

ESSA Final Rules on Accountability and State Plans

As we head into 2017, the U.S. Department of Education has issued its final rules for state plans and accountability under the Every Student Succeeds Act, or ESSA. Released on November 29, 2016, almost a year after the bill was signed into law by President Obama, the final rules provide clarity on what states must do to create their accountability system and plan for implementation of ESSA.

The final rules were released four months after the Department closed the comment period on earlier draft rules, having received more than 20,000 comments from the public, including suggestions from [NAfME and the Music Education Policy Roundtable](#). The Department made several substantive changes to the final rules, including changes in areas where NAfME and the Roundtable had asked for revisions. While our requests were rarely accepted in total, the responses from the Department and the overall shape of the final rule provide better opportunities for music education than the earlier draft version published in May, 2016.

Analysis of the rule, focusing on areas that are of interest to music education

1. A state's accountability system must report a single, summative score per school AND a breakdown of school performance on the required state accountability indicators - §200.18.

The original draft rule emphasized the single summative score as a way to make it clear to parents and the public how a school was performing, with heavy emphasis being given in that summative score to the tested subject areas (2 of the required state accountability indicators). NAfME and the Roundtable requested the Department re-think the summative score approach, as a single score and heavy emphasis on the tested subject areas felt like a return to the No Child Left Behind era, and schools would continue to over-emphasize tested subjects above all subjects outlined in the well-rounded education definition found in ESSA, including music.

The final rule still requires a single summative score per school, but outlines that states can do this simply by identifying schools that are required to receive comprehensive school improvement support, schools that are required to receive targeted school improvement support, and all other schools – i.e. a grade letter system or other summative reporting system is NOT required.

In addition, the final rule clarifies that the Department believes ALL accountability indicators – including the additional 5th indicator or set of indicators which a state adds based on its own interests (and some states are considering adding access and participation rates in music and the arts) must also be reported for each and every school as part of the reporting system.

“We agree that the increased number of required accountability indicators under the ESEA, as amended by the ESSA, provides a valuable opportunity for States to provide a more nuanced picture of school performance that includes both academic and non-academic factors. This is why our regulations would require both a summative determination and information on each indicator, which must be reported separately.” – [Rules](#), p. 86122

2. The final rule allows for more flexibility regarding the additional “5th” factor selected by a state for inclusion - §200.14.

In the draft rule, the flexibility afforded under ESSA for states to include a 5th accountability factor (or more) based on state needs and emphasis was diminished as the rule asked for the 5th factor to be tied directly to academic achievement as measured in the other, required accountability indicators in ESSA, such as reading and math test scores. NAFME and the Roundtable asked the Department to broaden this definition to include access to well-rounded subject areas. While the Department did not make that part of its final rule, it did clarify and open-up the possibilities of what the additional factor *could* be that a state will include, in response to our comment as well as many others received in this area. The new rule reads that the additional measure:

“is supported by research that high performance or improvement on such measure is likely to increase student learning (e.g. grade point average, credit accumulation, performance in advanced coursework), or, for a measure within indicators at the high school level, graduation rates, postsecondary enrollment, postsecondary persistence or completion, or career readiness.”
– [Rules](#), p. 86224

By broadening the language of what can be included for the 5th measure, while still giving a nod that the measure must impact student learning, the opportunity created by the 5th accountability measure to include a measure benefiting music education remains on the table as states begin to draft their new accountability systems.

An additional place to include music and arts access and participation rates can be found in the required state and LEA (district) report cards. Under [Section 1005](#) (State Plans) of ESSA, additional factors can be included in report cards not counted as part of the state’s accountability system. This may be an opportune way to position music and arts data within your state’s reporting to the public.

3. The final rule creates a needs assessment opportunity for music and arts within schools identified for comprehensive improvement (school improvement) - §200.21.

As part of ESSA’s accountability system, states must identify schools in need of comprehensive support and improvement – what would have been called school improvement identification under No Child Left Behind. Once a school has been identified, its district or charter holder must undertake a needs assessment to help identify the factors which are impacting the school’s level of performance, including the quality of the teachers (appropriately licensed in their content areas), and “the quality of the instructional program. “ This is an opportunity for a holistic approach to the instructional program and its resources, unlike ESSA’s predecessor law, No Child Left Behind, which focused so intensely on the tested subject areas that school improvement status often meant less opportunities throughout the rest of the curriculum. The opportunity for a holistic approach to the instructional program can and should include music and arts as part of a well-rounded education.

