

THE NATIONAL BOARD OF EDUCATION SCIENCES (NBES)
Advisory Board to the Director of the Institute of Education Sciences (IES),
U.S. Department of Education
Dr. Bridget Terry Long, Chair

**RECOMMENDATIONS FOR THE REAUTHORIZATION OF
THE EDUCATION SCIENCES REFORM ACT (ESRA)**

At the June 20, 2012 NBES meeting, Board members discussed recommendations to revise ESRA. These recommendations build from previous suggestions made by the NBES in May 2008 with several additional changes and revisions. The recommendations fall into three categories:

- Definitional changes
- Substantive changes in the Institute or Board’s functioning or powers
- Administrative or “housekeeping” changes to the bill

DEFINITIONAL CHANGES

1. Definitions related to “Scientific Research,” etc.

On pages 4-5, we recommend changes related to definitions of “scientific research.” Congress has moved towards defining *principles of scientific research* rather than defining *scientifically-based research*. As noted on page 5, the NBES agrees with the Department of Education’s position that any definition of “scientific research,” etc. in ESRA should be consistent with the definitions used in other bills such as the Elementary and Secondary Education Act.

2. Changes in IES’s mission

On page 7, the NBES recommends modifying the initial lines of IES’s mission to read:

The mission of the Institute is to provide national leadership in expanding reliable evidence on which to ground education practice and policy and to encourage its use by parents, educators, students, researchers, policymakers, and the general public...

The major differences between our recommendation and the original are to replace “expanding fundamental knowledge” with “expanding reliable evidence” and to add the words “encourage its use”. The new definition, which focuses on providing evidence and encouraging its use, is much closer to what IES does and is more objective than the existing definition’s focus on fundamental knowledge and understanding.

Note: This is not marked on the attached draft.

SUBSTANTIVE CHANGES RELATED TO POWERS, FUNCTIONS, AND TERMS OF OFFICE

1. Delegation of “Other Activities”

Changes on page 9 would leave it at the discretion of the IES Director to accept additional assignments from the Secretary of Education if they were consistent with IES’s mission and priorities. The existing language gives the Secretary the power to simply assign such activities to IES.

2. Provisions related to the IES Director

Page 9 removes language which is no longer relevant related to the appointment of the first IES Director. In addition, language is added making it possible for a Director to be nominated for a second term, and for a sitting Director to serve up to an additional year if his/her successor has not been appointed.

Additional new language on page 9-10 makes the IES Director eligible for “critical pay” under the Federal Workforce Flexibility Act of 2004. The explanatory note in the mark-up states, “Many people who might be qualified to be Director are unwilling to do so over a 6 year term at the rate of pay [specified in existing law]. This addition provides pay flexibility in recruiting a director, and would be subject to the recommendation of the Board.” Page 13 adds the language related to the Board’s ability to make recommendations in this area.

New language on page 10 specifies that the IES Director reports directly to the Secretary of Education. The explanatory note in the mark-up states, “A direct reporting line to the Secretary is important to maintaining the status and independent functioning of IES within the Department.”

3. Requirement that IES Director submit a biennial plan of activities to the Board for advice

Page 10 adds new language to the Director’s duties requiring him/her to submit a biennial plan of activities to the Board every two years. New language on page 12 adds reviewing and *advising* the Director on the plan of activities to the Board’s duties. (Note that the Board’s approval of the plan is not required.)

4. NBES: Organizations that advise the President on Board members

Existing language in ESRA requires the President to solicit advice regarding individuals to serve on the Board from the National Academy of Sciences, the National Science Board, and the National Science Advisor. New language on page 13 would add the Board itself, the American Educational Research Association, the Society for Research on Educational Effectiveness, and the National Academy of Education to the list of groups that the President must solicit advice from.

5. NBES: Board terms

Page 14 includes a number of changes aimed at fixing some of the difficulties that the Board has consistently encountered since its founding, including numerous vacancies and attenuated terms.

Page 14 adds language specifying that a member’s 4-year term *commences from the date of their appointment*. Current practice has been to appoint members to 4-year slots, whose beginning and end dates are calculated based on three cohorts tied to the original legislation. That is: there are five Board slots tied to an initial term expiration date of 11/28/08; five Board slots tied to an initial term expiration date of 11/28/06; and five Board slots tied to an initial term expiration date of 11/28/07. If a Board member was nominated or confirmed to a slot that was close to its expiration date, their effective term dating from their actual appointment might be as short as a year. Page 14 also strikes language which is no longer relevant related to the initial appointment of Board members to staggered terms.

Page 14 also adds a new provision (similar to the provision for the IES Director) allowing Board members to serve up to an additional year after their term has expired if their successor has not been appointed.

The net effect of the changes listed on page 14 will be to greatly reduce the number of unfilled vacancies on the Board and to make it much more likely that at all times the Board will have close to its full complement of 15 members that ESRA stipulates.

6. NBES: Executive Director

New language on page 15 of the mark-up provides greater detail regarding the Executive Director position. Board members favored revising ESRA to give the Board hiring and evaluation authority over the NBES Executive Director.

7. NBES: Charitable contributions

New language on page 16 would allow the Board to accept charitable donations to further the mission of the Board. This would allow the Board to provide coffee during advisory board meetings.

8. NBES: Standing committee structure

Pages 16 strikes language related to NBES’s standing committee structure. The existing language specifies a standing Board committee corresponding to each national education center (e.g., NCES, NCER). The Board has never functioned this way in practice. This is due, in part, to the fact that at times Board membership has dwindled to as few as 6 members.

