

# Environmental Education in the Every Student Succeeds Act and the Role of Advocates

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## ABSTRACT

*In December of 2015, the Every Student Succeeds Act was signed into law. For the first time ever, a federal education statute will provide funding for environmental education. Although exciting, this new statute will require additional effort by advocates to realize the full potential of the Act. The new law allows states to choose environmental education as one of many options to provide “well-rounded education,” but it does not encourage states to choose environmental education. The federal government is unlikely to do so either given its traditional role in general education policy. There are several steps advocates can take to ensure states take advantage of the opportunity to implement environmental education, an increasingly important subject, in their schools.*

## TABLE OF CONTENTS

Introduction . . . . .	417
I. Brief Summary of the Federal Role in Environmental Education . . . . .	419
II. ESSA’s Provisions on Environmental Education. . . . .	420
A. ESSA does not Promote Environmental Education. . . . .	420
B. Prohibitions on the Secretary . . . . .	423
III. Environmental Education and the Federalism Fence . . . . .	426
IV. How Advocates Can Maximize ESSA’s Potential . . . . .	430
A. Why Environmental Education Matters . . . . .	430
B. Advocates’ Role in Mobilizing the States. . . . .	431
C. Advocates’ Role at the Federal Level . . . . .	433
Conclusion. . . . .	434

## INTRODUCTION

Many advocates of environmental education consider the recent passage of the Every Student Succeeds Act (“ESSA”) a major success. Exploring New Horizons, a non-profit in the San Francisco Bay Area that provides outdoor education

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to over 8,000 K-8 students,<sup>1</sup> published a blog post about ESSA entitled “*Great News for Environmental Education!*” and called it a “major step forward.”<sup>2</sup> Another article entitled “*NAAEE Hails History-Making Opportunities for Environmental Learning in Congressional Education Bill*” stated that the North American Association for Environmental Education (“NAAEE”) sees ESSA as a “big win” and quoted Congressman John Sarbanes, a supporter of environmental education, describing the new legislation as a “tremendous victory for advocates of environmental education.”<sup>3</sup>

For the first time ever, language has been included in a federal education bill to fund environmental education for students in public schools. Undoubtedly, advocates are hopeful that ESSA will lead to more extensive integration of environmental education in schools. Under the Act, the federal government will provide funding to state and local education agencies that implement “well-rounded education” opportunities—environmental education being one of several activities states can choose from.<sup>4</sup> Prior to ESSA, the federal role in environmental education consisted of grants for environmental education initiatives awarded by the Office of Environmental Education within the Environmental Protection Agency (“EPA”).<sup>5</sup> Now, the Department of Education will have regulatory authority over environmental education.

Although this certainly is exciting, it seems doubtful ESSA will have a significant impact on environmental education without extra work by advocates. In Part I of this Note, I will give a brief summary of the federal role in environmental education prior to ESSA. In Part II, I will argue that the language of ESSA fails to incentivize or encourage states to choose to implement environmental education over several other options. Furthermore, the statute places prohibitions on the Secretary of the Department of Education that prevent her from overtly influencing states’ decision to implement environmental education.

In Part III, I will argue that in addition to the restrictions on the Secretary, given the Department of Education’s traditional role in general education policy, ESSA is unlikely to do much to promote environmental education. All of that said, this Note is not meant to only cast doubt on the impact of ESSA. In Part IV, I will discuss the importance of environmental education and recommend steps advo-

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1. See *About Us*, EXPLORING NEW HORIZONS, <http://exploringnewhorizons.org/enh/about/> (last visited May 9, 2016).

2. Tracey Weiss, *Great News for Environmental Education!*, EXPLORING NEW HORIZONS (Dec. 15, 2015), <http://exploringnewhorizons.org/2015/12/15/great-new-for-environmental-education/>.

3. *NAAEE Hails History-Making Opportunity for Environmental Learning in Congressional Education Bill*, PRWEB (Dec. 9, 2015), <http://www.prweb.com/releases/2015/12/prweb13120108.htm>.

4. Every Student Succeeds Act (ESSA), Pub. L. No. 114-95, § 4107(a)(3)(G), 129 Stat. 1802, 1978 (to be codified at 20 U.S.C. § 6301 *et seq.*).

5. See *Environmental Education (EE) Grants*, EPA, <https://www.epa.gov/education/environmental-education-ee-grants> (last visited May 9, 2017).

cates can take at the state and federal level to maximize the potential of ESSA and advance this important subject.

### I. BRIEF SUMMARY OF THE FEDERAL ROLE IN ENVIRONMENTAL EDUCATION

The federal role in environmental education started in 1970 with the passage of the National Environmental Education Act.<sup>6</sup> This Act created the Office of Environmental Education within the U.S. Department of Health, Education and Welfare (now the Department of Education),<sup>7</sup> which provided funding to groups promoting environmental education and created the National Advisory Council for Environmental Education.<sup>8</sup> The Office of Environmental Education was terminated under the Reagan Administration and then reauthorized by Congress in the Environmental Education Act of 1990.<sup>9</sup> The 1990 Act transferred authority over environmental education to the EPA and moved the Office of Environmental Education inside of the EPA.<sup>10</sup> The EPA describes environmental education as increasing “public awareness and knowledge about environmental issues or problems. In doing so, [environmental education] provides the public with the necessary skills to make informed decisions and take responsible action.”<sup>11</sup>

In 1992 under the authority of the Environmental Education Act of 1990, the Office of Environmental Education instituted a grant program that “provides financial support for projects that design, demonstrate, and/or disseminate environmental education practices, methods, or techniques.”<sup>12</sup> Eligible applicants included local education agencies, state education or environmental agencies, colleges or universities, non-profit organizations, noncommercial educational broadcasting entities, and tribal education agencies. Over the last twenty four years, the Office of Environmental Education has distributed between \$2 and \$3.5 million per year supporting 3600 grants nationwide.<sup>13</sup> Interestingly, the majority of these grants (2750) were awarded between 1992 and 2005.<sup>14</sup> This could indicate a decrease in interest the grant program after 2005, but there is little evidence to explain this decrease in grant awards.

