

Every Student Succeeds Act

This chapter is an overview of the requirements of the Every Student Succeeds Act (ESSA) as well as current federal and state guidance interpreting its provisions. The guidance documents issued by the United States Department of Education (ED) and the Pennsylvania Department of Education (PDE) are technically not “law,” but are simply policy statements made by the respective agencies. Practice has shown that such guidance is fluid – subject to waivers and constant interpretation and modification. However, the guidance is important to the implementation of ESSA. Practitioners are cautioned not only to confirm the current position of ED and/or PDE relating to these policy determinations, but also to confirm the state of the law when a question arises to ensure that the law has not been amended and that the guidance is an accurate reflection of what ESSA actually requires. Information about ESSA and its implementation in Pennsylvania can be found on PDE’s website.

What is ESSA?

ESSA, which reauthorizes the Elementary and Secondary Education Act of 1965 (ESEA), replaces the No Child Left Behind Act (NCLB). ESSA was signed into law by President Obama on Dec. 10, 2015. The amended Act can be found at 20 U.S.C. §§ 6301 *et seq.*

The ESEA is the single largest source of federal aid to schools and local educational agencies. Title I, aimed at improving education for disadvantaged children in poor areas, is the cornerstone of the ESEA. The ESEA and its amendments were enacted pursuant to Congress’ spending powers under the Constitution, meaning Congress can condition the receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives.

ESSA provides state education agencies with new flexibility, especially in designing systems to measure school and local education agency (LEA) performance and in determining how and when to deliver school improvement strategies.

Are all schools and local educational agencies required to comply with ESSA?

Yes and no. Pursuant to ESSA, the state educational agency must ensure that all schools and local educational agencies in Pennsylvania are subject to the same challenging state academic standards and accountability system. 20 U.S.C. §§ 6311(b)(1), (c). However, the ESSA-authorized school support and improvement activities do not apply to schools or LEAs that do not receive Title I funds.

Do the ESSA requirements apply to charter schools?

Yes. Charter schools and cyber charter schools are public schools and are subject to the accountability provisions under ESSA, which shall be overseen for charter schools in accordance with Pennsylvania’s Charter School Law. 20 U.S.C. § 6311(c)(5). According to the Charter School Law, 24 P.S. § 17-1701-A *et seq.*, the chartering school district is the entity that bears responsibility for ensuring that charter schools comply with applicable laws. 24 P.S. § 17-1729-A(a)(5).

What entity is the state educational agency (SEA) in Pennsylvania?

PDE is the SEA in Pennsylvania.

What responsibilities does PDE, as the SEA, have under ESSA?

PDE is responsible for, *inter alia*, developing and implementing the State Plan; adopting challenging state academic standards; implementing a single accountability system that measures academic achievement of all students in the state; developing statewide assessments in all required areas; developing a methodology to identify schools in need of Comprehensive Support and Improvement (CSI) and Targeted Support and Improvement (TSI); applying for, receiving and allotting Title I monies to LEAs; assisting LEAs in implementing the requirements of ESSA, including the provision of technical assistance; and preparing a State Report Card. 20 U.S.C. §§ 6301 *et seq.*

What is the State Plan?

Every state desiring to receive Title I money is required to submit a plan to the secretary of the ED that satisfies all of the requirements of ESSA. 20 U.S.C. § 6311(a). In Pennsylvania, the State Plan, which was approved by the ED on Jan. 16, 2018, is called Pennsylvania’s ESSA Consolidated State Plan. For a copy of the State Plan, see PDE’s website.

The State Plan will be periodically updated by PDE, as necessary to reflect new strategies and programs, and submitted for approval to the ED. 20 U.S.C. § 6311 (a)(6)(A)(ii).

Academic assessments

In what grades must students’ achievement be measured?

The achievement of students has to be measured in mathematics and reading or language arts in each of grades 3 through 8, and at least once in grades 9 through 12. 20 U.S.C. § 6311(b)(2)(B). Student achievement has to be measured in science at least once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. *Id.*

What assessments are used in Pennsylvania to measure student achievement?

The Pennsylvania System of School Assessment (PSSA) measures achievement in mathematics and English language arts for students in grades 3 through 8, and science (science, technology, environment and ecology) for students in grades 4 and 8. 22 Pa. Code § 4.51(a). The end-of-course Keystone Exams measure achievement in algebra I, literature and biology for students at the high school level. 22 Pa. Code § 4.51b. The assessments are aligned to Pennsylvania’s academic standards. See Chapter 12, Academic standards and planning.

The state’s alternative assessment, the Pennsylvania Alternate System of Assessment (PASA), is administered to students in the equivalent of grades 3 through 8 and 11 with the most significant cognitive disabilities.

The state’s annual English language proficiency assessment, the Assessing Communication and Comprehension in English State to State for English Language Learners (ACCESS for ELLs), assesses students in grades K-12 who are classified as English Learners (EL).

What does ESSA say about Universal Design for Learning and assessments?

ESSA requires that state assessments be developed, to the extent practicable, using the principles of universal design for learning (UDL). 20 U.S.C. § 6311(b)(2)(B)(xiii.)

The state must also describe the steps taken to incorporate UDL, to the extent feasible, in alternate

assessments for students with the most significant cognitive disabilities. 20 U.S.C. § 6311(b)(2)(D)(i)(IV). See PASA Administration Manual.

When is the PSSA administered?

The PSSA is typically administered during the month of April.

When are the Keystone Exams administered?

The Keystone Exams are offered three times per year – in the winter, spring and summer. PDE sets the testing windows for each time of year. A student who does not achieve at least a proficient score on the Keystone Exam may continue to take the exam without limitation until the end of the student’s 11th grade year in an attempt to achieve proficiency.

