



February 10, 2015

The Honorable John Kline
Chairman
Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
2101 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kline and Ranking Member Scott:

On behalf of the Foundation for Excellence in Education (ExcelinEd), I am writing to provide comments on H.R. 5, the Student Success Act to reauthorize the Elementary and Secondary Education Act (ESEA) that was introduced on February 3, 2015.

ExcelinEd strongly supports the efforts of the Committee to update this critical law last reauthorized in 2002 under the No Child Left Behind Act (NCLB). This process has been delayed for far too long and the current collection of state waivers from NCLB provisions is simply not sustainable. We look forward to working with you and the other Committee Members to ensure that we see a new, more effective ESEA as soon as possible.

ExcelinEd believes the Student Success Act provides an excellent foundation for a reauthorized ESEA and looks forward to being in a position to support this bill as it moves through the House of Representatives. However, this support will largely rest on the extent to which the bill, as it moves forward, continues to do three things:

- (1) preserves the annual testing provisions in current law;
- (2) significantly limits and focuses the federal role in state accountability systems; and
- (3) provides a much-needed assurance that the federal government may not dictate or coerce states into adopting particular academic standards or assessments.

NCLB sent an enormously important message that it was no longer acceptable to simply excuse away low student achievement. All students can learn and succeed; states and schools must be accountable for results and be honest in reporting the results. Even critics of NCLB concede that the law helped to shift the definition of educational quality from how much is spent on our schools to whether our schools are effectively using those funds to improve student outcomes, especially for children from disadvantaged backgrounds.

However, in the 14 years since NCLB became law, the education landscape has undergone significant transformation – particularly with respect to the active role of states in education reform – and it is long

past time for federal education policy to recognize and reflect these changes. To that end, ExcelinEd has developed five major principles for ESEA reauthorization:

- I. Reinforce state authority over education policy decisions.**
- II. Limit and focus the federal role.**
- III. Embrace research and innovation.**
- IV. Modernize Title I to support portability, equity, and rewarding of success.**
- V. Promote choice measures designed to increase the availability of high-quality educational options and give parents the financial freedom to choose the school and courses that best meet their child’s needs.**

We believe that, if adopted, these principles will help drive education reform and accountability into the next decade and support states as they build an American education system that equips every child to achieve his or her God-given potential.

Therefore, we have used these principles as the lens through which we have provided the following comments on the Student Success Act:

I. Reinforce state authority over education policy decisions.

The performance of our education system is of national significance. Low performance weakens the ability of today’s students to actively participate in our Democracy; undermines civil rights; weakens our national security; erodes the economic stability of the family and the nation; and, it hurts the ability of America’s companies to succeed in the global economy. But these national interests are best met by embracing the dynamism of federalism. We need a federal law that supports state reform rather than states working to support a federal law. We believe in the role of sovereign states to set high standards and design their own innovative accountability systems. These state systems should recognize a range of school effectiveness and should select from a toolbox of state-determined interventions to turn around struggling schools. Reform plans will – and should – acknowledge the variability in education challenges and necessary solutions across states.

ExcelinEd supports the provisions in the Student Success Act that reinforce state authority over education policy decisions. Specifically:

- H.R. 5 maintains provisions similar to current law with respect to states adopting academic content standards and academic achievement standards but specifies that states shall not be required to submit such standards to the U.S. Department of Education “for approval or certification” – firmly assuring that standards are a state, not a federal, responsibility.
- Under H.R. 5, states would have to include a system for “school improvement for low-performing public schools.” But, H.R. 5 provides far more flexibility to states to design their own accountability systems by removing rigid, federal mandates for making “adequate yearly progress.” Instead, states will be allowed to have rating systems that use a variety of student outcome measures to indicate a range of effectiveness, such as an A–F rating system.
- Under H.R. 5, states and districts – not the federal government – determine what strategies should be used to improve academic achievement in low-performing schools. This will give states and districts the freedom they need to employ the turnaround tools – such as recovery

districts, reading interventions, choice programs, online learning, and others – that best meet the needs of their schools and their students.