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6. See *Update on the National Environmental Education Act of 1990*, AM. GEOLOGICAL INST. (July 27, 2000), <https://www.agiweb.org/gap/legis106/neeaa106.html>.

7. See Whitney Stohr, *Coloring a Green Generation: The Law and Policy of Nationally-Mandated Environmental Education and Social Value Formation at the Primary and Secondary Academic Levels*, 42 J.L. & EDUC. 1, 75 (2013).

8. See *id.*

9. See *id.*

10. See *id.*

11. *Environmental Education (EE)*, EPA, <https://www.epa.gov/education> (last visited May 9, 2017).

12. See *Environmental Education (EE) Grants*, EPA, <https://www.epa.gov/education/environmental-education-ee-grants> (last visited May 9, 2017).

13. *Id.*

14. See Stohr, *supra* note 7, at 76.

The federal role in environmental education has historically been limited to those grants.<sup>15</sup> Due in large part to the lobbying efforts of the North American Association of Environmental Education (“NAAEE”), its affiliates, and their partnership with Congressman Sarbanes and Senator Reed, there is now new potential for an expanded role in environmental education.<sup>16</sup>

## II. ESSA’S PROVISIONS ON ENVIRONMENTAL EDUCATION

In the entire length of ESSA, environmental education is only mentioned twice: in § 4104 and § 4107.<sup>17</sup> This seems to suggest that environmental education is not a significant part of ESSA or education policy at large, but that alone is not enough to presume that the new statute will not significantly advance environmental education. In this Part, I will summarize the sections of ESSA relevant to environmental education and analyze the statute by its four corners. I will then argue that based on the language, ESSA alone is not going to incentivize or encourage the implementation of environmental education.

### A. ESSA DOES NOT PROMOTE ENVIRONMENTAL EDUCATION

ESSA outlines in detail how states might receive and use funding under the Act. In the section entitled “State Use of Funds” (known hereafter as the “SEA provision”) instructions are given to State Educational Agencies (“SEA”) that receive funding under “Formula Grants to States.”<sup>18</sup> An SEA will receive funding under “State Allotments” if its plan is submitted to and approved by the Secretary.<sup>19</sup> To be approved, a plan must include a description of how the SEA will use funds received for state-level activities; a description of how the SEA will ensure that awards given to local educational agencies (“LEA”) are consistent with the Allocations provision,<sup>20</sup> and ensure that the SEA will coordinate new resources and programs with existing resources and programs, monitor implementation of activities and provide assistance to LEAs as needed, and provide equitable access for all students to the activities supported under this subpart.<sup>21</sup> Once approved, the SEA provision instructs SEAs to 1) reserve at least ninety-five percent of the allotment for local educational agencies; 2) reserve no more than one percent of the allotment for administrative costs; and 3) use the

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15. *See id.*

16. *See Environmental Education in the Every Student Succeeds Act*, ENVTL. LITERACY IN NEW HAMPSHIRE (Dec. 10, 2015), <https://nhenvironmentalliteracyplan.wordpress.com/2015/12/10/environmental-education-in-the-every-student-succeeds-act/>.

17. Environmental education is also mentioned a third time in the amendment section.

18. *See Every Student Succeeds Act*, Pub. L. No. 114-95, § 4104(c), 129 Stat. 1802, 1974 (to be codified at 20 U.S.C. § 6301 et seq.).

19. *See* § 4103(b).

20. *See* § 4103(c)(2)(A)-(B).

21. *See* § 4103(c)(2)(C)(i)-(iii).

rest for activities in sub-section (b).<sup>22</sup>

Sub-section (b) is the first time environmental education is mentioned in ESSA.<sup>23</sup> SEAs may use the remaining funds to support “LEAs in providing programs and activities that offer well-rounded educational experiences” including environmental education.<sup>24</sup> Sub-section (b) gives states almost twenty different options for the remaining zero through five percent of their allotment. Environmental education is just one of many.

This statutory construction does not promote environmental education. First, given that environmental education is literally just two words in a sea of hundreds of thousands of words, an SEA that was not reading closely could easily overlook the phrase.<sup>25</sup> Second, even if an SEA was reading closely, an SEA is more likely to prioritize “foreign-language instruction”<sup>26</sup> or “college and career guidance counseling programs”<sup>27</sup> over environmental education. Given the current emphasis on college attendance and job security, those options might seem more essential to a child’s education than environmental education.

The second and final mention of environmental education is in § 4107 “Activities to Support Well-Rounded Educational Opportunities” (known hereafter as the “LEA provision”).<sup>28</sup> The LEA provision instructs those LEAs that receive an allotment under the Allocations provision<sup>29</sup> of more than \$30,000 to spend at least 20 percent of those funds under one of the § 4107 activities.<sup>30</sup> Under the Allocations provision, states are directed to allocate the funds reserved under the SEA Provision to each LEA that has an approved application.<sup>31</sup> To be approved, LEAs must submit an application that includes a description of the activities and programming that the LEA will carry out including any partnerships, how the funds will be used to support well-rounded education under § 4107, the objectives and intended outcomes, and assurances that LEAs will prioritize the distribution of funds to certain schools as defined under the LEA Applications provision.<sup>32</sup>

As in the SEA provision, environmental education is just one of ten programs or activities an LEA can choose to spend the allotment on.<sup>33</sup> In the LEA provision, environmental education suffers from the same problems as stated above. The language in the LEA provision could further work against environmen-

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22. See § 4104(a).