When are PSSA and Keystone Exam results reported?

PDE has been disseminating PSSA results to schools and LEAs during July, with final results available to the public in the Fall. Beginning in 2019, PDE plans to provide score reports to parents and schools by June 1.

Keystone Exam results are reported back to schools and LEAs after each testing window. Final Keystone Exam results are reported out for students for the school year in which the student is in 11th grade, regardless of when the student took the end-of-course examination. For example, if a student takes the Algebra I Keystone Exam at the end of his ninth grade year when he is enrolled in the Algebra I course, the student’s score is banked and reported out in the school year in which the student is in 11th grade and attributed to the school in which the student is enrolled for 11th grade.

Are all students required to participate in state assessments?

Yes, with the exception of those who are granted a religious exemption. 22 Pa. Code § 4.4(d)(4).

Students may also receive a medical exemption if they cannot participate in a state assessment during the testing window, including make-up dates, due to a significant medical event. See PDE’s Guidance for Medical Exemptions from State Assessments.

How are the PSSA and Keystone Exam results of students placed in educational settings outside of their home school included?

The answer depends on the circumstances surrounding the individual student’s situation. PDE has developed an Attribution Map to assist LEAs in accurately attributing student data to the correct school, LEA and/or agency for accountability reporting of the PSSA, PASA and Keystone Exams.

Are LEA’s responsible for testing homebound students?

Yes, homebound students must be included in the tested population of the home school and LEA. See PDE’s 2018 Attribution Map.

Are English Learners (EL) required to participate in state assessments?

For students identified as English Learners who are in their first year of enrollment in a U.S. school, participation is required for the Mathematics/Algebra I and Science/Biology assessments, and optional

for the English Language Arts/Literature assessment.

Additionally, ELs must participate in the annual English language proficiency assessment, ACCESS for ELLs.

Does Pennsylvania have a native language version of the state assessments?

A Spanish version of each Mathematics PSSA and Science PSSA and the Algebra I and Biology Keystone Exams are available. For more information, see PDE's Accommodations Guidelines for English Learners. See State Plan § 3.

How must assessment results be disaggregated?

Each state, LEA, and school must disaggregate assessment data by: (1) racial and ethnic group; (2) economically disadvantaged students compared to students who are not economically disadvantaged; (3) children with disabilities as compared to children without disabilities; (4) English proficiency status; (5) gender; and (6) migrant status. If the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student, disaggregation is not required. 20 U.S.C. § 6311(b)(2)(B)(xi).

What is the criteria for participation in the PASA?

To be eligible to take the Pennsylvania Alternate System of Assessment (PASA), a student must meet all six of the following criteria: (1) the student is in grades 3-8 or 11; (2) the student has a severe cognitive disability; (3) the student requires very intensive instruction to learn; (4) the student requires very extensive adaptations and supports in order to perform and/or participate meaningfully and productively in the everyday life activities of integrated school, home, community and work environments; (5) the student requires very substantial modifications of the general education curriculum; and (6) the student's participation in the general education curriculum differs very substantially in form and/or substance from that of most other students (i.e. requires modified objectives, materials, or activities). See PASA Administration Manual.

How many students with disabilities are eligible to take the PASA?

There is no limit on how many students with disabilities can take the PASA, as long as the students meet the six criteria to be eligible to take the PASA, as determined by the student's Individualized Education Program (IEP) team. 22 Pa. Code § 4.51(l).

Is there a cap on the number of PASA scores that can be included for purposes of calculating accountability data?

Yes. The inclusion of those students who score at proficient or advanced levels on the PASA (at the LEA and state level) cannot exceed 1% of all students in the grades assessed. 20 U.S.C. § 6311(b)(2)(D)(i); 34 C.F.R. § 200.13(c)(1).

Must the PASA be taken on grade level?

If an IEP team determines that an alternative assessment is required for a student with disabilities, the "alternative assessment must yield results for the grade in which the student is enrolled...." 34 C.F.R. §

200.6(a)(2)(ii)(A). However, there is a limited exception to this requirement, allowing students with the “most significant cognitive disabilities” to be assessed under “alternate academic achievement standards” defined by the states (e.g. standards deemed appropriate for their intellectual development). 34 C.F.R. § 200.6(a)(2)(ii)(B).

Are other accommodations available to students with disabilities who are not eligible to take the PASA?

Yes. Students with disabilities who are not eligible for assessment using the PASA and who are assessed using the PSSA must be assessed on grade-level academic content standards, regardless of their ability or their IEP. However, such students may be permitted appropriate accommodations. The types of accommodations available to students with disabilities are developed by PDE. The determination of which accommodation is appropriate for a student must be made individually by a student’s IEP team. See PDE’s Accommodations Guidelines for Keystone Exams and PSSAs.

Accountability System

What schools are included in the statewide accountability system?

PDE has a single accountability system for all public schools, which includes charter schools.

How does the state, LEAs and schools make accountability data public under ESSA?

Through the Future Ready PA Index, a comprehensive, public-facing school progress report that includes a wide-range of meaningful, evidence based indicators. The Future Ready PA Index will focus on all elements of the state’s school accountability and improvement system.

What are the subgroups on which the LEA and school must report accountability data?

