! Would 11:00 am eastern (10:00 central) on this Friday work for you? I can set up a conference call number for us to use if that would be easier or Dee and I can conference and then join you in. If we need to call you, what number should we use? Thanks again for everything! Chris

Sent from my iPhone

On Dec 30, 2019, at 11:51 AM, Rinkus, Christopher <Christopher.Rinkus@ed.gov> wrote:

Hello Chris,

Thanks for following up. I'm pretty flexible on Thursday or Friday of this week for a phone call if you're available. Please let me know what time is best for you. Thanks again,

Chris Rinkus

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**From:** Chris Borreca <cborreca@thompsonhorton.com>
**Sent:** Friday, December 27, 2019 5:26 PM
**To:** Rinkus, Christopher <Christopher.Rinkus@ed.gov>
**Cc:** Dee Carney <dcarney@hillcopartners.com>; Betsy Maggard <bmaggard@thompsonhorton.com>; Dalton, Ashley <Ashley.Dalton@ed.gov>
**Subject:** Fwd: Follow Up

Hi Chris,

Just following up to make sure you received the email below. Dee and I would love to have a chance to speak with you by phone sometime during the next two weeks if that is convenient. Thanks again for your consideration. Best, Chris

**Dear Chris,**

**We had a delightful meeting yesterday with Dr. Brogan and he spoke highly of your knowledge and expertise with ESSA accountability issues. Dee Carney, with HillCo, and I were up in DC on behalf of the Texas School Alliance (TSA) this week. TSA comprises the 40 largest school districts in Texas. We were discussing issues related to our ESSA implementation in Texas and Dr. Brogan suggested we arrange a meeting by phone with you to discuss some detailed questions we have. Would you mind letting us know what dates and times would work for you over the next week or two? Thanks so much!**

**Christopher P. Borreca | Partner | Thompson & Horton LLP**
**Phoenix Tower | 3200 Southwest Freeway, Suite 2000 | Houston, Texas | 77027**
**T: 713.554.6740 | F: 713.583.8664**
**cpb@thlaw.com | www.thompsonhorton.com**


**From:** "Dalton, Ashley" <Ashley.Dalton@ed.gov>
**Date:** December 11, 2019 at 3:23:02 PM CST
**To:** "dcarney@hillcopartners.com" <dcarney@hillcopartners.com>, "cpb@thlaw.com" <cpb@thlaw.com>
**Subject: Follow Up**

Chris and Dee –

It was such a pleasure meeting you both today! As discussed, I am following up with Chris Rinkus' contact information. He is aware you will be in touch, so he will be looking out for your message. Please let me know if you have any issues or additional questions, or if we can be of help in any other way. Have a great rest of your week, and a wonderful holiday season!

Christopher.Rinkus@ed.gov

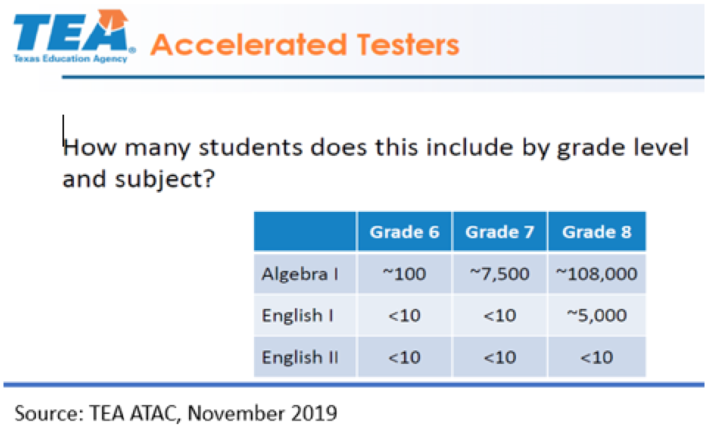
Best,
Ashley

TO: TSA Accountability Experts — December 30, 2019

FROM: Dee Carney, HillCo Partners

SUBJECT: ESSA waiver requests regarding double testing of hyper-accelerated middle school students

