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## Sources: House and Senate Negotiators Have Reached Preliminary ESEA Deal

By [Alyson Klein](#) on November 12, 2015 6:53 PM

### UPDATED

Christmas seems to have come early this year for education advocates. After weeks of long and hard negotiations, House and Senate lawmakers have reached preliminary agreement on a bill for the long-stalled reauthorization of the No Child Left Behind Act, multiple sources say.

The agreement will set the stage for an official conference committee, which would likely kick off next week. The legislation could be on the floor of the House and Senate by the end of this month, or early next, sources say. (Nothing set in stone on timing just yet.)

So far, the word isn't official. Neither the House nor the Senate education committee has confirmed.

No hard-and-fast details available yet, although those are likely to trickle out in coming days. But if I were a betting woman, I'd put money down that there will be some language asking states to intervene in the bottom five percent of their schools, and schools with high drop-out rates.

No provision for so-called Title I "portability," smart money says. (School choice fans might have something to cheer about anyway). And many smaller programs may have been rolled into a big giant block grant, according to folks familiar with earlier drafts of the proposal.

Sources familiar with previous versions of the agreement also say the odds are good that a new program for early childhood education made it into the compromise.

Some of the biggest sticking points towards the end of negotiations were said to be [secretarial authority](#), authorizations, and accountability. So where did things end up?

We'll find out soon enough for sure.

But the accountability provisions in earlier drafts were said to be pretty complicated, which makes sense, given the nature of bipartisan compromise.

"Based on what I've seen, for the next Secretary, interpreting the new law will be like looking at a Rorschach with one eye closed and with both hands tied behind their back," said Charlie Barone, the policy director at Democrats for Education Reform, who served as an aide to Rep. George Miller of California, the top Democrat on the House education committee, when NCLB was written.

But that complexity could actually be a boon to state and local control, especially since the compromise includes nearly all of the restrictions on the Secretary's authority that were in the House and Senate versions, a GOP aide said.

"The complexity helps," said a GOP aide. The agreement "leaves a lot of this to states to figure out and the secretary's ability to interfere with those state decisions is astonishingly limited."

**UPDATE [Nov. 13, 10:20 am]** Overall, everyone walked out of negotiations with his or her biggest priority intact, an aide said. "Everybody has a lot to be happy about," said a GOP aide who participated in the negotiations.

- Sen. Patty Murray, D-Wash., got her early childhood education program, which the Obama administration also really wanted, plus some additional accountability, including on subgroups.
- Rep. John Kline, R-Minn., the chairman of the House education committee, got much more program consolidation than was in the Senate bill.
- Sen. Lamar Alexander, R-Tenn., the chairman of the Senate committee, got limitations on secretarial authority. That includes new limits on teacher evaluations, turnarounds, tests, you name it.
- And Rep. Bobby Scott, D-Va., got some beefed-up subgroup language, which Murray also fought very hard for. The administration also wanted to see subgroup accountability.

**So what's in the bill?** Here are some details, based on conversations with multiple sources and confirmed by a GOP aide:

### **On Accountability**

The compromise uses the Senate bill as a jumping-off point here. Quick refresher: That means states would still have to test students in grades 3-8 and once in high school in reading and math. But states would get to decide how much those tests count for accountability purposes. And states would be in the driver's seat when it comes to goals for schools, school ratings, and more.

States would be required to identify and take action in the bottom 5 percent of schools, and schools where less than two-thirds of kids graduate.

States would also have to identify and take action in schools that aren't closing the achievement gap between poor and minority students and their peers. But importantly,

the bill doesn't say how many of those schools states would have to pinpoint, or what they would have to do to ensure that they are closing the gaps—the bill allows state leaders to figure all that out.

**On opt-outs:** The bill largely maintains the Senate language, which would allow states to create their own opt-out laws (as Oregon has). But it maintains the federal requirement for 95 percent participation in tests. And unlike under No Child Left Behind, in which schools with lower-than-95 percent participation rates were automatically seen as failures, local districts and states get to decide what should happen in schools that miss targets. States would have to take low testing participation into consideration in their accountability systems. Just how to do that would be up to them, though.

### **On Programs**

It's largely a win for Kline here. There's more consolidation in the compromise than there was in the Senate bill, including block granting of physical education, mathematics and science partnerships, and Advanced Placement.

Some programs will live on as a separate line item, including the 21<sup>st</sup> Century Community schools program, which pays for afterschool programs and has a lot support on both sides of the aisle.

Murray got the early childhood investment she wanted. But the new program will be housed at the Department of Health and Human Services, not the Education Department as some Democrats had initially hoped. The Education Department will jointly administer the program, sources say. (The move to HHS helped win Kline's support.)

That new research and innovation program that some folks were describing as sort of a next generation "Investing in Innovation" program made it into the bill.

So did a wrap-around services program that shares some DNA with both Promise Neighborhoods, as well as a community schools program that Rep. Steny Hoyer of Maryland, the second-ranking Democrat in the House, really likes. (Hoyer's support was critical to the survival of that program.)

### **On School Choice**

No Title I portability—that means that federal funds won't be able to follow the child to the school of their choice. But the bill does include a pilot project allowing districts to try out a weighted student funding formula, which would also essentially function as a backpack of funds for kids. (More details on that coming soon.)

### **Other Funding Issues**

No changes to the Title I funding formula along the lines of what the Senate passed that would steer a greater share of the funds to districts with high concentrations of kids in

poverty. But there were some changes to the Title II formula (which funds teacher quality) that would be a boon to rural states.

There was some chatter that the bill would also incorporate changes to the Family Educational Rights and Privacy Act. That's not part of the agreement.

**So what's the timing?** Expect the conference to kick off next Tuesday night and conclude by Thursday. And expect the bill to be on the floor of both chambers after Thanksgiving recess. That will give enough time for rank-and-file lawmakers to read it and make sure they understand what's in it before they have to vote on it.

**So what's the early reaction?** The National Education Association says they're glad to see the preliminary progress but notes that we've got a ways to go in terms of process.

"Today we are a step closer to rewriting a federal education law that commits America to the success of every student regardless of ZIP code," said Lily Eskelsen Garcia in a statement. "While we welcome this progress, our work is not done. We look forward to working with the Congressional conference committee members to ensure that we produce a bill that, when signed by the president, gives every student the opportunity, support, tools, and time to learn."

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