



Testimony before the U.S. Senate Committee on Health, Education, Labor,  
and Pensions

*The Every Student Succeeds Act: States Leading the Way*

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### **Introduction**

Chairman Alexander, Ranking Member Murray, and distinguished Members of the Committee, I appreciate the opportunity to testify before you today on state implementation of the Every Student Succeeds Act (ESSA).

My name is Shavar Jeffries, and I am President of Education Reform Now (ERN). ERN is a non-partisan think tank and advocacy organization with a national office here in DC and chapters in 8 states. We develop and advocate for policies intended to transform public education from pre-K through higher education, especially for those students who are ESSA's intended beneficiaries.

I was born and raised in the South Ward of Newark, New Jersey by my grandmother, a public-school teacher. I have been a civil rights lawyer and child advocate for 20 years. The opportunities I have had are directly attributable to the quality of education I received, and my life's work has been to ensure that all American children – especially those who come from low-income, racially diverse communities like my own – have the same opportunity. I appear today to discuss the good work some states are doing in meeting this challenge as well as the many states that still have much work to do.

### **The Purpose of Today's Hearing**

The theme of today's hearing—"States Leading the Way"—in too many respects remains more an expression of aspiration than a description of fact. It is true, Mr. Chairman, that some states have been leaders. Your home state, Tennessee, has advanced policies that ensure greater numbers of kids have access to quality schools that achieve better outcomes for all students. Under Governor Phil Bredesen, a

Democrat, and his successor, Governor Bill Haslam, a Republican, Tennessee has been a model for leveraging federal initiatives and funding streams, including President Obama’s Race to the Top, in support of its own priorities.

Likewise, Senator Murray, in your home-state of Washington, our chapter there has worked in coalition with advocates and state legislators toward the goal of “full funding” for public education as required by the state constitution. Washington has made significant progress on funding equity and differential pay for educators so that schools serving students with the highest needs get their fair share of the most qualified teachers, especially those in key shortage areas like STEM and special education, contrary to the reality in too many states where the students most in need have teachers with the least knowledge and expertise.

Yet alongside these islands of progress, we still see too many states in which yawning achievement gaps persist along lines of income, race, nationality, and disability as well as deficits in equal educational opportunities that contradict the core purposes of ESSA.

### **An Example of the Importance of Subgroup Accountability at a Diverse High School**

To illustrate, let me talk to you about Montclair High School in my home-state of New Jersey. Montclair was and remains today a racially diverse school – half White; one-third Black; and one-tenth Hispanic. Overall test scores and graduation rates for the school are solid, but those overall numbers mask stark achievement gaps showing that students at Montclair High have very different school experiences based on the color of their skin.

The proficiency gaps between Black and White students in both English Language Arts and Math are on the order of 30 percentage points; Black students are five times more likely to be suspended than White students; and Black students are substantially less likely to be assigned to honors or Advanced Placement courses as White students. The New Jersey State Department of Education, however, doesn’t recognize the yawning and persistent gaps at Montclair High School – where Black students have not made significant progress and where outcomes on most indicators last year slightly declined – as worthy of its attention. The state’s first report card issued last year under ESSA deems that Black students at Montclair High are not even at-risk of being an “underperforming subgroup” let alone identify Montclair as a school in need of what ESSA defines as “targeted assistance.”

And the Montclair example, sadly, is typical: millions of low-income students; students of color; students who speak English as a second language; and students with disabilities likewise experience, in too many states, segregated educational experiences, even within the same school, that run counter to the purposes of federal law. For these subgroups of students, no state is making consistent and significant gains across all grades and subjects for the very populations of students who historically have experienced educational inequity and whose interests lie at the heart of Title I. Far too many states are not even trying.

### **The Purpose of ESSA**

In enacting ESSA, Congress made its purposes explicit:

“[T]o provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”

Congress made clear that this educational guarantee extends to “all children” – not some; not the rich; not those well positioned to manipulate the system – but all children. And in driving home this equity mandate, Congress prioritized specific subgroups of students who historically had been denied equal opportunities: low-income students; students of color; students who speak English as a second language; children with disabilities; and, others such as children in foster care, those who are homeless, and the sons and daughters of migrant workers.

### **What the Statute Actually Says on State Plans**

In pursuing this statutory goal of providing an equitable education to all, Congress chose to give states a great deal more flexibility. The arguments we had within and between both political parties were about how much flexibility to provide to states and about which critical elements warranted federal guardrails. Neither side got everything they wanted. That, after all, is what’s required to break political gridlock and get things done. This was no small feat on your part. You succeeded after several attempts in past years did not.

We and our coalition members supported the final conference report, as did the vast majority of members of Congress, because it included key “bright-line” provisions to ensure that states and school districts use Title I dollars to fulfill ESSA’s intended purposes. The flexibility provided to states and localities in many other areas makes the guardrails that Congress chose and agreed to put into place of paramount importance.