In addition to reporting the achievement of all elementary and secondary students, a school or LEA must report data for certain subgroups, assuming each subgroup has the minimum number of students required by state law. Those subgroups are: (1) economically disadvantaged students; (2) students from major racial and ethnic groups; (3) students with disabilities; and (4) English Learners (ELs). 20 U.S.C. § 6311(c)(2). In Pennsylvania, the category of “students from major racial and ethnic groups” is further broken down into the subgroups of: African-American/Black; American Indian or Alaskan Native; Asian (not Hispanic); Hawaiian Native or Pacific Islander; Hispanic; Multi-Racial (not Hispanic); and White. See State Plan § 4.1 Accountability System. Pennsylvania will not include former students with disabilities in the students with disabilities subgroup. *Id.*

Are gifted students with GIEPs counted in the students with disabilities subgroup?

No, gifted students should not be included in the students with disabilities subgroup unless they are also considered students with disabilities (i.e., have a dual diagnosis).

Are the scores of EL students used for accountability?

Not in their first year of enrollment in the U.S. schools. However, their participation in the English Language Arts (if attempted), Mathematics, and Science assessments will be used in the calculation of the accountability participation rate. The scores of EL students will be used for accountability after their first year of enrollment, regardless of their level of English proficiency.

For currently identified ELs, PDE plans to make an English language proficiency count adjustment for the assessments based on a state-determined timeline for ELs to attain English proficiency and measured by an English language proficiency test.

Are the scores of EL students included in the EL subgroup after they attain English language proficiency?

Yes. With respect to a student previously identified as an EL, and for not more than four years after the student ceases to be identified as an EL, PDE plans to attribute the results of the state assessments to the EL Subgroup. *See State Plan § 4.1 Accountability System.*

In Pennsylvania, what is the minimum number of students, for purposes of accountability and reporting, that are necessary to be included in each of the subgroups of students?

The minimum number of students (N-size) that the state has established for accountability and reporting purposes is 20.

Annual meaningful differentiations will be informed by two years of achievement, growth and graduation rate data. To report a specific indicator, the school will need to meet the minimum N-size for that indicator in each year of the two-year window. Measurement will be finalized through weighted student averages.

To ensure statistically reliable accountability data for the small number of schools that fall below the minimum N-size number for the All Student group, Pennsylvania will aggregate data from up to four years to inform annual meaningful differentiation determinations. Any such determinations will require complete data for at least two accountability indicators. *See State Plan § 4.1 Accountability System.*

What are Pennsylvania's accountability indicators?

ESSA requires all schools to annually measure, for all students and separately for each subgroup of students, the following indicators:

1. Academic achievement as measured by proficiency on annual assessments;
2. Academic progress (a measure of student growth);
3. Graduation rate; and
4. English language proficiency.

20 U.S.C. § 6311 (c)(4)(B). In addition to these indicators, Pennsylvania will also measure school quality/student success using these indicators:

1. Chronic absenteeism; and
2. Career Readiness.

See State Plan § 4.1 Accountability System.

How is academic achievement measured?

Achievement measures describe the academic performance of students on state assessments; more specifically, the percentage of students scoring Proficient or Advanced on the PSSA in grades 3-8, end-of-course Keystone Exams, and the PASA. See State Plan § 4.1 Accountability System. Pennsylvania will use the following calculation to satisfy the ESSA requirement on annual measurement of achievement. 20 U.S.C. § 63119(c)(4)(E).

Numerator: Number of students among students in the denominator who achieved proficient or advanced on the statewide assessment.

Denominator: 95% of students enrolled in the school on the last day of the respective testing window who are full academic year **OR** the number of test takers among students enrolled in the school on the last day of the respective testing window who are full academic year, whichever is higher.

How is full academic year (FAY) defined?

A student is enrolled for a “full academic year” if the student is enrolled in the school on or before Oct. 1, and continuously enrolled in the school until (including) the last day of the applicable testing window. A school is not required to include the PSSA results of students who enroll in a school on, for example, Dec. 15; however, the school must administer the PSSA to all students, regardless of whether they have been enrolled for a “full academic year.” If a student moves from one school to another school within the same LEA during the academic year such that the student is in neither school for a “full academic year,” the LEA will still be accountable for the student’s performance, even though both the sending and receiving school will not. For more information, see the Pennsylvania System of School Assessment Handbook for Assessment Coordinators.

As a part of the statewide accountability system, is there a requirement to measure the academic achievement of a certain number of students (participation rate)?

Yes. ESSA requires Pennsylvania to annually measure the achievement of not less than 95% of all students, and 95% of all students in each subgroup of students, who are enrolled in public schools. 20 U.S.C. § 6311(c)(4)(E).

Pennsylvania will publish school-level participation rates through the Future Ready PA Index. Schools with participation rates below 95% will be required to develop and implement state-approved improvement plans, and complete a school- or LEA-level assessment audit. See State Plan § 4.1 Accountability System.

How will academic progress be measured?

Pennsylvania will use growth calculations derived from the Pennsylvania Value Added Assessment System (PVAAS), which seeks to determine whether each group of students gains, maintains or declines in overall academic performance. Pennsylvania proposes to utilize PVAAS data for Mathematics 4-8 and

English/Language Arts 4-8 in its system of annual meaningful differentiation. *See State Plan § 4.1 Accountability System.*

How will graduation rate be measured?

Pennsylvania will use the adjusted cohort graduation rate, which represents the percentage of students in a school who earn a high school diploma within four or five years. Pennsylvania will report both four- and five-year graduation rates, and average the two rates for purposes of annual meaningful differentiation determinations. *See State Plan § 4.1 Accountability System.*

How will English language proficiency be measured?