23. See § 4104(b).

24. § 4104(b)(3); § 4104(b)(3)(A)(VI).

25. See § 4104(b)(3)(A)(VI).

26. § 4107(a)(3)(F).

27. § 4107(a)(3)(A).

28. See § 4107(a)(3)(G).

29. See § 4105(a)(1).

30. See § 4106(f).

31. See § 4105 (a)(1).

32. See § 4106(e).

33. See § 4107(a)(3).

tal education because it does little to encourage LEAs to implement environmental education beyond providing funding. For example, while some options have a paragraph of guidance and description to entice an LEA, nothing is said for environmental education beyond “environmental education.” For example, the “college and career guidance and counseling programs” option lists three possibilities of implementation for the school, one of which is “training counselors to effectively use labor market information in assisting students with postsecondary education and career planning.”<sup>34</sup>

This extra description tells states why it would be useful to implement college and career guidance and counseling programs and how they could do it. Without extra description for environmental education, which is a relatively new subject, it is likely a state will think, “Why is this important?” or “How would we do that?” Without more guidance, a state might be discouraged from choosing environmental education. The lack of description or instruction might not be a problem for an activity like “foreign language instruction,”<sup>35</sup> which is already deemed important and offered in 91 percent of high schools, 58 percent of middle schools, and 25 percent of elementary schools.<sup>36</sup> With environmental education being new, it likely needs a little extra push by advocates or the federal government. More helpful phrasing could have included something like: “Adoption of an environmental literacy plan to increase hands-on learning opportunities and enhance students’ understanding of their natural environment.” This one sentence tells SEAs and LEAs how they could implement environmental education (through an environmental literacy plan), what benefits would come from that (hands-on learning and a better understanding of the natural environment), and provides more than just two words for the subject.

Aside from the specific mentions of environmental education, there are sections throughout ESSA where environmental education is not included when it could have been. Perhaps the most illustrative example is in the definitions section.<sup>37</sup> Under this section, well-rounded education is defined as “courses, activities, and programming in subjects such as . . .”<sup>38</sup> This provision goes on to list over twenty subjects, many of which have been included in other lists alongside environmental education in other sections of ESSA such as foreign languages and career and technical education.<sup>39</sup> Because § 4107 is entitled

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34. § 4107(a)(3)(A)(ii).

35. § 4107(a)(3)(F).

36. See Ingrid Pufahl & Nancy C. Rhodes, *Foreign Language Instruction in U.S. Schools: Results of a National Survey of Elementary and Secondary Schools*, 44 FOREIGN LANGUAGE ANNALS 258, 261–62 (2011), <http://onlinelibrary.wiley.com/doi/10.1111/j.1944-9720.2011.01130.x/pdf>; Jamaal Abdul-alim, *Elementary Pupils Immersed in Foreign Language*, EDUC. WEEK (Nov. 30, 2012), <http://www.edweek.org/ew/articles/2012/11/30/13foreign.h32.html?tkn=XRNfclhB1h8PE8v4xpvRZQF0h57Wc0GNm9ZM&cmp=clp-edweek>.

37. See § 8002.

38. § 8002(21)(52).

39. See *id.*

“Activities to Support Well-Rounded Educational Opportunities” and is one of only two sections that mention environmental education, one would expect to find environmental education mentioned under the definition of “well-rounded education” as well. Its absence when alternatives to environmental education are mentioned furthers the likelihood that an SEA or LEA will overlook environmental education as an option without advocacy by interest groups. Its absence may also suggest that environmental education is not as important to Congress as some of the other options, which could further deter the Secretary from promulgating regulations for environmental education.

#### B. PROHIBITIONS ON THE SECRETARY

In addition to rarely mentioning environmental education, the Act also restricts the Secretary of Education, while giving states the freedom to choose whether they participate in any of the programs under the act including “well-rounded education.” In a provision called “Prohibitions on Federal Government and Use of Federal Funds” sub-section (a), ESSA states “nothing in this Act shall be construed to authorize an officer or employee of the Federal Government, including through a grant, contract or cooperative agreement, to mandate, direct, or control a State, local educational agency, or school’s curriculum, program of instruction, or allocation of State or local resources . . . .”<sup>40</sup> Additionally, in “Prohibition on Requiring State Participation,” ESSA states, “nothing in this Act shall be construed to require a State to participate in any program under this Act.”<sup>41</sup> These sections mean that the Secretary still cannot control a school’s curriculum or allocation of resources, and the states are free to refuse to participate in any program under the Act. This language further undermines the environmental education provisions because states do not have to participate in this program at all, and the Secretary cannot require states to do so.

The Secretary is further restricted from promoting environmental education in a more general “Prohibition.”<sup>42</sup> This section prohibits the Secretary from adding any requirements to state plans or adding or deleting specific elements of the challenging academic standards.<sup>43</sup> It also prohibits the Secretary from issuing “a strictly limited or exhaustive list.”<sup>44</sup> Although this provision allows the Secretary to issue a list supporting environmental education with examples of how it has been done well, it prevents the Secretary from adding environmental education to a state plan. This is not an obvious restriction but is good for advocates to know

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40. § 8527(a).

41. § 8530A.

42. *See* § 1111(e).

43. *See* § 1111(e)(1)(B)(i)-(ii).