We know there are states that have avoided, in some cases defiantly so, complying with federal education law when it comes to almost every group of students for whom the federal government has tried to level the playing field over the past five decades, especially: girls and women; students of color; English Language Learners; low-income families; immigrants; and, persons with disabilities. Not too long ago, the U.S. Secretary of Education sat before you and admitted, only grudgingly, under questioning from Senator Murphy, that she had previously misspoken about the responsibility of schools to educate every child regardless of their citizenship status even though this has been an issue of settled law for almost four decades pursuant to the U.S. Supreme Court decision in *Plyler v. Doe* back in 1982.

### **Some States Are Not Leading the Way**

The best I can say about where we are now is that when it comes to states leading the way on ESSA, the jury is still out. But there already have been some troubling developments.

We at ERN have put together a list of more than 30 sections of the law that contain what we call “bright line” provisions where Congress made its intent crystal clear and yet the U.S. Department of Education approved state plans that fail to adhere to them. This is not an exhaustive list, nor are these provisions sufficient for meeting all of the law’s stated purposes. But these are provisions that members of the Committee and your colleagues in both chambers deemed necessary, by overwhelming margins. I obviously can’t address all of these here today, but they include:

- Differentiating schools, in part, based on the performance of each and every subgroup.
- Identifying schools for what the statute calls “Targeted Support and Improvement” in cases where students in a school are not meeting state-defined goals, regardless of how their school is doing overall.
- Identifying schools for what the statute calls “Additional Targeted Support and Improvement” in which any subgroup performs at a level equal to the bottom five percent of schools in the state.
- Ensuring that all indicators used in state accountability systems are the same ones used statewide, for each and every child.

- Including student attainment of grade-level proficiency, along with academic growth, as a factor in differentiating schools.

Some states have plans that meet or exceed one or more of these statutory requirements. The District of Columbia, for example, has a good plan that meets statutory requirements on differentiating schools based on each indicator for each subgroup. The District of Columbia actually went beyond what was required in the statute, based on recommendations put forth by our local chapter in coalition with other civil rights and advocacy groups, such that 25 percent of each school's overall accountability rating will be based on subgroup performance on each indicator.

There are also states that have plans approved by the U.S. Department of Education that violate one or more of key statutory provisions. It is important to note that opinions about adherence to the law do not seem to be a matter of partisanship. Former House Education and Workforce Committee Chairman John Kline (R-MN) went public in August with his concerns about state plans that violated key statutory provisions saying:

“During the eight long years our team spent working to pass this bill, no topic was more hotly debated than that of annual testing...In the end, we arrived at a fair and sensible compromise in the law: Keep the requirement that the same academic assessments [be] used to measure the achievement of all public elementary school and secondary school students in the state... [and be flexible in other areas]...However, Arizona and New Hampshire recently passed laws<sup>1</sup> that violate ESSA by permitting individual school districts to choose which assessments to administer...such violations undermine ESSA in its entirety.”<sup>2</sup>

The U.S. Secretary of Education went on to approve both of those plans without asking these states to change their policies. On our comprehensive list of key statutory provisions is a list of states that have approved plans that are clearly in violation of each of the provisions I cited and others. I cannot cover all of them in the space allotted for my testimony but I'd be happy to discuss this further with any of you here or after the hearing.

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<sup>1</sup> Cariello, Dennis M. and Hudalla, Nicholas M. (July 2017). *Achieving a Complete Understanding of Statewide Student Academic Achievement: The Legal Aspects Concerning State Assessment Laws in the Every Student Succeeds Act*. Retrieved from: <https://edex.s3-us-west-2.amazonaws.com/Final%207-26-17%20ESSA%20White%20Paper.pdf>

<sup>2</sup> Kline, John. (August 2017). *An ESSA Co-Author Weighs In on Accountability: The Ed. Department must step up to enforce ESSA*. Retrieved from: <https://www.edweek.org/ew/articles/2017/08/28/an-essa-co-author-weighs-in-on-accountability.html>

## **Keeping Our Eye on the Prize**

I want to close with an additional note on an area that the law leaves wide open and that is the types of interventions states, districts, and schools themselves must mount under the various categories under the law. The law lays out a fairly complicated set of roles and responsibilities for each level of government in deciding how to intervene in any particular school, but the law is clear that the federal government has no role in making those determinations whatsoever beyond provisions that they be “evidence-based,” however states and districts choose to define that term.

I’m not going to debate the wisdom of that structure because the law, present and past, is complicated and because of that, there are many different interpretations of what was required prior to ESSA and what role those requirements, or the lack thereof, played in the success of efforts to either turn schools around or create new choices that provide better opportunities for students and families.

At the end of the day, however, these decisions – for which, again, it is clear, there is little to no federal role – are the most important ones that will be made across this country over the next several years. History indicates that decisions will often be made based not on what is in the best interests of students, but rather what the path of least resistance is for those charged with carrying them out, despite whatever good intentions they, and I’m sure my fellow panel members, have. I ask that you at the very least monitor this process closely and make course corrections that provide incentives – if not requirements – for meeting the underlying purposes of the ESSA statute.

I look forward to discussing these and other issues with the distinguished members of this Committee today and in the future in the hope that we, as a nation, can work together to provide every child with the opportunity for a world class education so that every student truly succeeds to the utmost of his or her potential.