In the state of New Jersey, the ESSA working groups have identified that all content areas at a school designated in need of comprehensive support and improvement will be included in the needs analysis of

the quality of the instructional program, and included in the corresponding school improvement plan created by the school and approved by the state. Here is an opportunity to work with state leaders to help them think more broadly about what should be included in a needs analysis of the schools in school improvement.

The final rule also allows such broadening of the needs analysis to happen at the district level, too, allowing districts to identify additional indicators of need as they support schools undergoing this needs analysis. So, even if a state declines to outline a well-rounded education as part of the needs analysis, music and arts advocates can ask for that to be included at the local level.

In its discussion of the changes to this aspect of the rule, the Department stated:

The Department agrees with the commenters who indicated that the regulations should require LEAs, in partnership with stakeholders, to examine additional measures in a needs assessment. The needs assessment should examine the school's unmet needs, including the needs of students; school leadership and instructional staff; the quality of the instructional program; family and community involvement; school climate; and distribution of resources, including results of the resource inequity review. We believe these additions allow for the needs assessment to include measures of school climate and the school's existing interventions, as recommended by commenters. [Rules](#), p. 86148

While NAFME and the Roundtable did not specifically ask for this change, we did encourage the Department to consider a broad range of resources for schools in both continuous improvement (under discussion here) and targeted improvement, including the provision of a well-rounded education. The Department responded to our suggestions and those of others in their discussion:

We recognize that, as suggested by commenters, there are numerous examples of resources that contribute to positive educational outcomes that could be included in either a required or optional list in §§ 200.21(d)(4) and 200.22(c)(7), and we note that the final regulations would permit an LEA or school to add nearly any educational resource to its review that it deems important for supporting the effective implementation of school improvement plans [Rules](#), p. 86153

The increase of flexibility seen here in the needs analysis for school improvement schools, as well as the response of the Department in encouraging flexible resource review, responds directly to this idea of thinking holistically about all the aspects of a school and how they come together to support student learning.

4. The final rule creates flexibility around interventions used by schools in school improvement, and allows states to create lists of acceptable interventions -§200.23.

Music educators and other advocates may wish to have music-based interventions or arts integration interventions included in the state created list of approvable interventions. The law and rule allow states to either create an exhaustive list, meaning that a school in school improvement MUST choose from this exhaustive list of interventions when creating their school improvement plan and funding it with school improvement dollars (which are large in scope – a recommended

amount of \$500,000 per comprehensive school is found in the rule), or an open list, meaning a school MAY choose from the list or determine its own evidence-based intervention strategy.

Specifically, in the case of an exhaustive list of interventions established by the State consistent with § 200.23(c)(2), the intervention must be selected from that list, while in the case of a State establishing a non-exhaustive list, the intervention may be selected from that list. [Rule](#), p. 86152

Understanding what your state is intending to do with its school improvement intervention list, and being involved in the process may be helpful to increasing access to music and arts in school improvement schools. Arizona has research indicating that “D” label schools overall have less access to music and arts than higher ranked schools. Having music and arts interventions or related arts integration interventions may help us reach more students with music – especially students not receiving a music education currently.

5. The final rule emphasizes transparency around per pupil expenditures, including administrative expenditures - §200.35

ESSA requires that per pupil expenditures from all funding sources – federal, state and local - are published for the public to see and review annually. The rule clarifies that this information is broken down by classroom level per pupil expenditures and non-classroom level expenditures, usually referring to administrative costs.

While NAFME supports the transparency of funding for all engaged in public education, we are concerned that an emphasis on looking at classroom and administrative costs may mean a continued erosion of administrative level support for music education. In many states, the number of music supervisors – administrators with music education expertise – has dwindled tremendously under No Child Left Behind and the recent recession.