II. Limit and focus the federal role.

From Washington, D.C., Congress and the U.S. Department of Education are not in a position to know how to operate individual schools, administer school programs, or select the right turnaround strategies. Even the most thoughtful and well-intentioned federal dictates will bear little resemblance to the policies that play out in schools and classrooms. The federal government should not mandate, approve, or take any action that even appears to coerce states to adopt a particular set of standards. Rather than prescribing regulations around state accountability systems and school turnaround interventions, the federal government should embrace a more appropriate role: transparent reporting of academic performance. Taxpayers and parents deserve to know where and how their tax dollars are being spent and whether these investments are helping students succeed. Therefore, we need annual statewide assessments, which allow for measurement of student growth, fair evaluation of schools, and empowerment of parents with the data they need to make informed decisions about educational options for their children. It is also why we need the “[truth serum](#)” provided by state participation in the National Assessment of Educational Progress (NAEP).

Setting Clear Limits on the Federal Role

ExcelinEd supports the provisions in the Student Success Act that set clear limits on the federal role in education. Specifically:

- H.R. 5 includes new language expanding the prohibition in current law against federal “mandates, direction or control” over states’ standards or curriculum. H.R. 5 states explicitly that: “No officer or employee of the Federal Government shall, directly or indirectly, through grants, contracts, or other cooperative agreements, mandate, direct, incentivize, or control a State, local educational agency, or school’s specific instructional content, academic standards and assessments, curricula, or program of instruction, (including any requirement, direction incentive, or mandate to adopt the Common Core State . . .).” We believe that such a strong, clear statement will protect states’ future decisions about particular standards, curriculum, or assessments from any appearance of federal involvement and ensure maximum trust in those decisions.
- While maintaining the ability of states to seek waivers from certain provisions of ESEA, H.R. 5 prohibits the Department of Education from denying a states’ waiver request based on external conditions that are not specified in the legislation.
- H.R. 5 includes new language vastly limiting the ability of the federal government to expand its role in education through regulations. Specifically, new language rightly prohibits the Secretary from “establish[ing] any criterion that specifies, defines, describes or prescribes the standards or measures that a state or local educational agency. . . uses to establish, implement, or improve state academic standards, academic assessments, state accountability systems; or teacher and school leader evaluation systems.”

Focusing the Federal Role on Transparent Reporting

ExcelinEd supports the provisions in the Student Success Act that focus the federal role on transparent reporting of academic performance. Specifically:

- H.R. 5 maintains transparency provisions in current law by preserving the requirement that state and district report cards include disaggregated, annual student achievement data and graduation rates.
- H.R. 5 also continues the requirement that all states participate in NAEP as a “truth serum” check on the overall quality of their standards and assessments.

However, we believe that transparency could be improved if report cards also included information on per pupil spending and teacher salaries.

Preserving Annual, Statewide Assessments

We strongly support the provisions of H.R. 5 that preserve the annual testing requirements under current law. ExcelinEd, along with a growing, bipartisan list of groups representing [business](#), [civil rights organizations](#), and [education reform groups](#), strongly believe annual assessments are by far the best – and many would say the only – way to:

- Provide honest, objective information on academic achievement to students, parents, teachers, schools and the public;
- Identify struggling students and schools to make sure they receive the help and resources they need to be successful;
- Keep the promise of equity, ensuring that all children get a high-quality education;
- Know if state and local policies and interventions are working; and
- Be accountable to the taxpayers who fund them.

It is important to note that grade span testing, as is being proposed by some, would do little to help strengthen accountability, better inform parents, or reduce the amount of testing. In fact, grade span testing would increase, rather than decrease, the stakes attached to these tests. Furthermore, as pointed out in a [recent paper from Brookings](#) by Martin R. West and Matthew M. Chingos, grade span testing makes it difficult to calculate student growth, which is required in order to make equitable, fair accountability decisions that give schools credit for student learning.

Fewer, Better Tests

We understand the concern from parents and policymakers about over testing and firmly believe that we need fewer, better assessments. However, removing federal annual assessments or embracing grade span testing will do little to help because a growing body of evidence suggests that most of the testing comes from district requirements. The [Center for American Progress](#) found that high school students are tested twice as much on district exams than on required statewide tests. [ExcelinEd also reviewed](#) 44 (out of 67) Florida districts’ assessment calendars and found that districts required on average 98 tests in addition to state requirements. The numbers varied widely, with some districts requiring as few as eight additional tests to as many as 198 additional tests. As a first step toward

improving the quality and quantity of tests, districts should consider cutting back on their local tests, and state and local leaders should review test quality and frequency as well as whether results are being given back to teachers in a useful, timely manner.

