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NEXT STEPS IN K–12 EDUCATION: EXAMINING RECENT EFFORTS TO IMPLEMENT THE EVERY STUDENT SUCCEEDS ACT

HEARING

BEFORE THE

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JUNE 23, 2016

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NEXT STEPS IN K–12 EDUCATION: EXAMINING RECENT EFFORTS TO IMPLEMENT THE EVERY STUDENT SUCCEEDS ACT

Thursday, June 23, 2016
U.S. House of Representatives,
Committee on Education and the Workforce,
Washington, D.C.

The Committee met, pursuant to call, at 9:00 a.m., in Room 2175, Rayburn House Office Building, Hon. John Kline [chairman of the committee] presiding.

Present: Representatives Kline, Foxx, Roe, Thompson, Walberg, Guthrie, Rokita, Byrne, Carter, Bishop, Grothman, Curbelo, Allen, Scott, Davis, Courtney, Bonamici, and Adams.

Staff Present: Janelle Gardner, Coalitions and Members Services Coordinator; Tyler Hernandez, Deputy Communications Director; Amy Raaf Jones, Director of Education and Human Resources Policy; Nancy Locke, Chief Clerk; Dominique McKay, Deputy Press Secretary; Brian Newell, Communications Director; Krisann Pearce, General Counsel; Lauren Reddington, Deputy Press Secretary; Mandy Schaumburg, Education Deputy Director and Senior Counsel; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Leslie Tatum, Professional Staff Member; Brad Thomas, Senior Education Policy Advisor; Sheariah Yousefi, Legislative Assistant; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Jacque Chevalier, Minority Senior Education Policy Advisor; Mishawn Freeman, Minority Staff Assistant; Denise Forte, Minority Staff Director; Christian Haines, Minority Education Policy Counsel; Brian Kennedy, Minority General Counsel; Julia Lamberti, Minority Education Policy Fellow; Alexander Payne, Minority Education Policy Advisor; and Michael Taylor, Minority Education Policy Fellow.

Chairman KLINE. A quorum being present, the Committee on Education and Workforce will come to order. Welcome back, Mr. Secretary.

Secretary KING. Thank you.

Chairman KLINE. Thank you for joining us. When we last met, the process for implementing the Every Student Succeeds Act was just getting underway. We had a healthy discussion about the byproducts of reform that Congress passed and is presently signed into law. Those reforms are designed to restore State and local control over K–12 schools.

That is not just my personal view, it is a view held by governors, State lawmakers, teachers, parents, principals, and superintendents who recently wrote that "The Every Student Succeeds Act is clear, education decision-making now rests with States and districts and the Federal role is to support and inform those decisions."

It is also the view of most honest observers as the Wall Street Journal editorialized, the law represents "the largest evolution of Federal control to the States in the quarter century."

The reason for this hearing, and our continued oversight is to ensure the letter and the intent of the law are followed. The critical part is holding your agency accountable, Mr. Secretary, for the steps that are taken to implement the law.

When you were with us in February, you said, "You can trust that we will abide by the letter of the law as we move forward."

That is a strong statement and it is one of several commitments you have made that the Department would act responsibly, but actions speak louder than words. In recent words, we have seen troubling signs with the Department pulling the country in a different direction than the one Congress provided in the law. The first troubling sign is the rulemaking process itself. There are a number of concerns about the integrity of the negotiated rulemaking committee, including the makeup of the panel, a lack of rural representation, and the accuracy of statements made by the Department staff.

The point of the negotiated rulemaking process is to build consensus among those directly affected by the law. It seems the Department has decided to stack the deck. The second troubling sign surrounds the longstanding policy that Federal funds are a supplement and do not supplant State and local resources.

Prior to the Every Student Succeeds Act, this rule is applied differently depending on how many low-income students a school serves. Some schools face more onerous requirements than others. Last year, Congress decided the rule would be enforced equally across all schools. Now school districts must simply show that funds are distributed fairly, without prescribing a specific approach or outcome. The law explicitly prohibits the Secretary from interfering, yet that is precisely what you are proposing to do.

What the Department is proposing would be both illegal and harmful to students and communities. It would impose a significant financial burden on States and force countless public school districts to change as they hire and pay their teachers.

This regulatory effort is trying to achieve an end Congress deliberately rejected and the nonpartisan Congressional Research Service warrants and goes beyond "a plain language reading of the statute."

No doubt you have good intentions, Mr. Secretary, but you do not have the legal authority to do this. I strongly urge you to abandon this flawed scheme.

The third troubling sign is the Department's accountability proposal. Let me note that there are policies in this proposal we are pleased to see, such as how States set long-term goals and measure interim progress.

But in a number of ways, we also see the Department's bad habit for making decisions that must be left to States. This is especially troubling given the law's explicit prohibitions against Federal interference, including how States compare school performance and identify schools for support.

For years, States grappled with the rigid accountability system imposed by Washington. The Every Student Succeeds Act turns the page on that failed approach and restores these decisions back to States and local leaders.

I urge you, Mr. Secretary, to adopt a final proposal that fully reflects the letter and spirit of the law. We are raising these concerns because it is vitally important for the laws written by Congress to be faithfully executed and, just as importantly, we are raising these concerns because we want to ensure that every child has the best chance to receive a quality education.