ELs are expected to attain proficiency in English in up to six years depending on their initial proficiency level. In other words, students with little or no initial proficiency in English are expected to attain proficiency within six years while students at higher initial proficiency levels are expected to attain in fewer years. Growth toward proficiency and attainment of English proficiency will be measured based on a student's overall composite proficiency level score from the ACCESS for ELLs, the annual English language proficiency assessment. Individual student growth targets are calculated each year using ACCESS for ELLs scaled scores and are based on the amount of growth made and the remaining growth required to attain proficiency by the target year. The expectation is that schools meet increasing targets for students making adequate growth toward and attainment of proficiency on time. *See State Plan § 4.1 Accountability System.*

How will chronic absenteeism be measured?

The primary goal of this indicator is to incentivize programs and activities that support high rates of attendance for every student. Chronic absenteeism will be calculated based on the number of students who have missed more than 10% of school days across the academic year, roughly 18 days in a 180-day school year. Enrollment of less than 60 days of school will exclude a student from that school's calculation as there has not been sufficient opportunity for the school to apply intervention strategies. A student is considered absent if they are not physically participating in instruction or instruction-related activities on school grounds or at an approved off-grounds location for at least half the school day. Any day that a student is absent for less than 50% of the school day should not count as an absence. Chronically absent students include students who are absent regardless of whether absences are excused or unexcused. Chronic absenteeism calculations will be derived from existing data collections by PDE. *See State Plan § 4.1 Accountability System.*

How will career readiness be measured?

The purpose of this indicator is to highlight how well schools help students explore career opportunities and develop career goals throughout their schooling. Pennsylvania has identified the skills students need to succeed in the workplace in the Career Education and Work (CEW) academic standards. Pennsylvania will use the percent of students who demonstrate engagement in career exploration and preparation, with individualized career plans through specific measures by or before the end of grades 5, 8, and 11. Calculations will be performed using all students enrolled in grades 5, 8, and 11 as the denominator; the number of students in grades 5, 8, and 11 who demonstrate evidence that they have satisfied state-mandated CEW standards will serve as the numerator. *See State Plan § 4.1 Accountability System.*

How will Pennsylvania approach annual meaningful differentiation?

ESSA requires states to have a system for annual meaningful differentiation of all public schools, including public charter schools. 20 U.S.C. § 6311(c)(4)(C). Pennsylvania will use a three-step system of annual meaningful differentiation. Pennsylvania will also use this three-step approach to identify: the lowest 5% of Title I schools for Comprehensive Support and Improvement (CSI), Targeted Support and Improvement (TSI) schools, and schools exceeding federal accountability targets. See State Plan § 4.1 Accountability System.

Step 1. Preliminary identification based on academic achievement and growth: PDE will initially categorize schools based on position on an achievement/growth plot. The achievement measure will be derived from a weighted average of the percentage of students scoring Proficient or Advanced on state assessments in English Language Arts and Mathematics combined, as derived from at least two years of data. The state will examine achievement in relation to a school's average growth index (AGI), again as derived from state achievement test data from at least two years. Achievement and growth data will be plotted to allow the state to identify schools exhibiting low performance in both achievement and growth. PDE will finalize cut points that denote inadequate school performance for both achievement and growth in the fall of 2018, based on 2016-17 and 2017-18 state assessment results.

Step 2. Final identification based on additional academic and non-academic indicators: To establish the lowest-performing 5% of all schools as required under ESSA, Pennsylvania will examine the performance of low-achievement and low-growth schools on remaining accountability indicators as available based on school configuration and minimum N-size:

- Substantially Weighted Indicators: High school graduation rate and progress in moving English Learners to proficiency; and
- School Quality/Student Success Indicators: Chronic absenteeism and career readiness.

Low-achievement and low-growth schools that also fall in the bottom quartile of school performance on either of the following will also be identified for CSI:

- One or both substantially weighted indicators (graduation rate and progress in achieving English language proficiency); or
- Both school quality/student success indicators (chronic absenteeism and career readiness). Schools for which only one School Quality/Student Success Indicator is available, and that fall in the bottom quartile of performance for that indicator, will also be identified for CSI.

Step 3. Identification of additional high schools with low graduation rates: ESSA requires that states identify "all public high schools [not just Title I schools] in the state failing to graduate one third or more of their students." PDE will identify any such high schools not already identified through Steps 1 and 2 through evaluation of the four- and five-year adjusted cohort graduation rates.

Support and improvement for schools

How have the requirements related to schools in need of improvement changed under ESSA?

Under NCLB when schools failed to meet goals (e.g. make Adequate Yearly Progress), federal law required specific interventions. Identification of schools for school improvement, corrective action,

restructuring and supplemental educational services (NCLB requirements) is replaced with two categories: Comprehensive Support and Improvement; and Targeted Support and Improvement.

Under ESSA, the state and LEAs will determine which schools are low-performing and then create a plan to improve student outcomes. The philosophy behind ESSA's assessment requirements is that they are intended to help improve learning rather than impose punitive consequences, and to identify struggling schools so they can get special help to improve.

How will the state identify schools in need of Comprehensive Support and Improvement?

Pennsylvania will identify Comprehensive Support and Improvement (CSI) schools in the fall of 2018 and every three years thereafter as follows:

- **Lowest-Performing Schools:** Pennsylvania's three-step approach for identifying the lowest 5% of Title I schools is set forth above.
- **Schools with Low High School Graduation Rates:** Pennsylvania will report both four- and five-year graduation rates, and average the two rates for purposes of annual meaningful differentiation determinations, including CSI identification. Pennsylvania will identify any high school with a resulting graduation rate at or below 6%.
- **Schools with Chronically Low-Performing Subgroups:** Title I schools identified for Additional Targeted Support and Improvement that fail to satisfy Pennsylvania's exit criteria over a four-year span will be identified for CSI.