44. § 1111(e)(1)(C)(i)-(ii).

going forward so they do not propose environmental education as a requirement of state plans.

In the past, states have shown that they do pay close attention to new statutes and will take advantage of opportunities for extra funding. For example, the American Recovery and Reinvestment Act (known hereafter as the “Recovery Act”) gives states the opportunity to apply for “State Incentive Grants” or what are known as the Race to the Top (“RTT”) grants.<sup>45</sup> Like the brief mention of environmental education in ESSA, the discussion of RTT grants within the Recovery Act takes up less than a page and a half of the over 400 page long statute that was mostly unrelated to education.<sup>46</sup> Similar to the environmental education provision in ESSA, the RTT provisions provide extra funding for states’ LEAs and SEAs.<sup>47</sup> Despite these similarities, the RTT provisions are significantly different from the environmental education provisions, which is why environmental education is not likely to see the same response by the states.

First, the process of how states receive funding through these provisions differs. RTT was set up through a competitive grant process with limited funding available.<sup>48</sup> Because the funding was a substantial, not automatically given, and the states were in desperate need, the states were incentivized to apply for these grants. Additionally, the provisions were well publicized. The funding for environmental education under ESSA is through a formula grant, and no application process is required.<sup>49</sup> Because the money will always be there, in theory, states might not feel the pressure to acquire this funding.

Second, the purpose of the funding for the states is different. The RTT grants require states to “describe how the state would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies.”<sup>50</sup>

Because funding under RTT is for general education and funding education is primarily the states’ duty, the states were more incentivized to apply for this extra funding. The same cannot be said about the funding for environmental education under ESSA. As mentioned above, under ESSA a state may choose a “well-rounded” activity to put the extra formula grant funding towards. Environmental education is not required of the states nor is it common amongst states’ curriculums. According to the North American Association for Environmental Education, as few as thirteen states have begun to implement “Environmental Literacy Plans,”<sup>51</sup> which integrate environmental education into the K-12 curricu-

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45. See American Recovery and Reinvestment Act, 42 U.S.C. § 140006 (2012).

46. See *id.* §§ 14005(c)-§ 140006.

47. See *id.* § 14006.

48. See *id.* § 14006(b).

49. See Every Student Succeeds Act § 4103(b); § 4104; § 4107.

50. American Recovery and Reinvestment Act § 14005(c)(4).

51. See STATE ENVIRONMENTAL LITERACY PLANS 2014 STATUS REPORT 2, N. AM. ASS’N FOR ENVTL. EDUC. (2014), <https://naace.org/eepro/resources/2014-state-elr-report>.

lum.<sup>52</sup> Given its minimal popularity, it seems likely that states will choose to spend the money on one of the many other programs.

More comparable to the environmental education provisions under ESSA is the provision for “same-sex schools” originating in No Child Left Behind (“NCLB”).<sup>53</sup> LEAs receiving funding under NCLB could receive additional funding for “innovative assistance programs” in which a school could choose from twenty-seven different options, one of which was “same-gender schools and classrooms.”<sup>54</sup> Like the environmental education provisions under ESSA, same-gender schools and classrooms are just one of over 20 options that a school can provide through a formula grant. Although school districts did not initially jump at the opportunity to implement single-gender schools or classrooms, once the NCLB was enacted in 2006 and made it easier for districts to institute single-gender classrooms and schools, the number of single-gender schools and classrooms rose significantly.<sup>55</sup> From 1995 to 2008, the number of single-gender public schools increased from two to forty-nine with sixty-five percent of those opening between 2006 and 2008. In 2002, only twelve public schools offered single-gender classes; now they are offered in more than three hundred and sixty public schools.<sup>56</sup>

This suggests that even a small provision within a lengthy statute can make a large impact on public education. However, environmental education is not directly comparable with single-gender schooling and classrooms. Many scholars and studies suggest that single-gender schools and classrooms achieve better academic performance.<sup>57</sup> The same cannot be said for environmental education. As mentioned earlier, it is a relatively new subject and would not impact general education in the same way that single-gender schools and classrooms did.

Even if schools do respond to environmental education as they did single-gender schools and classrooms, environmental education would still not be the success that the various environmental education proponents are claiming ESSA to be. In academic year 2008–2009, there were 98,706 public schools in the U.S.<sup>58</sup> Comparing that number to the forty-nine single-gender public schools and three hundred and sixty public schools offering single-gender classes in 2008

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52. *See id.*

53. *See* Ashley Elizabeth Johnson, *Single-Sex Classes in Public Secondary Schools: Maximizing the Value of a Public Education for the Nation's Students*, 57 VAND. L. REV. 629, 635 (2004).

54. *See* No Child Left Behind Act, 20 U.S.C. § 7215(a)(23) (2006).

55. *See* Lea Hubbard & Amanda Datnow, *Do Single-Sex Schools Improve the Education of Low-Income and Minority Students? An Investigation of California's Public Single-Gender Academies*, 36 ANTHROPOLOGY & EDUC. Q. 115, 115–16 (2005); Elizabeth Weil, *Teaching Boys and Girls Separately*, N.Y. TIMES MAGAZINE (March 2, 2008), [http://www.nytimes.com/2008/03/02/magazine/02sex3-t.html?\\_r=2](http://www.nytimes.com/2008/03/02/magazine/02sex3-t.html?_r=2).

56. *See* Weil, *supra* note 55.

57. *See generally*, Kristin S. Caplice, *The Case for Public Single-Sex Education*, 18 HARV. J.L. & PUB. POL'Y 227 (1994); Hubbard, *supra* note 55, at 115–16; Johnson, *supra* note 53.