We cannot go back to the days when the Federal Government dictated national education policy. It did not work then and it will not work now. If the Department refuses to file a letter as intended in law, you will prevent State leaders, like Dr. Pruitt from Kentucky, from doing what is right for the school districts. You will deny superintendents like Dr. Schuler of Arlington Heights, Illinois, the ability to manage schools in a way that meets the needs of their local communities. And you will make it harder for teachers like Cassie Harrelson from Aurora, Colorado, to serve the best interests of the students in the classrooms. Later, we will hear from these individuals because they represent the people we work to empower.

Every child in every school deserves an excellent education and the only way to achieve that, though, is to restore State and local control. That is what the Every Student Succeeds Act is intended to do and we will use every tool at our disposal to ensure the letter and intent of the law is followed.

With that, I will now recognize Ranking Member Bobby Scott for his opening remarks.

[The information follows:]

Prepared Statement of Hon. John Kline, Chairman
Committee on Education and the Workforce

Welcome back, Secretary King, and thank you for joining us. When we last met, the process for implementing the Every Student Succeeds Act was just getting underway. We had a healthy discussion about the bipartisan reforms Congress passed and the president signed into law. Those reforms are designed to restore state and local control over K–12 schools.

That's not just my own personal view. It's the view held by governors, state lawmakers, teachers, parents, principals, and superintendents who recently wrote that, "[The Every Student Succeeds Act] is clear: Education decision-making now rests with states and districts, and the federal role is to support and inform those decisions." It's also the view of most honest observers. As the Wall Street Journal editorialized, the law represents the "largest devolution of federal control to the states in a quarter-century."

The reason for this hearing and our continued oversight is to ensure the letter and intent of the law are followed. A critical part of our effort is holding your agency accountable, Mr. Secretary, for the steps that are taken to implement the law. When you were with us in February, you said, "You can trust that we will abide by the letter of the law as we move forward."

That is a strong statement, and it is one of several commitments you've made that the department would act responsibly. But actions speak louder than words. In re-

cent months, we have seen troubling signs of the department pulling the country in a different direction than the one Congress provided in the law.

The first troubling sign is the rulemaking process itself. There are a number of concerns about the integrity of the negotiated rulemaking committee, including the makeup of the panel, the lack of rural representation, and the accuracy of statements made by department staff. The point of the negotiated rulemaking process is to build consensus among those directly affected by the law, yet it seems the department decided to stack the deck to achieve its own preferred outcomes.

The second troubling sign surrounds the long-standing policy that federal funds are to supplement, not supplant, state and local resources. Prior to the Every Student Succeeds Act, this rule was applied differently depending on how many low-income students a school served; some schools faced more onerous requirements than others. Last year, Congress decided the rule would be enforced equally across all schools. Now, school districts must simply show that funds are distributed fairly without prescribing a specific approach or outcome. The law explicitly prohibits the secretary from interfering, yet that is precisely what your proposal would do.

What the department is proposing would be both illegal and harmful to students and communities. It would impose a significant financial burden on states and force countless public school districts to change how they hire and pay their teachers. This regulatory effort is trying to achieve an end Congress deliberately rejected and that the nonpartisan Congressional Research Service warns goes beyond "a plain language reading of the statute." No doubt you have good intentions, Mr. Secretary, but you do not have the legal authority to do this. I strongly urge you to abandon this flawed scheme.

The third troubling sign is the department's accountability proposal. Let me note that there are policies in this proposal we are pleased to see, such as how states set long-term goals and measure interim progress. But in a number of ways, we also see the department's bad habit for making decisions that must be left to states.

This is especially troubling given the law's explicit prohibitions against federal interference, including how states compare school performance and identify schools for support. For years, states grappled with a rigid accountability system imposed by Washington. The Every Student Succeeds Act turns the page on that failed approach and restores these decisions back to state and local leaders. I urge you, Mr. Secretary, to adopt a final proposal that fully reflects the letter and spirit of the law.

We are raising these concerns because it's vitally important for the laws written by Congress to be faithfully executed. And just as importantly, we are raising these concerns because we want to ensure every child has the best chance to receive a quality education. We cannot go back to the days when the federal government dictated national education policy—it didn't work then and won't work now.

If the department refuses to follow the letter and intent of the law, you will prevent state leaders, like Dr. Pruitt from Kentucky, from doing what's right for their school districts. You will deny superintendents, like Dr. Schuler of Arlington Heights, Illinois, the ability to manage schools in a way that meets the needs of their local communities. And you will make it harder for teachers, like Cassie Harrelson from Aurora, Colorado, to serve the best interests of the students in their classrooms.

Later, we will hear from these individuals because they represent the people we want to empower. Every child in every school deserves an excellent education, and the only way to achieve that goal is to restore state and local control. That's what the Every Student Succeeds Act is intended to do, and we will use every tool at our disposal to ensure the letter and intent of the law are followed.

With that, I will now recognize Ranking Member Scott for his opening remarks.

Mr. SCOTT. Thank you, Mr. Chairman, for calling this hearing to discuss the implementation of the bipartisan law we worked to craft and enact last year. I look forward to the dialogue with both Secretary King and the panel of expert witnesses concerning the Department's ongoing efforts to provide States and school districts with the clarity and guidance necessary to ensure effective implementation of the Every Student Succeeds Act.

As I have previously stated, I am proud of our collective efforts to craft a strong bipartisan law that was worthy of the President's signature. Doing so is no small feat. However, passing legislation

is only one step of many. Fulfilling the promise of the Every Student Succeeds Act rests on its successful implementation that honors Congress' longstanding intent of the Elementary and Secondary Education Act, the intent to support and promote and protect at all levels of government the right to an educational opportunity for every child, regardless of race, income, language status or disability.