See State Plan § 4.2 Identification of Schools.

How must a school respond if identified as in need of CSI?

Upon receiving such information from the state, the LEA shall, for each school identified by the state and in partnership with stakeholders (including principals and other school leaders, teachers, and parents), locally develop and implement a comprehensive support and improvement plan for the school to improve student outcomes, that:

- Is informed by all indicators (including student performance);
- Includes evidence-based interventions;
- Identifies resource inequities;
- Is approved by the school, LEA, and SEA; and
- Is monitored and periodically reviewed by SEA.

20 U.S.C. § 6311(d)(1)(B).

What is the exit criteria for CSI schools?

At a minimum, to exit CSI status, schools will be required to:

1. Show continued progress on at least the academic achievement indicator and, in the case of high schools, the adjusted cohort graduation rate, such that the school contributes to the state's progress toward both interim and long-term goals;
2. Show continued progress on the school quality or student success indicator(s) for which the school was identified;
3. Exceed the identification standards for CSI that were applied the year of initial identification, as well as the standards from the most recent round of annual meaningful differentiation;

4. Submit an updated improvement plan that details LEA and school activities that focus on sustainability and continued improvement, including a focus on phase-out of school improvement funds and phased withdrawal of intensive supports; and
5. Participate in PDE-sponsored technical assistance activities throughout the duration of CSI status.

20 U.S.C. § 6311(d)(3)(A)(i); See State Plan § 4.2 Identification of Schools.

What happens if a school does not demonstrate improvement?

A school that does not demonstrate significant improvement after a state-determined number of years (not to exceed four years) will be subject to more rigorous requirements established by the state. 20 U.S.C. § 6311(d)(3)(A)(i)(I). The Pennsylvania State Plan identifies four years as the timeframe in which improvement must be demonstrated. See State Plan § 4.2 Identification of Schools.

To ensure appropriate, focused and tailored supports for schools that fail to meet CSI exit criteria within four years of initial identification, Pennsylvania will take more rigorous actions to include the following strategies based on school needs:

- Where returning CSI schools are exhibiting especially acute challenges, require them to participate in a networked improvement community, utilizing an evidence-based framework for building the capacity of schools to achieve improvement goals;
- Partner with returning CSI schools and their LEAs to identify an external partner with an evidence-based model for improving LEA and school performance in the identified priority areas;
- Require additional Department approvals of LEA- and building-level expenditures associated with ESSA;
- Require more frequent updates to the Department and to the school's community on progress towards interim and long-term goals; and
- Review and approve an amended comprehensive support and improvement plan that establishes specific interventions for the areas not showing improvement and that provide support for continuation of strategies showing success.

See State Plan § 4.3 State Support and Improvement for Low-performing Schools.

For all schools that fail to exit CSI status after four years of initial identification, school improvement plans will be revised and will provide detailed SEA, LEA, and school-level strategies to ensure shared responsibility and adequate provision of technical resources. *Id.*

How will the state identify schools in need of Targeted Support and Improvement?

Pennsylvania will identify Targeted Support and Improvement (TSI) schools in a manner consistent with its overall approach to annual meaningful differentiation and CSI identification. TSI schools will be identified when one or more student groups performs below the CSI thresholds for academic proficiency, academic growth, and either: 1) one or both substantially weighted indicators (graduation rate and progress in achieving English language proficiency); or 2) both school quality/student success indicators (chronic absenteeism and career readiness) over a three-year span. See State Plan § 4.2 Identification of Schools.

How must a school respond if identified as in need of TSI?

PDE will notify LEAs in which one or more schools are identified for TSI, and the LEA must provide timely notification to identified schools. 20 U.S.C. § 6311(d)(2); *See State Plan § 4.2 Identification of Schools.*

Each school receiving a notification, in partnership with stakeholders, must develop and implement a school-level targeted support and improvement plan to improve student outcomes for each subgroup of students that was the subject of notification that:

- Is informed by all indicators;
- Includes evidence-based interventions;
- Is approved by the LEA prior to implementation;
- Is monitored by the LEA; and
- Includes additional action if implementation is unsuccessful.

What is the exit criteria for TSI schools?

To exit TSI status, schools will be required to demonstrate each of the following during the four-year span after identification:

1. Show continued progress on at least the academic achievement indicator and, in the case of high schools, the adjusted cohort graduation rate, such that the school contributes to the state's progress toward both interim and long-term goals;
2. Show continued progress on the School Quality or Student Success indicator(s) for which the school was identified;
3. Exceed the identification standards for A-TSI that were applied the year of initial identification, as well as the standards from the most recent round of annual meaningful differentiation;
4. Submit an updated improvement plan that details LEA and school activities that focus on sustainability and continued improvement, including a focus on phase-out of school improvement funds and phased withdrawal of intensive supports; and
5. Participate in PDE-sponsored technical assistance activities throughout the duration of A-TSI status.

See State Plan § 4.2 Identification of Schools.

Persistently dangerous schools and victims of violent criminal offenses

What are “persistently dangerous schools”?

A “persistently dangerous school” is a “public elementary, secondary or charter school that meets one of the following criteria in the most recent school year and in one additional year of the two years prior to the most recent school year: (i) For a school whose enrollment is 250 or less, at least five dangerous incidents; (ii) For a school whose enrollment is 251 to 1,000, a number of dangerous incidents that represents at least 2% of the school's enrollment; (iii) For a school whose enrollment is over 1,000, 20 or more dangerous incidents.” 22 Pa. Code § 403.2. A “dangerous incident” is defined as a “[w]eapons

possession incident resulting in arrest (guns, knives or other weapons) or a violent incident resulting in arrest (homicide, kidnapping, robbery, sexual offenses and assault) as reported on the Violence and Weapons Possession Report (PDE-360).” *Id.*

Who makes the determination that a school is “persistently dangerous”?