58. *See* INST. OF EDUC. STUDIES, *Fast Facts*, <https://nces.ed.gov/fastfacts/display.asp?id=84> (last visited May 9, 2017).

puts into perspective just how small a response there was by school districts.<sup>59</sup> Less than one percent of schools offered single-gender classes and even fewer were single-gender schools. Numbers like that do not constitute a “tremendous victory.”<sup>60</sup>

On the face of the statute, then, ESSA does little to incentivize or encourage states to implement environmental education. It also restricts the Secretary of Education, giving her minimal direction or flexibility in the regulation of environmental education. Because of the substantive differences between environmental education and programs like RTT and same-gender schools in similar statutory provisions, it is unlikely SEAs or LEAs will have the same response as they did to those programs. All of this together creates significant doubt that the language in ESSA will be the victory the environmental education proponents believe it to be. In the next part of this Note, I argue that aside from the statute itself, ESSA faces other challenges that could prevent it from having a significant impact on the subject.

### III. ENVIRONMENTAL EDUCATION AND THE FEDERALISM FENCE

Education has historically been regarded as the responsibility of the states.<sup>61</sup> As such, any education policy promulgated by the federal government usually tries to achieve a balance between federal, state, and local control. This concept is referred to as the “federalism fence”<sup>62</sup> and is present in policy areas aside from education as well. Typically, federalism fence legislation will include a goal, standard, or program, but leave the details to be determined by the states. This allows for the furthering of a federal goal with minimal intrusion into the states’ side of the metaphorical fence. Education is a policy area that can be described as existing in the states’ yard. This Part will first establish that there are certain reasons related to education why Congress and the Department of Education will tread further into the states’ yard than usual. This Part will then argue that environmental education is not one of those reasons.

Congress and the Department of Education are more likely to cross the federalism fence in education policy and regulation when it comes to ensuring equal access to education, particularly for low-income children, minority chil-

59. See Weil, *supra* note 55.

60. NAAEE *Hails History Making Opportunity for Environmental Learning in Congressional Education Bill*, *supra* note 3.

61. See CARL F. KAESTLE & ALYSSA E. LODEWICK, *TO EDUCATE A NATION: FEDERAL AND NATIONAL STRATEGIES OF SCHOOL REFORM* 17 (Carl F. Kaestle et al. eds., 2007); Michael Heise, *Political Economy of Education Federalism*, 56 EMORY L.J. 125, 130 (2006); Kimberly Jenkins Robinson, *The High Cost of Education Federalism*, 48 WAKE FOREST L. REV. 287, 287 (2013).

62. James Ryan, *The Perverse Incentives of No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 987 (2004); Eloise Pasachoff, *Equality, Centralization, Community, and Governance in Contemporary Education Law*, 42 FORDHAM URB. L.J. 763, 773 (2015).

dren, and children with disabilities.<sup>63</sup> For example, the stated purpose of NCLB is “to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education.”<sup>64</sup> It goes on to specifically mention “highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance.”<sup>65</sup> In the Individuals with Disabilities Education Act, Congress states “it is in the national interest that the Federal Government assist state and local efforts to provide programs to meet the educational needs of handicapped children in order to ensure equal protection of the law.”<sup>66</sup>

These purposes speak to Congress’s intention behind the act and define what the Secretary of the Department of Education will have in mind when promulgating regulations. By definition, environmental education is seemingly unrelated to equality or equal access to education. Although ESSA’s stated purpose is “to provide all children significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps,”<sup>67</sup> and does not include specific language identifying discrete groups, it is still primarily concerned with equality. Thus, when promulgating regulations or non-regulatory guidance, the Secretary will have equality in mind, and it is unlikely that environmental education will be a priority.

Advocates, however, might think that environmental education is a subject that would fall within the realm of equality. Globally, environmental education is mandated and viewed as a right in several countries. In Brazil, a national mandate requires all public schools to include environmental education in the academic curriculum.<sup>68</sup> The Brazilian government recognizes environmental education as a legally protected right.<sup>69</sup> In Australia, the national government works closely with state and territory agencies to create environmental education curriculum.<sup>70</sup> The Netherlands mandates environmental education as one of its core subjects in primary schools.<sup>71</sup> In 1989, the Convention on the Rights of the Child was passed by the United Nations General Assembly, which determined, amongst other things, that “education of the child shall be directed to: the development of respect for their natural environment.”<sup>72</sup> A total of 191 countries ratified the

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63. See generally, Kimberly Jenkins Robinson, *Disrupting Education Federalism*, 92 WASH. U. L. REV. 959, 983 (2015); Robinson, *supra* note 61.

64. No Child Left Behind Act § 6301.

65. *Id.*

66. Individuals with Disabilities Education Act, 20 U.S.C. § 1400(c)(6) (2006).

67. Every Student Succeeds Act § 1001.

68. Stohr, *supra* note 7, at 42.

69. See Stohr, *supra* note 7, at 43.

70. See *id.* at 30.

71. See *id.* at 78.

72. *State Education Law Compared to the U.N. Convention on the Rights of the Child*, 5 GEO. J. ON FIGHTING POVERTY 241, 247 (1998).

Convention, and it received early bipartisan support in the United States.<sup>73</sup> The U.S. has not yet ratified the Convention, but it did sign it, which shows its intention to do so.<sup>74</sup> Although this might seem compelling, in the United States there is no right to education mentioned anywhere, not even general K-12 education.<sup>75</sup> Thus, it is unlikely that the United States would ever consider environmental education a right, and even more unlikely that it would nationally mandate the subject.