While ESSA returns much decision-making power to the State and local level, it is not a blank check. The Federal law includes important guardrails, most importantly that States and school districts are required to take action when students are not learning.

States and districts get to decide which actions are most appropriate in each school's unique context, but taking some action is not negotiable. A robust regulatory framework is necessary to ensure that States and school districts are getting the job done and taking action and each and every school is required to do so by federal law.

The regulations require States and local districts to fully comply with the Federal law. Getting this right is hard work, and the Federal Government has an important role to play.

I wanted to thank the Department of Education under the leadership of then acting Secretary King for moving so quickly to provide feedback for and to provide necessary clarity to practitioners, parents, and community members through the proposed regulations.

I also want to commend the Secretary and staff for their transparency and continued collaboration with members in this committee and our staff throughout the process. The Department has demonstrated a commitment to fulfilling its regulatory responsibilities critical to helping States and school districts move forward expeditiously.

On this point, there is considerable agreement. Although some State and local stakeholder groups originally urged that there be no regulatory framework, those very same groups in combination with others on the negotiated rulemaking panel reached an agreement on the proposed assessment regulatory text.

We thank members of that panel, including the Department, for working and making compromises to reach consensus on proposed regulations with some of the most contemptuous and challenging issues in the entire law. Their consensus serves as a powerful affirmation of the need for the clarity and direction that the regulations provide.

In addition to the negotiated rulemaking process, the Department recently released its proposed regulatory text for accountability, intervention, data reporting, and consolidated state plan development for public commenting. Again, I want to thank the Secretary for moving so quickly. Many individuals and groups request additional regulatory clarity on these important issues and the Department heeded those requested as the Department has done in the past.

I am sure the robust dialogue, with all stakeholders, including Congress, will inform revisions and improvements in the proposal during the 60-day comment period which closes August 1st.

I look forward to hearing from today's experts on the specifics of the Department's proposal. And just as the Federal Government works to meaningfully to engage the diverse stakeholders to effectively implement the new law, State and local leaders must use the clarity provided by the Federal regulations to work collaboratively with all stakeholders in the development of new plans as the implementation moves forward.

The upcoming election will usher in a new administration. With less than six months before that transition, Secretary King's time at the Department is winding down. And with this upcoming change in leadership, States and school districts need the consistency and dependability to provide regulations, election year or not.

I look forward to hearing from the Secretary about his efforts to put in place a meaningful regulatory framework that empowers States and districts to fulfill the congressional intent and improve educational equity beyond the current administration. Thank you, Mr. Chairman. I yield back.

[The information follows:]

Prepared Statement of Hon. Robert C. "Bobby" Scott, Ranking Member, Committee on Education and the Workforce

Mr. Chairman, thank you for calling this important hearing to discuss implementation of the bipartisan law we worked to craft and enact last year. I look forward to dialogue with both Secretary King and the panel of expert witnesses concerning the Department of Education's ongoing efforts to provide states and school districts with the clarity and guidance necessary to ensure effective implementation of the Every Student Succeeds Act.

As I have stated previously, I am proud of our collective efforts to craft a strong bipartisan law that was worthy of the President's signature. Doing so was no small feat. However, passing legislation is only one step of many. Fulfilling the promise of the Every Student Succeeds Act rests in successful implementation that honors Congress' longstanding intent of the Elementary and Secondary Education Act; the intent to support, promote and protect, at all levels of government, the right to educational opportunity for every child, regardless of race, income, language status, or disability.

While the ESSA returns much decision-making to the state and local level, this new law is not a blank check. Federal law includes important guardrails – most importantly, states and school districts are required to take action when students aren't learning. States and districts get to decide which actions are most appropriate to address each school's unique context, but the action is a non-negotiable.

A robust regulatory framework is necessary to ensure that states and school districts are getting the job done and ACTING in each and every school required by federal law. Regulations empower states and school districts to fully comply with federal law.

Getting this right is hard work and the federal government has an important role to play.

I want to thank the Department of Education, under the leadership of then-Acting Secretary King, for moving so quickly to collect feedback from and provide needed clarity to practitioners, parents, and community members through proposed regulations.

I also want to commend the Secretary and his staff for their transparency and continued collaboration with members of this committee and our staffs throughout the process. The Department's demonstrated commitment to fulfilling its regulatory responsibility is critical for helping states and school districts move forward expeditiously.

On this point, there is considerable agreement. Although some state and local stakeholder groups originally urged that there be no regulatory framework, those very same groups – in combination with others on the negotiated rulemaking panel – reached an agreement on the proposed assessment regulatory text. I want to thank members of the negotiating panel, including the Department, for working – and making compromises – to reach consensus on proposed regulations for some of the most contentious and challenging issues within the entire law. Their consensus

serves as a powerful affirmation of the need for the clarity and direction that regulations provide.

In addition to the negotiated rulemaking process, the Department recently released its proposed regulatory text for accountability, intervention, data reporting, and consolidated state plan development for public comment. Again, I want to thank the Secretary for moving quickly.

Many individuals and groups requested additional regulatory clarity on these important provisions, and the Department heeded those requests. As has been emblematic of the Department's work to-date, I am sure that robust dialogue with all stakeholders, including Congress, will inform revisions and improvements to the proposal during the 60 day comment period, which closes on August 1. I look forward to hearing from today's experts on the specifics of the Department's proposal.

Just as the federal government works to meaningfully engage with diverse stakeholders to effectively implement the new law, state and local leaders must use the clarity provided by federal regulations to work collaboratively with all stakeholders in developing new plans, as the implementation process moves forward.