Furthermore, recent polling results show strong public support for assessments. According to an AP-NORC Center for Public Affairs Research survey, the majority of [parents think](#) current levels of testing are about right, with only one in four believing their children take too many tests. A [PACE/USC Rossier Poll](#) showed large majorities of California parents support annual assessments.

It is also worth noting that the focus on transparency and the preservation of annual testing significantly strengthen the Title I portability and public school choice provisions in the Student Success Act. Annual assessments provide critical school performance data to help parents make decisions about the best educational options for their child. Annual tests also enable authorizers, policy makers, and the public to measure the success of options such as charter schools compared to traditional schools.

III. Embrace research and innovation.

If we want to give all our students the world-class education they need to compete in the global economy, we must embrace an array of 21st-century tools. And, we must do so in a way that does not trade innovation for accountability. ESEA should support opportunities to incubate new models of education in states, particularly in those that have demonstrated success with student performance. States and schools are exploring [competency-based education systems](#) that allow students to progress upon demonstrating mastery of the material rather than basing learning on a calendar year. Computer adaptive testing helps to identify not just if a student is proficient, but his or her precise level of achievement. ESEA must support these and other innovations in three ways. First, ESEA must continue to support the rigorous, scientifically-based research needed for evaluating which reforms and programs are working and which are not. Second, the law must support efforts to help accelerate the development of technologies and innovations to empower teachers and school leaders. Finally, ESEA must accommodate innovations and emerging accountability, assessment, and instructional models.

ExcelinEd supports provisions in H.R. 5 that promote research, innovation, and flexibility. Specifically:

- The Student Success Act empowers states and districts to identify and implement their own innovative reforms and instructional strategies designed to strengthen academic programs within their school, but the bill also requires that such reforms and strategies are “evidence-based.”
- We are also pleased to see that H.R. 5 gives states the following flexibilities, which could help promote development of innovative assessment models, such as competency-based models:
 - enables states to use federal funds for the costs of development of state assessments and standards;
 - allows states to develop computer adaptive assessments and permits states to use – as part of a state’s accountability system – assessment items that are above or below a student’s grade level; and
 - permits states to determine if annual student scores are based on one summative assessment or on the results of multiple assessments given throughout the year that result in a single summative score.

Balancing Innovation and Accountability

However, we believe the Student Success Act could do a better job of balancing innovation and accountability with regard to the next generation of student assessments in two respects.

- First, H.R. 5 should give states the opportunity to participate in pilot programs to support and substantiate innovative assessment models at the state or district levels – such as performance-based assessments that emphasize the mastery of standards and aligned competencies in a competency-based education model, technology-based academic assessments, and portfolios, projects, or extended performance task assessments.
- Second – and perhaps most importantly – the legislation should require that before adopting innovative assessment approaches or proposed assessment pilot programs, states must demonstrate – through an approval process utilizing a Federal Advisory Committee that increases access to technical experts while minimizing political influence on the decisions – that the assessments and combined results thereof are: valid; secure; aligned to state standards; testing a broad, representative range of state standards; comparable year-to-year to enable measurement of individual student growth; and comparable in depth, breadth, and results to traditionally used statewide assessments.

IV. Modernize Title I to support portability, equity, and rewarding of success.

Title I funding is overly complex and bureaucratic. As a result, this \$14 billion taxpayer investment is failing to maximize its potential impact on the achievement of our most vulnerable and disadvantaged students. Title I should be modernized into a portable program that rewards states' success in improving student learning. There are enormous challenges involved with modernizing the program, but that should not be an excuse for failing to comprehensively tackle an underperforming funding program. While it appears that the upcoming reauthorization of ESEA will not include a complete overhaul of Title I's funding formulas and allocation rules, Congress should take immediate steps to maximize states' federal fiscal flexibility within existing rules and structures.

A critical component of this modernization is rewarding success. Currently, Title I pays the same amount to states and schools regardless of quality. Establishing a Title I Rewards Fund would allow states to earn additional funding that would be allocated to schools based on their ability to improve student outcomes such as raising student proficiency, increasing student growth, closing achievement gaps, reducing dropouts, or increasing graduation rates. Such an approach helps reward schools that successfully accomplish the core goal of Title I which is helping improve student achievement.

ExcelinEd supports provisions in the Student Success Act that make immediate improvements to Title I formulas and allocation rules:

- The Student Success Act's inclusion of "Title I portability" provisions will give states the option of empowering parents to use Title I funds to select from the expanding array of educational options that best meet their child's needs.