Advocates might also point to the Equal Justice Movement (“EJM”), which started as part of The Civil Rights Movement, for further reason to believe that the federal government may one-day view environmental education as a matter of equality. The EPA defines environmental justice as:

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies. Meaningful involvement means that: (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) their concerns will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.<sup>76</sup>

The EJM has drawn attention to how the most polluted environments in the United States primarily affect poor and minority populations.<sup>77</sup> The Movement refers to this phenomenon as “environmental racism.”<sup>78</sup> One solution to environmental racism could be environmental education, as it would achieve the meaningful involvement the Movement seeks. The NAAEE states that “environmental education is a process that helps individuals, communities, and organizations learn more about the environment, develop skills to investigate their environment and to make intelligent, informed decisions about how they can help

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73. *See id.* at 241.

74. *See Convention on the Rights of the Child Frequently Asked Questions*, UNICEF, [http://www.unicef.org/crc/index\\_30229.html](http://www.unicef.org/crc/index_30229.html) (last visited May 9, 2017).

75. *See* Brooke Wilkins, *Should Public Education Be a Federal Fundamental Right?*, 2005 BYU EDUC. & L.J. 261, 271 (2005); Stephen Lurie, *Why Doesn't the Constitution Guarantee the Right to Education?*, THE ATLANTIC (Oct. 16, 2013), <http://www.theatlantic.com/education/archive/2013/10/why-doesnt-the-constitution-guarantee-the-right-to-education/280583/>.

76. *Environmental Justice*, EPA, <https://www3.epa.gov/environmentaljustice/basics/ejbackground.html> (last visited May 9, 2017).

77. *See* Renee Skelton & Vernice Miller, *The Environmental Justice Movement*, NAT'L RES. DEF. COUNCIL (March 17, 2016), <http://www.nrdc.org/ej/history/hej.asp>.

78. *Id.*

take care of it.”<sup>79</sup> The connection between environmental education and the EJM movement is clear, but it still seems like a stretch to argue that this could lead to environmental education being viewed as a right or nationally mandated when neither Congress nor the Department of Education has done so for education generally even in the face of blatant segregation and discrimination.

The Department of Education’s general avoidance of curriculum involvement further inhibits the promotion of environmental education. For example, NCLB hoped and ESSA hopes to improve the quality of education through “challenging” standards particularly in the areas of “math, reading or language arts and science.”<sup>80</sup> Even though Congress is asking the states for higher standards in those subjects, Congress leaves it to the states to decide what those standards should be.<sup>81</sup> If Congress is hesitant to allow the Department of Education to create mere standards in core subjects in order to respect the states’ side of the fence, it is even less likely to promulgate curricular regulations for a new, optional subject like environmental education, let alone a national mandate.

Another roadblock to the Department of Education’s promotion of environmental education is the political debate surrounding the subject.<sup>82</sup> As a government agency, the Department of Education is an unelected and therefore a non-politically accountable entity that in theory is supposed to make decisions based on evidence. Although it is possible that there could eventually be evidence showing the benefits of environmental education, given that it is new, data on such benefits is limited. Without evidence in support of regulatory decisions, and the political tension, the Secretary might choose to avoid the subject altogether so as not to infringe upon the states in a particularly political way.

When considering environmental education from the perspective of the federalism fence, it seems doubtful that the Department of Education will take additional steps to promote environmental education or promulgate any extensive regulations. In the next Part, I will discuss how advocates can compensate for the language in the statute and the minimal federal involvement to realize the success they believe ESSA can achieve.

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79. *About Environmental Education and Why It Matters*, N. AM. ASS’N FOR ENVTL. EDUC., <https://naaenvironmental.education.org/about-us/about-environmental-education-and-why-it-matters> (last visited May 9, 2016).

80. *See* Every Student Succeeds Act § 1111(b)(1)(c).

81. *See* § 2301(a)(1).

82. *See* John H. Cushman, *Critics Rise Up Against Environmental Education*, N.Y. TIMES (Apr. 22, 1997), <http://www.nytimes.com/1997/04/22/us/critics-rise-up-against-environmental-education.html>; Stephen L. Jackstadt & Michael Sanera, *Environmental Education: Turning Kids into Political Activists*, FOUND. FOR ECON. EDUC. (Oct. 1, 1995), <https://environmental.education.org/articles/environmental-education-turning-kids-into-political-activists/>; Michelle Nijhuis, *Green Failure: What’s Wrong with Environmental Education?*, YALE ENV’T 360 (May 26, 2011), [http://e360.yale.edu/feature/green\\_failure\\_whats\\_wrong\\_with\\_environmental\\_education/2407/](http://e360.yale.edu/feature/green_failure_whats_wrong_with_environmental_education/2407/).

#### IV. HOW ADVOCATES CAN MAXIMIZE ESSA'S POTENTIAL

Although it is doubtful that ESSA on its own will do much to advance environmental education beyond the provision of funding, with the continued initiative of advocates, it could have a greater impact than Parts II and III of this paper suggest. This part will discuss the importance of environmental education and outline steps advocates can take at the state, local, and federal levels to promote implementation by schools.