The upcoming election will usher in a new administration, and with less than six months left before that transition, Secretary King's time at the Department is winding down. With this upcoming change in leadership, states and school districts need the consistency and dependability provided by regulations, election year or not.

I look forward to hearing from the Secretary about his efforts to put in place a meaningful regulatory framework that empowers states and districts to fulfil congressional intent and improve educational equity beyond the current administration.

Thank you, Mr. Chairman.

Chairman KLINE. The gentleman yields back. Pursuant to Committee Rule 7(c), all members will be permitted to submit written statements to be included into the permanent hearing record. Without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material evidence during the hearing you submitted for the additional hearing record.

It is now my pleasure to introduce our distinguished witness.

We are glad to have you here. As Mr. Scott said, the last time you were here, I believe you were still the acting Secretary, so congratulations on becoming the official Secretary of the Department of Education.

Everybody here knows your background and we are delighted that you are here. I am going to ask you now to raise your right hand.

[Witness sworn]

Chairman KLINE. Let the record reflect that Dr. King answered in the affirmative. Before I recognize you to give your testimony, let me just remind you of the lighting system. It will apply pretty rigorously to my colleagues, not so much to you. we will turn the 5-minute clock on; that is sort of a background reference to you. Please give your testimony as you see fit. It has been a long time since I gaveled down a cabinet Secretary for speaking too long, but if you would try to wrap up at a reasonable time because we are getting actually a surprising number of members to show up considering that the House adjourned and I am sure there was a race to the airport sometime early this morning. So I am going to make sure that all of my colleagues have a chance to engage in the conversation. Mr. Secretary?

TESTIMONY OF THE HONORABLE JOHN B. KING, SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION

Secretary KING. Thank you very much. Thank you, Chairman Kline, Ranking Member Scott, and members of the committee. I ap-

preciate the invitation to come back before this committee and testify today regarding how the Department of Education is moving forward with the implementation of the Every Student Succeeds Act which the President signed into law on December 10, 2015.

I am grateful that thanks to the leadership of Chairman Kline and Ranking Member Scott and members of this committee, Congress acted last year to reauthorize this critical piece of legislation.

Over the past 7–1/2 years, thanks to hardworking educators supported by families, our schools and students have made tremendous strides. Our high school graduation rate is at a record high and schools in 49 States are helping students meet college and career ready standards in assessing their projects.

More States also are investing more money in helping make sure children are ready to succeed when they enter kindergarten, increasing their spending on early learning by 1.5 billion dollars over the past 3 years and yet, so much work remains, far too many students from every background still arrive at college needing remedial classes, and black and Hispanic students continue to lag behind their white peers in achievement and graduation rates.

The latest figures from our civil rights data collection illustrate in powerful and troubling ways the disparities in opportunity and experience for different groups of students in our schools.

Just a few statistics. Students with disabilities are more than twice as likely as students without disabilities to be suspended.

Schools with high concentrations of black and Latino students are less likely to offer advanced courses such as calculus and physics which also are critical for success in college.

One out of every five high school students who are English language learners is chronically absent.

These are the very children that the Elementary and Secondary Education Act of 1965 as most recently amended by ESSA was designed to protect and serve.

The good news is that ESSA provides local communities and States with a pathway toward equity and excellence for all students as well as tools that will help them get there. Using the greater flexibility in ESSA, States will be able to go beyond test scores and mathematics and English language arts by adding their own indicators of school quality and progress to ensure a rigorous, well-rounded education for every student. We know that strong literacy and math skills are necessary for success in college, careers and life, but they are not sufficient.

And importantly, a rich, rigorous, well-rounded education helps our children make critical connections among what they are learning in school, their curiosities, their passions, and the skills they will need to become sophisticated thinkers and leaders who will solve the most pressing challenges facing our communities, our country, and our world.

Understanding that this requires all of us working together, States are expected to involve local educators, parents, civil rights groups, business leaders, tribal officials, and other stakeholders in choosing other indicators of quality such as decreases in chronic absenteeism or increases in the number of students taking and passing advanced classes.

The legislation also includes critical protections and provides additional resources for traditionally underserved students, such as students of color, students from low-income families, students with disabilities, students learning English, Native American students, fostered and homeless youth, and migrant and seasonal farmworker children.

States must take meaningful actions to improve schools where students or groups of students are struggling and high schools that have low graduation rates year after year, but the flexibility of the law also allows them to tailor these interventions to schools' specific needs. As with all legislation and policy, the quality and fidelity of the implementation is critical to success.

Please allow me to update you on our progress towards helping the States implement this law fully and faithfully.

The first thing we did was listen. Today, we have convened over 200 meetings with stakeholders across the country.

This included dozens of meetings with educators and school leaders in rural, urban, and suburban communities across the country.

We posted a notice seeking public comment on areas in need of regulation in the Federal Register and requested feedback on areas in need of guidance. We received hundreds of comments. In response, we prioritized accountability, including data reporting and State plans, assessments under Title I, Parts A and B, and Title I's requirement that Federal dollars supplement and not supplant State and local funds for education.

As you know, this past spring, we engaged in negotiated rulemaking on Title I, Part A, assessment and supplement, not supplant, regulations. We appreciate the input we received and reached consensus on assessments, but not on how to enforce the law's supplement not supplant requirement.

We are now considering how best to address the feedback we received on the latter as we develop our policy.

Last month, we also issued our Notice of Proposed Rulemaking on accountability, State plans, and data reporting which was published in the Federal Register on May 31st for a 60-day public comment period, concluding on August 1st. We encourage comment on those proposed regulations.