PDE. PDE reviews the Annual Report on School Violence and Weapons Possession (PDE-360) submitted by the LEA in compliance with the Safe Schools Act, and then makes the determination that a school is persistently dangerous. 22 Pa. Code § 403.6(d)(2).

What additional rights do students have who attend persistently dangerous schools?

States must permit students who attend persistently dangerous schools to transfer to a safe public elementary or secondary school within the LEA, including charter schools. 20 U.S.C. § 7912(a).

The State Board of Education regulations have expanded a student’s right to transfer. In addition to offering the right to transfer to students who attend persistently dangerous schools, LEAs and schools must permit students who are victims of violent criminal offenses while in or on the grounds of the public elementary or secondary school that they attend (regardless of whether the school has been labeled a persistently dangerous school) to transfer to a non-persistently dangerous school within the LEA, which could include a charter school. 22 Pa. Code § 403.6(c)(1). Before a student victim is entitled to such a transfer, the student, the student’s parent or guardian, or school officials must report the violent criminal offense to law enforcement authorities. *Id.* A student victim or the student’s parent or guardian may apply to the LEA to transfer to another school within 30 calendar days after the incident is reported to school authorities. *Id.* Students who attend persistently dangerous schools are entitled to transfer at any time while the school maintains that designation. 22 Pa. Code § 403.6(c)(2)(ii).

What if there are no safe schools within the LEA?

If there are no safe schools within the LEA to which students may transfer, the LEA is encouraged, but not required, to establish an agreement with a neighboring LEA to accept the transfer of students. 22 Pa. Code §§ 403.6(d)(1)(vii), 403.6(d)(2)(ix).

Can students transfer to any safe school within the LEA?

It depends. When considering a student’s request to transfer to another school, the LEA shall take into account the particular needs of the student and the parent. 22 Pa. Code §§ 403.6(d)(1)(v), 403.6(d)(2)(vi). To the extent possible, the LEA shall allow the student to transfer to a school that is making AYP, and one that is not identified as being in school improvement, corrective action or restructuring. (Editor’s Note: ESSA eliminated AYP, school improvement, corrective action, and restructuring, but current standards adopted by the Pennsylvania State Board of Education have not been changed.) A charter school only has to accept a student who meets its admission criteria and if it has space available. 22 Pa. Code §§ 403.6(d)(1)(vi), 403.6(d)(2)(viii).

What parent notification requirements does the LEA have?

With respect to schools that have been identified as persistently dangerous, an LEA must notify the parent or guardian of each student who attends the school that has been so designated of the designation within 10 school days of receiving notification from PDE. The notification must include an offer to transfer to a safe school within the LEA, including a charter school, and also state that no student is required to transfer. 22 Pa. Code § 403.6(d)(2)(ii)-(iv).

With respect to students who have been victims of violent criminal offenses, the LEA must notify the student victim within 10 calendar days of receiving notice of the offense that the student has the right to transfer to a safe school within the LEA, including a charter school. The notice and offer to transfer shall also state that the student is not required to transfer. If the student files an application to transfer, the LEA shall transfer the student as soon as possible, and no later than 10 calendar days after receiving the application. 22 Pa. Code § 403.6(d)(1)(i)-(iii).

Must transferred students return to their home school if the home school is no longer identified as persistently dangerous?

Yes, but only if the students have not transferred to a charter school. “LEAs may not require students to return to their original school if the students are enrolled in a charter school.” However, with respect to students who transferred to a non-charter school within the LEA, the LEA is “encouraged to permit students who transferred to complete their education at their new school.” 22 Pa. Code § 403.6(d)(2)(xii).

Must an LEA with one or more persistently dangerous schools submit a corrective action plan to PDE?

Yes. The LEA must submit a corrective action plan to PDE for approval within 30 calendar days of receiving notification that a school has been identified as persistently dangerous. PDE will provide the LEA with technical assistance in drafting the plan. Upon approval of the plan, the LEA must implement all steps contained in the plan within the time periods specified in the plan. 22 Pa. Code §§ 403.6(d)(2)(x)-(xi), 403.6(e)(3).

Highly qualified teachers and paraprofessionals

Did ESSA affect the NCLB’s provisions on highly qualified teachers and paraprofessionals?

Yes. ESSA eliminated the NCLB’s “highly qualified” teacher and paraprofessional requirements beginning with the 2016-17 school year, and instead requires LEAs to ensure that all teachers and paraprofessionals working in programs supported by Title I funds meet the applicable state certification and licensing requirements. 20 U.S.C. § 6312(c)(6). (Editor’s Note: Although ESSA eliminated the “highly qualified” teacher and paraprofessional requirements, Pennsylvania certification and staffing policies, statutes and regulations remain in effect. See PDE’s Appropriate Certifications and HQT under ESSA at <http://www.education.pa.gov/Educators/Certification/CertFAQs/Pages/AppCertunderESSA.aspx>)

Did ESSA affect the IDEA’s provisions on “highly qualified” special education teachers?