##### A. WHY ENVIRONMENTAL EDUCATION MATTERS

Perhaps the most obvious but also the most important benefit of environmental education is the impact it will have on the environment's future. According to Dr. Thomas Horton, a professor at the State University of New York College of Environmental Science and Forestry, the disconnect between human perception of nature and human's place in nature is the world's biggest environmental problem.<sup>83</sup> Similarly, Dr. Horton's colleague, Dr. Jack Manno, blames the "human mind" as the source of all environmental problems.<sup>84</sup> Environmental education strives to address this very problem by teaching critical-thinking, enhancing problem-solving and decision-making skills, and increasing public awareness and knowledge of environmental issues.<sup>85</sup> Many students today are growing up indoors, leaving them disconnected from nature,<sup>86</sup> which makes environmental education more vital now than ever. If an entire generation either lacks interest in or cares for the environment, the next generation will likely be the same. Environmental education could be fundamental in building the bridge between humans and nature.<sup>87</sup>

In addition to future benefits, environmental education can positively impact children's health now. The phrase "environmental education" might suggest students sitting in a classroom, reading about pollution and recycling. In reality, most environmental education includes extensive outdoor activity. This is important when recent studies have revealed shocking statistics about children's lifestyles, like that children ages three through twelve spend only one percent of their time each week outdoors; children ages eight through eighteen spend over seven hours each day watching TV, using the computer, playing video games, and other indoor activities; and in 2001, two-thirds of the public failed a basic

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83. See, *What's the Worst Environmental Problem? We Are*, SUNY COLL. OF ENVTL. SCI. AND FORESTRY (Apr. 16, 2015), <http://www.esf.edu/communications/view.asp?newsID=3434>.

84. *Id.*

85. See *What is Environmental Education?*, EPA, <https://www.epa.gov/education/what-environmental-education> (last visited May 9, 2016).

86. See, *Why Teach Environmental Education*, AM. FORESTRY FOUND., <https://www.forestfoundation.org/why-teach-environmental-education-in-schools> (last visited May 9, 2017).

87. See John Paulk & Lynn Hodges, *Environmental Education: The Future*, 14 EPA J. 36, 36-37 (1988).

environmental quiz while eighty-eight percent failed a basic energy quiz.<sup>88</sup> As a result of those habits, many children suffer from attention difficulties, hyperactivity, childhood obesity, and more.<sup>89</sup> Environmental education has been shown to combat these health problems through hands-on activity, exposure to the outdoors, and critical thinking.<sup>90</sup>

As an example, the creative integration of environmental education at Redtail Ridge Elementary School in Minnesota—which includes some classes held outdoors—has proven to be successful.<sup>91</sup> The students enjoy the experiential learning, and academic progress and state assessment scores in Science have improved.<sup>92</sup> Fifth grade students have performed above the state average the last four years.<sup>93</sup> The teachers believe the integration of outdoor learning increases the students’ attention span and focus upon returning to the classroom.<sup>94</sup> While this is just one example of how the subject can produce positive outcomes, it serves other beneficial purposes as well.

ESSA provides states the opportunity to implement environmental education, and this section has established why it is important they do. The following section will discuss how advocates can encourage and mobilize states towards implementation.

#### B. ADVOCATES’ ROLE IN MOBILIZING THE STATES

The North American Association for Environmental Education (“NAAEE”) has set a strong example of what other advocacy groups can do to increase the likelihood of state implementation. Even before ESSA, NAAEE had been working with thirteen states to implement Environmental Literacy Plans.<sup>95</sup> These plans serve as a guide to achieving environmental literacy in each state through integration of the subject in the K-12 curriculum.<sup>96</sup> Even though NAAEE has been successful with these states, it notes that integration has been challenging. The Environmental Literacy Report it issued cited “lack of professional development opportunities for teachers, limited time and resources for field trips and outdoor activities, and widespread cuts to education funding in general” as some

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88. See *Why Environmental Education is Important*, PROJECT LEARNING TREE, <https://www.plt.org/why-environmental-education-is-important> (last visited May 9, 2017).

89. See *id.*

90. See *id.*

91. See Sara Aker & Susan Schnackenberg, *Nature-Based Curriculum a Hit with Students and Staff Alike*, HOMEROOM: THE OFFICIAL BLOG OF THE U.S. DEP’T OF EDUC. (Apr. 20, 2016), <http://blog.ed.gov/2016/04/nature-based-curriculum-a-hit-with-students-and-staff-alike/#more-23085>.

92. See *id.*

93. See *id.*

94. See *id.*

95. See STATE ENVIRONMENTAL LITERACY PLANS, N. AM. ASS’N FOR ENVTL. EDUC., *supra* note 51.

96. See *id.*

of the barriers to integration.<sup>97</sup>

In the face of these problems, NAAEE, along with other organizations put together the “No Child Left Inside” initiative which would have amended the No Child Left Behind Act to include environmental education as a high school graduation requirement and to provide states funding for the subject.<sup>98</sup> This was not successful for reasons discussed above and the replacement of the No Child Left Behind Act with ESSA. Now, advocacy groups have the opportunity to address the identified barriers and the failure of the No Child Left Inside initiative at the state level.

With the passage of ESSA, some funding is now available for environmental education at state and local levels that could help advocacy groups with their future environmental education endeavors. Advocates should make this funding known by approaching state legislators, state departments of education, state education agencies, or other decision-making entities with information about the new provisions under ESSA. As discussed above, one of the hurdles environmental education faces is not being noticed. By bringing environmental education to these groups’ attention, advocates will jump over the first hurdle. From there, advocates should then explain the importance of the subject to these groups, potentially using examples from other states to show the positive outcomes.

Next, advocates such as state environmental education associations and environmental education non-profits will want to work with state decision-makers on the state’s environmental literacy plan—as NAAEE has done in the past. It is important that state-based advocates do the work in their state so that national groups like NAAEE can focus their efforts on the federal government. Advocacy groups should provide resources and information about other states’ plans, provide contact information for other states’ representatives, and conduct workshops about how plans can be developed.<sup>99</sup> Additionally, because some funding under ESSA will also go directly to local education agencies, advocacy groups can provide support closer to the ground level, possibly even partnering with schools to facilitate field trips or educational programs to the students.