Consistent with a strong civil rights legacy of the law, the proposed regulations ensure a focus on all students, including historically underserved subgroups of students, in accountability decisions. They also ensure that meaningful action is taken to improve lowest performing schools with families, educators, and stakeholders playing an important role in the process. They also ensure that educators, students, and families have an accurate picture of students' academic performance.

In April, I announced the Department would be issuing nonregulatory guidance in several key areas concerning students in foster care, homeless students, and English learners. Each of these areas was raised frequently as a priority issue in our stakeholder outreach.

I am happy to report that this morning, we have released guidance on ensuring educational stability for children in foster care. As you know, ESSA for the first time it includes protections for fos-

ter youth who largely, because of their mobility, lagged behind their peers academically.

Our guidance, released jointly with the Department of Health and Human Services, clarifies the new statutory requirements regarding children in foster care, promotes greater collaboration between State educational agencies, local educational agencies, and child welfare agencies as well as highlighting promising examples to help guide implementation.

We plan to issue guidance to support homeless students and English learners at the end of this summer or early fall.

The Department is also working on guidance to support States and districts as they implement Title II, Title IV, and the provisions in ESSA around early learning.

Our aim with these guidance documents would be to highlight examples and best practices as States and districts make use of new funding opportunities in the law.

As I noted at the time, we have made incredible progress as a Nation over the past several years, but there is more to be done. ESSA is a bipartisan achievement that provides a statutory foundation to close our remaining gaps and address our persistent inequities.

I am pleased to hear feedback from this committee today and look forward to continuing to work with all of you to ensure high-quality implementation of this law, supported by the Department, and that guarantees a world-class education for every child. Thank you, I am happy to answer your questions.

[The statement of Secretary King follows:]

EMBARGOED UNTIL DELIVERY

U.S. DEPARTMENT OF EDUCATION

Statement by Secretary John King

Hearing, "Next Steps in K-12 Education: Examining Recent Efforts to Implement the Every Student Succeeds Act"

U.S. House of Representatives, Committee on Education and the Workforce

June 23, 2016

Thank you Chairman Kline, Ranking Member Scott, and members of the Committee. I appreciate the invitation to come back before this Committee and testify today regarding how the Department of Education is moving forward with the implementation of the Every Student Succeeds Act (ESSA), which the President signed into law on December 10, 2015. I am grateful that, thanks to the leadership of Chairman Kline and Ranking Member Scott, and the Members of this Committee, Congress acted last year to reauthorize this critical piece of legislation.

Over the past seven years, our schools and students have made tremendous strides. Our nation's high school graduation rate is at a record high 82%, in part due to significant gains by historically underserved student groups. 49 States and the District of Columbia have adopted and are implementing rigorous, college- and career-ready standards and aligned assessments for all students. In the last three years alone, since the President's call to action on preschool for all, 38 States and the District of Columbia have increased their public pre-school investments for four year olds by more than $1.5 billion. When the President made that call to action, 11 States did not offer preschool. Now all but four States do. Between 2008 and 2013, there was a nearly 30 percent reduction in the number of students who did not graduate on time and college enrollment for Black and Hispanic students is up by more than a million.

And yet so much work remains. Far too many students from every background still arrive at college needing remedial classes. And pernicious gaps remain for students who have been underserved for generations. Black and Hispanic students continue to lag behind their White peers in achievement and graduation rates. Our recent Civil Rights Data Collection (CRDC) release illustrates, in powerful and troubling ways, the disparities in opportunities and experiences that different groups of students have in our schools. Students with disabilities are more than twice as likely as students without disabilities to be suspended. Black and Latino students participate at lower rates in gifted and talented education programs. Schools with high concentrations of Black and Latino students are less likely to offer

advanced courses, such as calculus and physics. One out of every five English learner and more than a quarter of Native American high school students is chronically absent. These are the very children that the Elementary and Secondary Education Act of 1965, as most recently amended by ESSA, was designed to protect and serve.

ESSA advances equity by upholding critical protections for America's disadvantaged students. The law maintains resources and supports for students from low-income families; students with disabilities; English Learners; Native American students; foster and homeless youth; neglected, delinquent, or at-risk youth; and migrant and seasonal farmworker children. ESSA requires that all students be taught to rigorous college- and-career ready academic standards and that vital information about their progress and performance be shared with educators, families, students, and communities on an annual basis, through statewide assessments. For the first time, the law asks States to consider the progress of all of their English Learners toward English Language Acquisition in the context of their Title I plans. ESSA also encourages a smarter approach to testing. Our Administration is pleased that ESSA includes provisions consistent with President Obama's Testing Action Plan, which put forward principles for reducing the amount of classroom time spent on unnecessary standardized testing, encouraging States to limit the amount of time devoted to these assessments and supporting efforts to audit, streamline and improve assessments at the State and local levels.

Through this law, Congress has reinforced the Federal commitment to holding ourselves accountable for the progress of all students while establishing a new, improved Federal-State partnership that moves away from the one-size fits all approach of No Child Left Behind (NCLB) and its overemphasis on testing as the only means of assessing how schools and students are doing. ESSA builds on the work already underway in States to develop their own strong State systems for school improvement. And it maintains the expectation of meaningful action to support students in schools where students or groups of students are struggling – and, in high schools that have low graduation rates year after year.