This new rule may continue the pressure placed on districts to cut administrative costs and positions. And we know the importance that district level arts coordinators play in creating a high quality arts education program in schools. In *Gaining the Arts Advantage*, a research-based study on districts with successful music and arts education programs, the Arts Education Partnership discusses the “Critical Success Factors for Achieving District Wide Arts Education.” Critical factor #4 is the District Arts Coordinator as the person who “facilitates program implementation throughout a school system and maintains an environment of support for arts education.” ([Gaining the Arts Advantage](#), 1999: 14-15).

6. The final rule gives states an opportunity to measure, support, and define teachers who teach out of their content area - §200.35.

As part of the ESSA state plan and annual state reporting, states must identify teachers who are “not teaching in the subject or field for which the teacher is certified or licensed.” Licensure for music educators is complex in that music teachers are often licensed K-12 and at times are licensed in specific sub-areas of the discipline, such as choral education. Understanding how your state is including music education certification or licensure within this reporting requirement, and influencing how the state is defined “out of content” areas for music teachers will be important to accurate reporting here for the profession. Having this done correctly may also mean additional support for the training and

professional development of music educators if the state identifies this as an area of need in terms of a high percentage of out of content area educators teaching in music.

7. The final rule clarifies the importance of stakeholder input to state plan development and makes states accountable for addressing all feedback received - §299.13

States are not only encouraged in the final rule to reach out and involve parents, teachers, students, community members, higher education institutions and others in the creation of their ESSA plans, they are held accountable to respond to the feedback provided ([Rule](#), p. 86242):

Describe how the consultation and public comment were taken into account in the consolidated State plan or individual program State plan submitted for approval, including—

- (i) How the SEA addressed the issues and concerns raised through consultation and public comment; and*
- (ii) Any changes made as a result of consultation and public comment.*

NAfME will work with state leadership and the Advocacy Leadership Force to make certain that music educators participate in the stakeholder feedback all states will undertake in plan design, and that music educators hold states accountable for publishing how their suggestions were handled during the plan creation. This is a great opportunity for music educators to get their voices heard and to go on the record regarding their concerns and ideas for ESSA plan development at the state level.

8. The final rule emphasizes the role of a well-rounded education through Title IV of ESSA, focusing on equitable access for all students to a well-rounded education. §299.19

States will include how they will support a well-rounded education in their states through their ESSA state plans. The final rule begins with **equitable access for all students** in the well-rounded subject areas, including music and arts ([Rule](#), p. 86247):

Well-rounded and supportive education for students. (1) In its consolidated State plan, each SEA must describe how it will use title IV, part A funds and funds from other included programs, consistent with allowable uses of funds provided under those programs, to support State-level strategies and LEA use of funds designed to ensure that all children have a significant opportunity to meet challenging State academic standards and career and technical standards, as applicable, and attain, at a minimum, a regular high school diploma consistent with § 200.34. This description must:

- (ii) Address the State’s strategies and how it will support LEAs to provide equitable access to a well-rounded education and rigorous coursework in subjects in which female students, minority students, English learners, children with disabilities, or low-income students are underrepresented, **such as** English, reading/language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, **arts**, history, geography, computer science, **music**, career and technical education, health, or physical education*

Two important factors to keep in mind as states work on this section of their state plan:

A. In order to include music and arts in this well-rounded work of support for students, states need to identify what equitable access currently looks like in the state in these areas. Does your state have this information available? Most states do even if they are not publicly reporting on it. State MEAs may be able to help with this by helping identify where music programs exist or don't and sharing that information with their state department of education.

B. The language **such as** is bolded in the rule for emphasis here: states MAY include music and arts strategies within their state plans, but they don't have to. In order to make certain that a state includes music and arts in their ESSA plans, music advocates will need to speak up and demand that states do so. This is an amazing opportunity to draw attention to music and arts within the ESSA planning work of your state, and making certain that music and arts are included in the strategies to support students through ESSA and Title IV-A funding over time.

Next Steps

NAfME will be taking the Department's ESSA State Plan Template and highlighting places of opportunity and interest for music educators based on our analysis. As we work with state leadership and members of the Advocacy Leadership Force, we will update the Template to provide examples of what states are doing and additional opportunities discovered at the state level through conversation and discussion with state education departments. The highlighted State Plan Template will be available in early January, 2017.