Yes. The IDEA reauthorization, effective Dec. 3, 2004, required states to ensure that special education teachers were “highly qualified” by a deadline established in the ESEA, as amended by the NCLB. ESSA amended the IDEA by removing the requirement that special education teachers be “highly qualified,” and incorporating the previous requirement that a person employed in an elementary school, middle school or secondary school must: 1) have obtained full certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the state special education teacher licensing examination and hold a license to teach in the state as a special education teacher; 2) not have had special education certification or licensure requirements waived on an emergency, temporary or provisional basis; and 3) hold at least a bachelor’s degree. 20 U.S.C. § 1412(a)(14)(C).

Does ESSA contain any additional requirements related to teachers?

Yes. Both the state and LEAs must ensure that low-income students and minority students are not being taught at higher rates than other students by ineffective, inexperienced or out-of-field teachers. 20 U.S.C. §§ 6311(g)(1), 6312(b)(2); *See* State Plan § 5.3 Educator Equity.

Prior to the passage of ESSA, the ED required states to submit a state plan to ensure Equitable Access to Excellent Educators. Pennsylvania’s plan was approved by the ED on Sept. 10, 2015, and is available on PDE’s website. The designations in the equity plan are aligned with the outdated HQT definitions, so in the coming years PDE will be working with stakeholders to revise definitions and data reporting to comply with ESSA. *See* State Plan § 5.3 Educator Equity.

What rights do parents have to inquire about the credentials of their children’s teachers?

ESSA requires that LEAs receiving Title I money notify parents at the beginning of each school year that they have the right to request, and the LEA will provide upon request (and in a timely manner), information regarding the professional qualifications of a student’s classroom teachers, including at a minimum, the following: (1) certification information, including whether the teacher has emergency or provisional state certification and whether the teacher has met state qualification and licensing criteria for the grade levels and subject areas taught; (2) whether the teacher is teaching in the field of discipline of the teacher’s certification ; and (3) whether the child is provided services by paraprofessionals and, if so, their qualifications. 20 U.S.C. § 6312(e)(1)(A). This notice must be provided to parents in a uniform and understandable format, and, to the extent practicable, in a language that parents can understand. 20 U.S.C. § 6312(e)(4).

Are Title I schools required to inform parents of any additional information with respect to their child’s teacher?

Schools that receive Title I funds “must provide to each individual parent of a child who is a student in such school ... timely notice that the student has been assigned, or has been taught for 4 or more

consecutive weeks by, a teacher who does meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned.” 20 U.S.C. § 6312(e)(1)(B). Nothing in federal or state law expands this notification requirement to non-Title I schools.

Homeless students

Do “homeless children and youths” have specific protections?

Yes. The McKinney-Vento Homeless Assistance Act, originally authorized in 1987, was reauthorized in January 2002 as Title X, Part C, of the NCLB, and was amended by ESSA. McKinney-Vento is designed to address the problems that homeless children and youths face in enrolling, attending and succeeding in school.

Who are “homeless children and youths”?

The term “homeless children and youths” means individuals who lack a fixed, regular and adequate nighttime residence and includes:

(1) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

(2) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;

(4) migratory children who qualify as homeless under federal law because the children are living in circumstances described above. The term “migratory children” means children who are (or whose parent(s) or spouse(s) are) migratory agricultural workers, including migratory dairy workers or migratory fishermen, and who have moved from one school district to another in the preceding 36 months, in order to obtain (or accompany such parents or spouses in order to obtain) temporary or seasonal employment in agricultural or fishing work; and

(5) unaccompanied homeless youth including, any child who is not in the physical custody of a parent or guardian, who have run away from home, been thrown out of their home, been abandoned by parents or guardians, or separated from their parents for any other reason.

42 U.S.C. § 11434a(2); See PDE’s Basic Education Circular – Education for Homeless Youth (issued Dec. 10, 2016).

What responsibilities do LEAs and schools have regarding “homeless children and youths”?

LEAs serving “homeless children and youths” must, according to the child's or youth’s best interest: (1) continue the child’s or youth’s education in the school of origin for the duration of the homelessness when the family becomes homeless between academic years or during the academic year, and for the remainder of the academic year, if the child or youth becomes permanently housed during the academic year; or (2) enroll the child or youth in any public school that non-homeless students, who live in the

attendance area in which the homeless child or youth is actually living, are eligible to attend. 42 U.S.C. § 11432(g)(3)(A). The term “school of origin” means the school the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled, including preschool. When the child or youth completes the final grade level served by the school of origin, the school of origin shall include the designated receiving school at the next grade level for all feeder schools. *Id.* at § 11432(g)(3)(I).

The school in which a homeless child or youth enrolls must immediately enroll the child or youth, even if the child or youth is unable to produce records normally required for enrollment, such as academic records, records of immunization and other required health records, or proof of residency. 42 U.S.C. § 11432(g)(3)(C); *See also* 28 Pa. Code § 23.85. The school must immediately contact the school last attended by the child or youth to obtain relevant academic and other records. If the child or youth needs to obtain immunizations, or immunization or medical records, the enrolling school shall immediately refer the parent/guardian to the LEA liaison for homeless children and youths, who shall assist in obtaining the necessary immunizations or screenings, or immunization or other required health records. 42 U.S.C. § 11432(g)(3)(C).

The LEA must also designate an appropriate staff person as a liaison for homeless children and youths. 42 U.S.C. § 11432(g)(1)(J)(ii). *See* PDE’s Basic Education Circular – Education for Homeless Youth (issued Dec. 10, 2016) for a list of this person’s responsibilities.

How does the LEA determine where the homeless child or youth should be educated?