At the same time, ESSA creates an opportunity for States to reclaim the goal of a well-rounded education for all students. We have long understood that English Language Arts and Math test scores alone do not tell us all we need to know about our students' progress, or their readiness for college and careers. Under the new law, States have an opportunity to broaden indicators and measures of a successful school for the 21st century while maintaining a focus on key academic outcomes. That may mean States measuring how students – particularly historically underrepresented subgroups of students – are doing in Advanced Placement and International Baccalaureate courses, or whether they have

access to rigorous coursework like physics or computer science. It may mean States taking a closer look at chronic absenteeism, postsecondary enrollment, placement in remedial college coursework, or socioemotional development as additional measures of how schools are serving all students.

The possibilities are expansive, but their real-world impact for children will depend on implementation. As a parent of children in public school, and a former teacher, principal, and State education commissioner, I can tell you that the prospect of a new law of this magnitude is both exciting and daunting. There is an incredible amount of work to be done at all levels to implement the law. ESSA represents a significant departure from NCLB in many ways. There are new opportunities, such as the Innovative Assessment Demonstration Authority, and new requirements, including the requirement to publicly report per-pupil expenditure data. The law rightly shifts more authority to States and also expects more of them – from developing and incorporating new indicators beyond test scores and graduation rates into their accountability systems to building the infrastructure for meaningful stakeholder consultation and engagement.

Since the bill was signed into law, we have been listening to the many stakeholders who care about implementation. We met with teachers and principals and their representatives, State and school district leaders, tribal officials, parents, civil rights leaders, and many others to hear their questions and concerns and identify areas in which regulations, guidance, or technical assistance might be most needed. We posted a notice seeking public comment on areas in need of regulation in the Federal Register, and also requested feedback on areas in need of guidance. We received hundreds of comments. All told, we held over 200 meetings with stakeholders across the country. And our outreach continues.

In response to that feedback, we announced our intention to regulate in a few key areas: accountability (including data reporting) and State plans, assessments under Title I, Parts A and B, and Title I's requirement that federal dollars supplement, not supplant, State and local funds.

As required by statute, for the Title I, Part A assessment and supplement, not supplant regulations, we engaged in negotiated rulemaking in late March and early April. Through that process, we were able to gather a lot of good input and feedback, and reached consensus on assessments, but not supplement not supplant. For Title I, Part A assessment regulations, the consensus-based language will be reflected in the notice of proposed rulemaking that we will publish later this year. For supplement not supplant,

we are considering how best to address the feedback we received from a wide variety of stakeholders and carefully considering how best to meet the objective behind this proposed regulation.

Our notice of proposed rulemaking (NPRM) on accountability, State plans, and data reporting was published in the Federal Register on May 31 for a 60-day public comment period concluding on August 1. We welcome comment from all quarters on these proposed regulations – including from members of this committee. In addition, the NPRM contains several directed questions on which the Department is seeking particular input. As always, we know the regulations will be improved through public input, and we look forward to receiving feedback.

One of our top priorities in the proposed regulations was to guarantee a meaningful role for stakeholders in the development of each State's vision for its educational system. It is important that the input and perspectives of parents, teachers, principals, civil rights and community leaders, and other state and local education and community leaders be reflected in both the initial development and the ongoing implementation of State plans under ESSA, especially as state and local leaders shape new school accountability systems under the law.

Our proposed regulations on accountability create flexibility for States to create their own vision of an excellent, well-rounded education, and add their own indicators of school quality or student success to include in their accountability systems, such as chronic absenteeism or access to and success in advanced courses. States have flexibility to choose these indicators, as long as they can be measured by subgroup, meaningfully differentiate among schools, and demonstrate that they are related to academic achievement or graduation rates.

Consistent with the strong civil rights legacy of the law, the proposed regulations ensure a focus on all students and historically underserved subgroups of students in accountability decisions, and provide safeguards to ensure that all students have an accurate measure of their academic performance, and that parents and communities are informed when students are falling behind. And the proposed regulations confirm that public charter schools must be included in State accountability systems.

The proposed regulations ensure that meaningful action is taken to improve student outcomes in the lowest-performing 5 percent of schools, in schools that fail to graduate at least two-thirds of their students, and in schools where a subgroup of students is consistently underperforming or chronically low-performing. At the same time, the regulations build on the new law's flexibility around school improvement and intervention and support locally designed solutions to improve struggling schools, and

provide a clear role for parents, families, educators, and stakeholders to meaningfully participate in the implementation process. These strategies must be evidence-based and, as a part of determining how to improve their lowest-performing schools, districts must look at resource inequities.

The proposed regulations ensure that parents, educators, and community members have key information about how schools and students are performing and being supported, providing clear and transparent data on report cards on critical measures of student success, school quality, and resource equity – including per pupil expenditures, and enrollment in postsecondary education. And in order to ensure that parents and students have a clear sense of how their schools are performing, the proposed regulations require a comprehensive summative rating for each school based on the State-designed system of indicators.

Finally, the proposed regulations encourage States to think comprehensively across their programs about how to support student success, and streamline requirements, through their submission of consolidated State plans. As a former State chief, I know how important it is not to think about these programs as separate silos, and instead to think holistically about the best ways to spend Federal funds.

In April, I announced that the Department would be issuing non-regulatory guidance on several key topics: students in foster care, homeless students, and English Learners. Each of these topics was raised frequently in our stakeholder outreach. I am happy to report that this morning we released the first of those three – *Ensuring Educational Stability for Children in Foster Care* – and plan to issue guidance to support homeless students and English Learners at the end of the summer or early fall. The Department is also working on guidance to support States and districts as they implement Title II, Title IV, and the provisions in ESSA around early learning. Our aim with these guidance documents will be to highlight examples and best practices as States and districts make use of some of the new funding opportunities in the law. These guidance documents are designed to help States and school districts understand their options and share what the Department has learned about what works across the country.