Advocacy groups should also work to educate parents in the community on the importance of environmental education.<sup>100</sup> This could be beneficial in two important ways. First, if a state successfully implements an environmental literacy plan, parents informed on the benefits of such a plan will be less likely to question or protest the program. This will make it easier for the school and the teachers to implement the plan. Second, if a state has yet to implement a plan, by

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97. *Id.* at 3.

98. *See id.*

99. *See* STATE ENVIRONMENTAL LITERACY PLANS, N. AM. ASS’N FOR ENVTL. EDUC., *supra* note 51, at 5.

100. *See* Margaret R. Meyer, Mary L. Delagardelle & James A. Middleton, *Addressing Parents’ Concerns Over Curriculum Reform*, 53 EDUC. LEADERSHIP 54, 54–57 (1996), <http://www.ascd.org/publications/educational-leadership/apr96/vol53/num07/Addressing-Parents’-Concerns-Over-Curriculum-Reform.aspx>.

educating parents on the importance of environmental education, advocacy groups could mobilize parents to propose integration of the subject to the school board, the local education agency, the state education agency, or the state legislature. Doing so would send a powerful message to local and state decision-makers and increase the likelihood of implementation.

This section has provided ways in which advocacy groups could advance implementation of environmental education at the state and local level. The next section will discuss advancement at the federal level.

### C. ADVOCATES' ROLE AT THE FEDERAL LEVEL

Advocacy groups are no stranger to lobbying and outreach. As discussed above, these efforts are what made the inclusion of environmental education in ESSA possible.<sup>101</sup> These same kinds of efforts must continue in order to further the advancement of environmental education. Most importantly, advocating for federal communication about the subject will be key because ESSA itself provides states with very little information.

First, the Department of Education has recently requested comments and suggestions on “student support services (Title IV) and other areas where state and local agencies could benefit from additional guidance.”<sup>102</sup> Comments submitted to [ESSA.guidance@ed.gov](mailto:ESSA.guidance@ed.gov) were accepted until May 25<sup>th</sup>, 2016.<sup>103</sup> Environmental education is included in Title IV of ESSA and could be an area where state and local agencies could benefit from additional guidance given that environmental education is brand new in federal education policy. Advocacy groups should use these types of avenues to provide extensive suggestions to the Department of Education on how they could provide non-regulatory guidance to assist states. For example, this non-regulatory guidance could promote implementation by describing the subject and its benefits and suggest how a state might go about implementation. Without advocacy groups taking the lead, the Department of Education might receive minimal comments and issue no non-regulatory guidance on the subject for the reasons discussed in Parts II and III.

Second, advocacy groups could contact the Department of Education to encourage the dissemination of a Dear Colleague Letter expressing best practices of environmental literacy programs.<sup>104</sup> Although it is unclear at this time which

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101. See *Environmental Education in the Every Student Succeeds Act (S.1177)*, N. AM. ASS'N FOR ENVTL. EDUC., [https://naaee.org/system/files/harmony/files/ee\\_in\\_essa\\_fact\\_sheet\\_2.5.16.pdf](https://naaee.org/system/files/harmony/files/ee_in_essa_fact_sheet_2.5.16.pdf) (last visited May 9, 2017).

102. *Every Student Succeeds Act (ESSA)*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/policy/elsec/leg/essa/index.html> (last visited May 9, 2017).

103. *Id.*

104. See Eloise Pasachoff, *Advocates, Federal Agencies, and the Education of Children with Disabilities*, 29 OHIO ST. J. ON DISP. RESOL. 461, 477 (2014).

office within the Department of Education would be best to contact,<sup>105</sup> this could be an effective method to draw states' attention to the subject and provide examples of how implementation could be accomplished. Advocacy groups that have already been working with states in the implementation of environmental literacy plans will likely be the best suited to do this because they will know or could determine best practices based on their experience. Relatedly, advocacy groups should work together to cross-reference information and distill best practices known at this time.

Finally, advocacy groups need to continue the work they have already been doing at the federal level. Since environmental education has some momentum right now, advocacy groups should capitalize on that by pushing Congress for more extensive policies related to environmental education. Senator Reed and Congressman Sarbanes are known supporters of this subject.<sup>106</sup> Increased communication and collaboration with them could lead to further legislation. However, advocacy groups should extend their outreach to other members of Congress to increase support of the subject. With more advocacy groups working together, eventually the dream of the No Child Left Inside Act discussed above could become reality.

#### CONCLUSION

ESSA marks an important moment in time for environmental education: for the first time, environmental education has been included in a federal education statute. Although this is exciting, the statutory language and federal-state dynamic gives reason to believe that without additional advocacy, states might choose to implement something other than environmental education. Environmental education is important, with benefits that can be achieved now and benefits that will be felt in the future, so these barriers to implementation should not be the end of the discussion.

Through advocacy, interest groups can bring environmental education to the states' attention while encouraging the issuance of non-regulatory guidance and further action by the Department of Education and Congress. By maximizing the potential of ESSA, advocates will bring children to the outdoors, which will lead to a future citizenry in tune with nature and prepared to solve its environmental problems.

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105. A good place to start could be the Institute of Education Sciences: [contact.IES@ed.gov](mailto:contact.IES@ed.gov). More information available here: <http://ies.ed.gov/contact/>. Or the Office of Elementary and Secondary Education: [oes@ed.gov](mailto:oes@ed.gov). More information available here: <http://www2.ed.gov/about/offices/list/oes/contact.html>.

106. See *Environmental Education in the Every Student Succeeds Act*, *supra* note 101.