I. Background info from TEA ATAC, November 2019

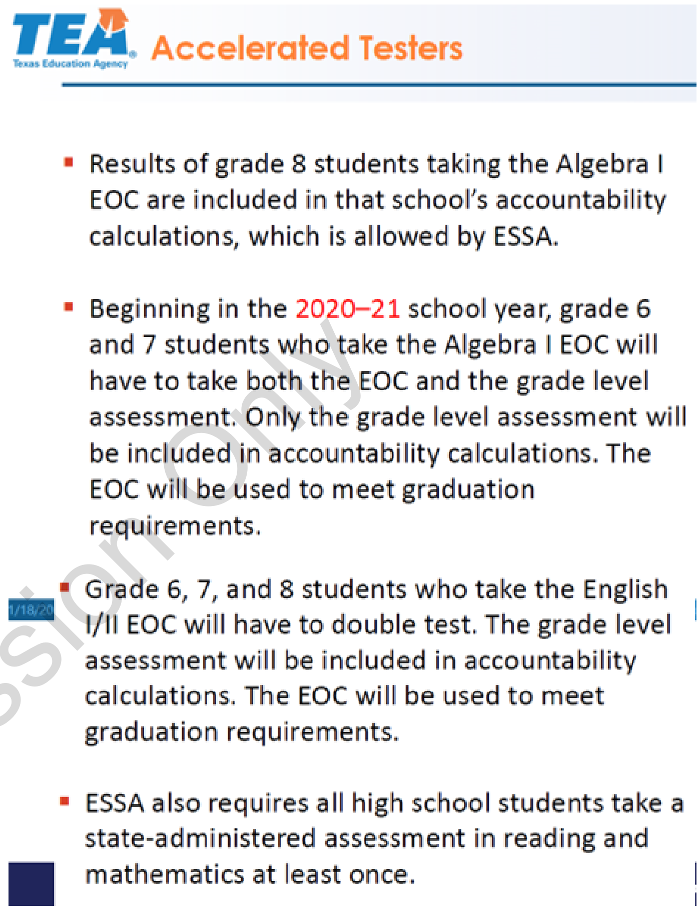


TEA Texas Education Agency — Accelerated Testers

How many students does this include by grade level and subject?

| | Grade 6 | Grade 7 | Grade 8 |
|---|---|---|---|
| Algebra I | ~100 | ~7,500 | ~108,000 |
| English I | <10 | <10 | ~5,000 |
| English II | <10 | <10 | <10 |

Source: TEA ATAC, November 2019



TEA Texas Education Agency — Accelerated Testers

- Results of grade 8 students taking the Algebra I EOC are included in that school's accountability calculations, which is allowed by ESSA.
- Beginning in the 2020–21 school year, grade 6 and 7 students who take the Algebra I EOC will have to take both the EOC and the grade level assessment. Only the grade level assessment will be included in accountability calculations. The EOC will be used to meet graduation requirements.
- Grade 6, 7, and 8 students who take the English I/II EOC will have to double test. The grade level assessment will be included in accountability calculations. The EOC will be used to meet graduation requirements.
- ESSA also requires all high school students take a state-administered assessment in reading and mathematics at least once.



**II.** Listed below is a brief summary of each ESSA waiver request that USDE **APPROVED** to permit middle school students who take advanced courses to take the aligned high school assessments. To read the complete USDE waiver approval letters, click on the link below to find the state's letter. .**https://www2.ed.gov/admins/lead/account/stateplan17/waivers/index.html**

1. **District of Columbia's** requested a waiver to expand the allowable grade eight mathematics exception in ESEA sections 1111(b)(2)(C)(i) through (iii) to permit any 7th-grade District of Columbia middle school student to take a high school end-of-course mathematics assessment when the student is enrolled in the corresponding course for high school credit. ***Approved October 5, 2018.***
   a. In high school, the student will take a more advanced, State-administered end-of course assessment or nationally recognized high school assessment (that meets the requirements in 34 C.F.R. 200.3(d)) and the student's performance on and participation in that assessment will be used for the purposes of measuring academic achievement and participation as it pertains to the school-based accountability system required under the ESEA.

2. **Georgia** requested a waiver to allow any middle school student enrolled in an advanced reading/language arts, mathematics or science course to take the State administered end-of-course assessment aligned with that course in lieu of the grade-level assessment. ***Approved April 12, 2018.***
    a. In high school, the student will take a more advanced, State-administered end-of-course assessment or nationally recognized high school assessment (that meets the requirements in 34 C.F.R. 200.3(d)) and the student's performance on and participation in that assessment will be used for the purposes of measuring academic achievement and participation as it pertains to the school-based accountability system required under the ESEA.

3. **Illinois** shows that a waiver was approved but the letter from USDE is addressed to the District of Columbia.

4. **Maryland** requested this waiver to allow a student in grade 6 or 7 who is enrolled in an advanced mathematics course to be assessed with the corresponding advanced-level assessment in lieu of the grade-level assessment in mathematics. ***Approved June 2018.***
    a. In high school, the student will take a more advanced, State-administered end-of-course assessment or nationally recognized high school assessment (that meets the requirements in 34 C.F.R. 200.3(d)) and the student's performance on and participation in that assessment will be used for the purposes of measuring academic achievement and participation as it pertains to the school-based accountability system required under the ESEA.

5. **Missouri** requested this waiver to allow any middle school student enrolled in an advanced mathematics course to take the State-administered end-of-course (EOC) assessment in mathematics aligned with that course in lieu of the grade-level assessment in mathematics. ***Approved December 2017.***
    a. Specifically, I am approving for a period of four years (from school year 2017-2018 through school year 2020-2021), DESE's request that: Students taking the Algebra I EOC in middle school will take the Algebra II EOC in high school; and Students taking the Algebra I and Geometry EOCs in middle school will the Algebra II EOC in high school.