- The Student Success Act also takes an important step toward reducing federal micromanagement, bureaucracy, and paperwork by eliminating the current “maintenance of effort” requirements.

To add to these important short-term steps, we also recommend that H.R. 5 simplify the manner in which districts can demonstrate compliance with the “supplement not supplant” requirements. Specifically, districts should no longer have to demonstrate that every individual cost or service provided to a Title I school is supplementary. Instead, a district should simply demonstrate that its allocation methodology for state and local funds does not take a school’s Title I status into account.

Taking Concrete Steps Toward Full Title I Modernization

Although H.R. 5 makes dramatic improvements to Title I, more can be done in the long-run. We encourage Congress to use this opportunity to take concrete steps toward the full modernization of Title I by creating a national commission of State leaders, civil rights leaders, and education experts to report to Congress on how to achieve full Title I modernization, including a review of weighted student funding, performance-based Title I rewards for student success, and other state-designed options that could increase opportunities for all students to receive a world-class education.

Past Title I reforms have focused on improving the targeting of Title I funds to better serve vulnerable and disadvantaged students who need the most help. These efforts should continue to be refined and improved. However, Congress should give states the chance to earn additional funding that could be allocated to schools that are doing the best job meeting the goals of Title I.

Such a rewards-based approach is not new. [Florida’s School Recognition Program](#) provides public recognition and financial awards to schools, of up to \$100 per student, that have sustained high student performance or demonstrated substantial improvement in student performance. Schools qualify for the award if they:

- receive a grade of “A”;
- improve at least one letter grade;
- improve more than one letter grade and sustain the improvement the following school year; or
- are designated as Alternative Schools and receive a school improvement rating of “Improving” or improve at least one level.

In addition, the Advanced Placement Incentive Program (APIP) in current law offers teachers and students the opportunity to earn cash rewards based on each passing score earned on an Advanced Placement (AP) exam. Early versions of the program were championed as a national model in the 2006 report, [Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future](#) and were later scaled through the [National Math and Science Initiative](#) to 620 high schools across 26 States. The results have been impressive. For example, the State of Virginia saw a 52 percent increase in AP Exams with a score of 3 or higher in math, science, and English. Schools that have fully implemented the three-year program have seen the [number of passing AP scores for African American and Hispanic students triple](#), and the number of passing scores for female students triple as well.

V. Promote choice measures designed to increase the availability of high-quality educational options and give parents the financial freedom to choose the school and courses that best meet their child’s needs.

Today, there are more than [19 states with school choice programs](#); [43 states have charter school laws](#); [26 states have statewide virtual schools](#); and [11 states have laws supporting course access programs](#). A modern ESEA must reflect and support these growing reforms that provide students with high-quality educational options at both the school and the course level. ESEA should allow funds to follow each child to help him or her assemble the portfolio of educational services that meet his or her unique needs and leverage his or her full potential.

ExcelinEd supports provisions in the Student Success Act that support public school choice. Specifically,

- As discussed more fully above, we appreciate the provision allowing states to opt into a Title I portability funding model for Title I.
- H.R. 5 also effectively updates the Charter Schools Program. The improvements included under this program – such as protecting charter school autonomy, supporting the replication and expansion of high-quality charter schools, and encouraging states to provide more equitable funding for charter schools – will help to provide more high-quality educational options for students across the country.
- The Student Success Act includes “direct student services” provisions that require states to set aside 3 percent of their Title I allocation to provide competitive grants to school districts that wish to offer tutoring or transportation for public school choice to their students.

However, we urge the Committee to take the following additional steps to provide the full range of choices to all students:

- Expand H.R. 5’s “direct student services” provisions in the following respects:
 - Make competitive grants available to districts or to charter management organizations serving the relevant districts;
 - Ensure that state course access programs are eligible for support under the grants; and
 - Include transportation for public and private school choice.
- Support state [course access](#) and [online learning](#) programs by allowing states to direct federal Title II and AP Incentive Program funds toward the establishment or expansion of course access programs.
- Authorize and fund the DC Opportunity Scholarship Program.

We appreciate your consideration of our recommendations for the Student Success Act and look forward to working with you and other Committee Members as you continue your efforts to reauthorize this historic piece of legislation.

Sincerely,

A handwritten signature in black ink that reads "Patricia Levesque". The signature is written in a cursive, flowing style.

Patricia Levesque
Chief Executive Officer
Foundation for Excellence in Education