In place of the struck language, the mark-up adds new permissive language on page 16 that allows the Board to establish standing committees related to the Board’s responsibilities.

9. Commissioner’s pay

Similar to the new language related to the IES Director’s pay, page 18 adds language allowing Commissioners to be eligible for critical pay under the provisions of Federal Workforce Flexibility Act of 2004. The rationale is similar to that for the IES Director: to enhance recruitment flexibility for Commissioners.

10. The appointment process for the NCES Commissioner

Page 18 has existing language that has the NCES Commissioner be appointed by the President and confirmed by the Senate. The Board made no recommendation regarding changing to the appointment process for the NCES Commissioner, because opinion was evenly divided among the members. Some felt strongly that the current requirement that the NCES Commissioner be appointed by the President and confirmed by the Senate reflects a hard-won acknowledgment that education statistics deserve national-level prestige. Others instead felt that the procedure for appointing the NCES Commissioner should be the same as that for the other IES Center commissioners to support smooth and efficient functioning of IES.

11. National Research and Development Centers

Pages 21-22 strike existing language related to National Research and Development Centers and replaces it with a section titled, “Priorities for Long-Term Research Activities.” The changes remove language requiring the funding of at least eight National R&D Centers as well as requirements related to the topics assigned to the centers. The replacement language does not address the number of centers funded and allows the NCER Commissioner to choose topics consistent with IES’s priorities. The feeling is that the NCER commissioner and the director, with the counsel of the Board, should be able to determine the best funding mechanisms and funding levels for advancing IES’s long-term research priorities rather than having Congress earmark particular centers and levels of funding.

12. Removal of privacy protection for individual school information

Page 41 strikes language giving privacy protection to individually identifiable information with respect to *individual schools*. The explanatory note in the mark-up states that, “Schools do not receive privacy protection elsewhere in federal statute or regulations. Many IES reports from NCES require that schools be identified, e.g., the Common Core of Data. The prohibition on revealing school identity means that useful information must be omitted from evaluation reports. There is no compelling reason to maintain this protection for schools.”

13. Adjustment to the circumstances under which the Director or Board members may be removed

Pages 45-46 add language that allows the President to remove the Director and any Board member *for cause*, although the President must inform the Board of the cause for which the appointee is being removed. The original language did not include the words “for cause,” nor was Board notification required. The original language also included the Commissioner for Education Statistics in these provisions. However, the mark-up’s proposed change to make the Commissioner of Education Statistics a Director-appointed position, like the other Commissioners, means that the Commissioner should be struck from the provisions of this section.

14. Expansion of authorization related to data bases to be included in the statewide longitudinal data systems

Page 52 adds language specifying the Higher Education Act and IDEA with regard to the development of statewide longitudinal data systems. The existing language only specifies the Elementary and Secondary Education Act. The change expands the authority so that a broader range of educational records can be incorporated into the supported data systems.

15. NAEP reports

Pages 55 and 57 add language related to authority over the content and release of National Assessment of Educational Progress (NAEP) reports. The mark-up’s explanatory note states, “There are ongoing disputes between NCES and the National Assessment Governing Board (NAGB) on the content and formatting of NAEP reports... These are IES/NCES reports published under the authority of the Director and Commissioner. The NCES commissioner needs to retain responsibility for the content of the reports.” And, “NAGB has taken the position that the NCES commissioner’s role at the release event is entirely at the discretion of NAGB. Because the findings being released are from an NCES statistical report, the commissioner or his delegate should be responsible for presenting the findings.”

ADMINISTRATIVE/HOUSEKEEPING CHANGES

1. Delegation of authority

Page 8 contain new language aimed at delineating the delegation of authority between the IES Director and the Secretary of Education.

2. Removal of language related to the role of the National Assessment Governing Board (NAGB)

Four provisions related to NAGB are struck on pages 8-9. The rationale given was that a preceding paragraph clearly articulated NAGB’s role and so the subsequent four provisions were redundant.

3. Other changes in the Director’s duties

Page 10 changes language related to peer review from “establish” to “maintain,” reflecting the fact that peer review procedures have already been established.

Another change on page 11 specifies that the Director will coordinate with the Secretary of Education to insure that IES’s findings are used by all of ED’s technical assistance providers, and not just the 15 comprehensive assistance centers.

4. Review of publications, not “products”

Page 11 strikes the term “products” from the section pertaining to the Director’s review of evidence-based claims in ED publications. The rationale is that IES cannot review products, only publications that make scientific claims.

5. Requirement that IES priorities be proposed every 6 years

New language on page 11 requires the IES Director to submit priorities for the Institute to the Board for approval at least every 6 years. This would put into statute what has occurred in practice.

6. Peer review standards and NCER

Page 19 strikes language requiring the National Center for Education Research (NCER) to maintain peer review standards. This would conform to IES’s actual practice, which is to have the Scientific Review Office maintain IES’s standards related to peer review.

7. Replacing ‘Commissioner’ with ‘Center’

Pages 26 and 29 replace ‘Commissioner’ with ‘Center’ for the sake of consistency.

8. Removal of outdated language related to NCEE

Page 32 strikes language regarding the award of specific contracts which is outdated and not relevant for reauthorization. Similarly, pages 34-35 strikes additional outdated language that is not relevant to reauthorization.