Today's guidance addresses concerns specifically related to students in foster care, who are more likely to lag in academic achievement or be retained in grade, and less likely to graduate high school, than their peers. An important contributing factor is the high mobility of these children, which often causes unplanned school changes and slowed academic progress.

To address these concerns, ESSA added important new protections for children in foster care to promote greater educational stability and improved educational outcomes overall. Our guidance on

these ESSA foster care provisions, released jointly with the Department of Health and Human Services, clarifies the new statutory requirements regarding children in foster care, promotes greater collaboration between State educational agencies, local educational agencies, and child welfare agencies, and highlights promising examples to help guide implementation. We hope that this guidance, developed with the input of a diverse group of stakeholders, will be a helpful tool that equips the field to successfully implement the new foster care provisions under ESSA and to improve supports for children in foster care more generally.

We are continuing to engage with stakeholders to identify additional areas where guidance and technical assistance may be useful. Our goal is a Federal-State partnership that will support local school districts and their schools in helping every student succeed.

As I noted at the beginning of my remarks, we have made incredible progress as a nation over the past several years, but there is more to be done. ESSA provides the statutory foundation to close our remaining gaps and address our persistent inequities. Through high-quality implementation of this law, supported by the Department, we can ensure a world-class education for every child.

Thank you. I am happy to answer any questions that you have.

Chairman KLINE. Thank you, Mr. Secretary. I will be happy to start my feedback now. I partially quoted some of your remarks from February in my opening statement. That quote came in response to my request that you would commit to regulating consistent with the statute.

You said in full, and I am happy to read here and make sure I have got it right, "You can trust that we will abide by the letter of the law as we move forward to do regulations, provide guidance and technical assistance to States and districts, and our intent is to work together with you and to gather input from educators, from parents, and from members of this committee as we move forward."

I am concerned your proposal is not fully consistent with that commitment. The questions I and other members have will reflect those concerns.

I want to start by asking you about the supplement, not supplant proposal which you discussed in your opening remarks. As you know, we asked the Congressional Research Service to review the proposal and they agreed with us that your proposal, if it were promulgated as a final rule, would likely be illegal.

They said, and I quote, "Based on the plain language of the above provisions, in conjunction with the legislative history and the statutory scheme as a whole, it, therefore, seems unlikely that Congress had intended Section 1118(b) to authorize the Education Department to establish regulations of the required Title I(a) expenditures to meet or exceed those of non-Title I(a) schools."

I would like you to respond specifically to one of those conclusions. CRS said the plain language of the section does not appear to require equalized spending and the chair proposal failed to justify why you believe it does. Could you explain, beyond the talking points we have already heard, how a plain reading of Section 1118(b) would require the result you have proposed?

Secretary KING. Sure, the historical context for supplement not supplant is important. That language was originally added to the law after the NAACP LDF report that showed that Federal dollars were being used to backfill State and local responsibilities to high-need schools, particularly those serving students of color. That is the history of that language. The language clearly must mean that the Federal dollars are intended to be supplemental, not to backfill State and local responsibilities.

We know that there are districts where 25 to 30 percent more is being spent in schools serving affluent students than in schools a few blocks away serving low-income students.

That is clearly inconsistent with the very words supplement not supplant.

Our proposal seeks to ensure that we enforce the law as written, that the funds are truly supplemental, however, we received feedback throughout the negotiated rulemaking process, adjusted the proposal throughout that negotiated rulemaking process, have continued to receive feedback and input from stakeholders since the completion of the negotiated rulemaking sessions, and look forward to moving forward in a way that is responsive to the feedback and input we have received.

Chairman KLINE. Well, I thank you for the response. However, the point I am trying to get at is that the statute, the plain lan-

guage of the statute, is very, very clear and it does not say that the Secretary is allowed to decide on his own what the intent of the history of this was. The language is very, very clear and that is what the Congressional Research Service said.

Second, I want to ask one straightforward question about your accountability proposal. In looking at it in totality, my concern, you are deliberately attempting to increase the number of schools identified for interventions beyond what was intended in the statute.

Five years from now, what number or percentage of schools nationwide do you anticipate will be identified for comprehensive and target support as a result of these regulatory proposals?

Secretary KING. The proposal really seeks to ensure that States have the opportunity to broaden their definition of educational excellence, to introduce additional indicators of performance beyond just English and math performance and graduation rates.

It also creates the opportunity for States to set goals and targets for performance and it importantly requires that States and districts intervene when schools are in the bottom 5 percent of performance, when schools are struggling with particular subgroup performance, and when schools have low graduation rates year after year. The number of schools that will be identified will depend on how States use that flexibility, but clearly a priority in the law was to ensure that States act meaningfully in schools that are struggling over their achievement gaps and that is what the regulations require.

Chairman KLINE. So as you pointed out, you do not know and that is not to be—not a surprise. How many schools would fall into that category?

Presumably, the Department is doing some analysis of this as it goes forward and if that is so, would you please commit to providing that analysis to us so we can see how this is going to unfold? I am afraid that right now, I mean, we are early here and that is why I am glad you are here so we can get at this, it looks like there is an attempt here to increase the number of schools identified for interventions. And so we want to look at that analysis. That is not the intent of the statute, we need to see that number go up.