6. **New Jersey** requested this waiver to allow all middle school students enrolled in advanced mathematics courses to take the end-of-course assessment aligned with the student's course in lieu of the grade-level assessment. ***Approved December 2017.***
    a. In high school, the student will take a more advanced, State-administered end-of-course assessment or nationally recognized high school assessment (that meets the requirements in 34 C.F.R. 200.3(d)) and the student's performance on and participation in that assessment will be used for the purposes of measuring academic achievement and participation as it pertains to the school-based accountability system required under the ESEA.

7. **New York** requested this waiver to permit students enrolled in grade 7 (or other grades, with the permission of the Commissioner) who complete advanced mathematics coursework and students enrolled in grade 8 (or other grades, with the permission of the Commissioner) who complete advanced science coursework to take the high school level Regents examinations in lieu of the grade-level assessments. ***Approved Jan 2018.***
    a. In high school, the student will take a more advanced, State-administered end-of-course mathematics or science assessment, respectively and the student's performance on and participation in that assessment will be used in the State's school-based accountability system required under the ESEA.

8. **Ohio** requested a waiver to expand the allowable 8th-grade mathematics exception in ESEA sections 1111(b)(2)(C)(i) through (iii) to permit any Ohio middle school student to take a high school end-of-course assessment in reading/language arts, mathematics or science when the student is enrolled in the corresponding course for high school credit while the student is in middle school. ***Approved Jan 2018.***
    a. In high school, the student will take a more advanced, State-administered end-of-course assessment or nationally recognized high school assessment (that meets the requirements in 34 C.F.R. 200.3(d)) and the student's performance on and participation in that assessment will be used for the purposes

of measuring academic achievement and participation as it pertains to the school-based accountability system required under the ESEA.

9. **Virginia** requested this waiver to allow students, starting in grade 3, who are enrolled in advanced mathematics courses one, two or three grade levels above the grade in which the student is enrolled to take the mathematics assessments for the mathematics courses in which they are enrolled in lieu of the mathematics assessment for the grade in which the they are enrolled. Such students would take a more-advanced mathematics assessment in high school in lieu of VDOE's statewide mathematics assessment under the ESEA. ***Approved August 2018.***
    a. After reviewing VDOE's request, I am pleased to approve, pursuant to my authority under ESEA section 8401(a)(3), a waiver of sections 1111(b)(1)(B) and 1111(b)(2)(B)(i)(I) of the ESEA, as amended by the ESSA, as well as the corresponding regulation 34 C.F.R 200.2(b)(1)(i). This waiver will permit students as early as grade 3 to take more-advanced mathematics assessments in place of grade-level assessments. In high school, the students will take either the Geometry and Algebra II statewide assessments or the ACT, SAT, AP Calculus or IB mathematics assessments. This waiver is in effect from the 2017-2018 school year through the 2020-2021 school year.

III. And what about Texas' ESSA waiver to eliminate double testing in all grades?

**Texas** requested to waive this provision, for school year (SY) 2018-2019, to allow a student in grades earlier than grade 8 taking an advanced mathematics course or a student earlier than high school taking an advanced English course to take the assessment aligned to the student's advanced course rather than the student's grade-level assessment. ***Denied August 2019.***

b. The U.S. Department of Education (the Department) does not find TEA has demonstrated the requested waiver would advance student achievement as required under ESEA section 8401(b)(1)(C) nor does it describe how the waiver will maintain or improve transparency in reporting to parents and the public on student achievement and school performance as required under ESEA section 8401(b)(1)(F). TEA has stated that it cannot require a student to take an assessment that is more advanced than English II or Algebra I. As a result, for a student who takes English II or Algebra I in middle school, the State has no more advanced assessment it can require the student take in subsequent grades, including high school and those students are not included in the State's accountability system in high school. Accordingly, for SY 2018-2019, TEA cannot ensure that all students were assessed or that schools were held accountable for the students' performance in Texas' accountability system.

c. In the proposed plan, starting in SY 2019-2020 Texas indicated that it intends to require a student taking an accelerated course to be administered the assessment aligned to the course as well as the grade-level assessment. If a student takes the high school math or reading/language arts assessment used for Federal accountability purposes while in middle school, Texas will require the student to be administered a more rigorous assessment while in high school. While this plan appears to be in line with other similar waivers that the Department approved for students taking advanced courses in middle school, Texas did not implement this option during SY 2018-2019. Due to the fact that TEA has been out of compliance with this requirement for multiple years, Texas must submit a plan by September 30, 2019, for how it will appropriately assess all students on the statewide assessments and include them in the State's accountability system for the 2019- 2020 school year. If Texas is unable to resolve this matter for the 2019-2020 school year, the Department may take additional action.