In determining the best interest of a child or youth, the LEA must: (1) presume that keeping a homeless child or youth in the school of origin is in the child’s or youth’s best interest, except when doing so is contrary to the request of the parent/guardian or unaccompanied youth; and (2) consider student-centered factors, including factors related to the impact of mobility on achievement, education, health and safety, giving priority to the request of the parent/guardian or unaccompanied youth. If, after such consideration, the LEA determines that it is not in the child’s or youth’s best interest to attend the school of origin or the school requested by the parent/guardian or unaccompanied minor, the LEA must provide the parent/guardian or unaccompanied youth with a written explanation of the reasons for its determination, including information regarding the right to appeal, in a manner and form understandable to the parent/guardian or unaccompanied youth. In the case of an unaccompanied youth, the LEA must ensure that the LEA liaison for homeless children and youths assists in placement or enrollment decisions, considers the views of the unaccompanied youth, and provides notice to such youth of the right to appeal. 42 U.S.C. § 11432(g)(3)(B).

What happens if there is an enrollment dispute involving a homeless child or youth?

If a dispute arises over school selection or enrollment in a school, the child or youth must be immediately admitted to the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals; the parent/guardian of the child or youth or the unaccompanied youth must be provided with a written explanation of the school’s decision within 20 business days after the LEA liaison is notified of the dispute, including the rights of the parent/guardian or youth to appeal the decision; and the child, youth, parent/guardian must be referred to the LEA liaison for homeless

children and youths who shall resolve the dispute expeditiously in accordance with procedures drafted by the SEA. 42 U.S.C. § 11432(g)(3)(E). See PDE’s Basic Education Circular – Education for Homeless Youth (issued Dec. 10, 2016) for a list of this person’s responsibilities.

Who is responsible for transporting homeless children or youths?

If the homeless child or youth continues to live in the area served by the LEA in which the school of origin is located, the child’s or youth’s transportation to and from the school of origin shall be provided or arranged by the LEA in which the school of origin is located. 42 U.S.C. § 11432(g)(1)(J)(iii)(I).

If the homeless child’s or youth’s living arrangements in the area served by the LEA of origin terminate and the child or youth, though continuing his or her education in the school of origin, begins living in an area served by another LEA, the LEA of origin and the LEA in which the homeless child or youth is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the LEAs are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally. 42 U.S.C. § 11432(g)(1)(J)(iii)(II).

Children in Foster Care

Do children in foster care have specific protections in federal education law?

Yes. On Dec. 10, 2016, pursuant to ESSA, the phrase “awaiting foster care placement” was removed from McKinney-Vento’s definition of “homeless children and youths.” Pub. L. 114-95, title IX, § 9105(a)(1). This means children in foster care will no longer automatically be considered “homeless,” but keep in mind, that some children in foster care may still be eligible for protections under McKinney-Vento, i.e., children in foster care who are “unaccompanied homeless youths” (youth who have run away from child welfare placements) and children in foster care living in “emergency or transitional shelters.”

Concurrently, ESSA added provisions to the ESEA specifically addressing educational stability for children in foster care. The provisions require LEAs to: (1) designate a foster care point of contact; (2) maintain children in foster care in their school of origin when in their best interest; (3) ensure immediate enrollment and records transfers; and (4) develop a plan to arrange, provide and fund transportation. 20 U.S.C. §§ 6311(g)(1)(E), 6312(c)(5)

The ESSA provisions compliment the provisions in the Fostering Connections to Success and Increasing Adoptions Act of 2008, which require child welfare agencies to: (1) ensure educational stability for children in foster care; (2) coordinate with the appropriate LEA; and (3) consider the proximity of living placement to original school and the appropriateness of the current educational setting when making living placement decisions. 42 U.S.C. § 675.

How does the LEA determine where a child in foster care should be educated?

A child in foster care must remain in his or her school of origin unless there is a determination that it is not in his or her best interest. 20 U.S.C. § 6311(g)(1)(E). School of origin is the school in which a child is enrolled at the time of placement in foster care. If a child’s foster care placement changes, the school of origin would then be considered the school in which the child is enrolled at the time of the placement change.

The best interest determination must be based on all factors relating to the child's best interest including consideration of the appropriateness of the current educational setting and the proximity of the school in which the child is enrolled at the time of placement. *Id.* LEAs and county children and youth agencies must collaborate to develop a school placement best interest determination process.

More information on the Best Interest Determination (BID) Process is available here:
<http://www.pafostercare.org/educational-stability/best-interest-determination-bid/>.

What responsibilities do LEAs have regarding enrollment of a child in foster care?

When a determination is made that it is not in a child's best interest to remain in his or her school of origin, the child's new school must immediately enroll the child, even if the child is unable to produce records normally required for enrollment. 20 U.S.C. § 6311(g)(1)(E)(ii); *See also* 28 Pa. Code § 23.85. The enrolling school must immediately contact the school last attended by the child to obtain relevant academic and other records. 20 U.S.C. § 6311(g)(1)(E)(iii).

Who is responsible for transporting a child in foster care?

By Dec. 10, 2016, LEAs receiving Title I funds were required to collaborate with county children and youth agencies to develop and implement a local written transportation plan governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged and funded for the duration of the time in foster care. The transportation plan must: 1) ensure transportation is promptly provided and funded in a cost-effective manner and in accordance with Section 475(4)(A) of the Social Security Act; and 2) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the LEA will provide transportation to the school of origin, if: a) the local children and youth agency agrees to reimburse the LEA; b) the LEA agrees to pay for the cost; or c) the LEA and the local children and youth agency agree to share the costs. 20 U.S.C. § 6312(c)(5)(B). LEAs must provide transportation in accordance with the local transportation plan even if the LEA does not provide transportation to other students.

More information on transportation plans is available here:
<http://www.pafostercare.org/educational-stability/transportation/>