We wrote the language very specifically. Yeah, I have asked and you have answered that you will give us that analysis as we go forward. Let me yield for questions to Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Before I begin, I would like to submit for the record documents, one a statement released yesterday by 31 civil rights groups calling for stronger accountability regulations and another letter from the leadership of the Tri-Caucus urging the Secretary and the administration to fulfill its regulatory obligation and protect the civil rights of all students, including that supplement not supplant and—

Chairman KLINE. No objection.

Mr. SCOTT. Thank you. And Mr. Secretary, when you propose regulations as a comment period, what is the purpose of the comment period and what happens after the comment period?

Secretary KING. The purpose is really for us to gather input from stakeholders. We want to hear from educators, from parents, from civil rights organizations, from tribal leaders, from business communities, from community based organizations that are working

with young people, particularly our young people most at risk and we will gather that input and we will address it and similarly we want input from members of Congress and appreciate this opportunity to gather feedback.

The ultimate regulations will reflect our attempt to respond to the input we have received.

Mr. SCOTT. You mentioned supplement not supplant. There's language in Brown v. Board of Education that said that the opportunity of education is a right which must be made available to all on equal terms.

If a locality is chronically underfunding certain schools, is there not an obligation to come up with some appropriate equitable funding outside of the ESSA?

Secretary KING. Absolutely.

Mr. SCOTT. And then supplement and not supplant would mean that you would have to supplement over what your legal obligation is, is that right?

Secretary KING. That is right.

Mr. SCOTT. Can you say a word about how you identified—how you make sure that all students in underserved schools receive the support that they need in light of the fact that some schools look like they are doing okay but subgroups are not performing?

Secretary KING. That is right. We have been careful in regulations to try to ensure that schools do not fall through the cracks because we do not want students to fall through the cracks, so the regulations give States the opportunity to set meaningful goals and targets, but require them to intervene where schools are not making overall progress for their subgroups. And so we will be vigilant in showing that States respond and States have to intervene where subgroups are struggling, where the schools are in the bottom 5 percent of performance or where they have low graduation rates. And if their interventions do not meaningfully improve student performance, they will need to intensify those interventions using evidence of effectiveness.

Mr. SCOTT. Now, you mentioned the bottom 5 percent. There is some suggestion that the data collected will not allow you to rank schools and if you cannot rank schools, how do you ascertain the bottom 5 percent?

Secretary KING. That is an excellent question. It is one of the reasons the regulations require a summative rating, but how States approach that summative rating could vary.

Some States may use a numerical index, some States may use an A–F methodology, some States may use categorical labels for different sets of schools, but the law does require that States intervene in that bottom 5 percent of schools and they will need to have a summative rating to get to that bottom 5 percent.

Mr. SCOTT. Last month, the GAO released a study that I requested, along with former Ranking Member George Miller and Judiciary Committee Ranking Member John Conyers, on segregation in public schools K–12. The GAO report found that there is an increase in racial and socioeconomic segregation and that it is getting worse.

I have asked for hearings and, hopefully, one day we will have hearings on that, but what can ESSA do to reduce racial and socioeconomic segregation in our public schools?

Secretary KING. Let me say we are deeply concerned about the lack of progress since Brown v. Board of Education in places around the country where we are seeing increased socioeconomic and racial isolation.

I think there is an opportunity as States consider their flexibility to intervene in struggling schools to think about how they create a strategy that would promote school diversity.

We made school diversity a priority in our competitive grant programs. The President, as you know, has proposed in the 2017 budget an initiative called "Stronger Together" that Senator Murphy and Congressman Fudge and you are also helping us to advance, that would allow us to direct resources to support voluntary locally led efforts to increase school diversity.

We also are using the magnet schools program, the longstanding magnet schools program, to support local efforts to increase school diversity, but we know that for our low-income students, they do better in schools that are socioeconomically diverse.

We know that we want to prepare all of our young people for success in a diverse society. All kids benefit from diverse schools.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman KLINE. Thank you, gentlemen. Dr. Foxx, You are recognized.

Ms. FOXX. Thank you, Mr. Chairman. Secretary King, welcome to the committee. I would like to return to the supplement not supplant conversation.

In 2011, the Department issued a policy brief and report analyzing the compliance and the comparability requirement for per pupil expenditures for Title I schools, a proposal that is analogous to the Department regulations. Assuming you have more recent data, would you please provide us the estimated cost in State and local dollars of compliance with the proposal put forth by the Department during negotiated rulemaking?

Secretary KING. I just want to make a distinction in the way that the question was framed between comparability and supplement not supplant. Comparability addresses the issue of services, supplement not supplant addresses the issue of the allocation of State and local funding.

The proposal that was discussed in negotiated rulemaking and adjusted throughout the negotiated rulemaking would require States to comply with the—supplement districts to comply with the supplement not supplant provision of the law. The process that districts would use to do that would be determined by the districts and so there is not a single number that can be estimated today for that proposal. But as I said, the proposal was adjusted throughout the negotiated rulemaking and we will continue to adjust that proposal based on the input and feedback we have received since then.

Ms. FOXX. Well, how can the Department put forward a regulatory proposal without understanding the financial impact and how can the Congress and the public be expected to evaluate its wisdom without such information?

Secretary KING. Well, the requirement in the statute is that the Federal dollars be used in a way that is supplemental. In fact, the language "supplement not supplant" is intended to separate the issue of the use of Federal funds from the issue of State and local funds, to say that State and local funds should be allocated in a way that is equitable and then the Federal funds should be supplemental.

Ms. FOXX. The Center for American Progress reported last year the nationwide compliance cost for proposals similar to yours would be 8.5 billion. Do you think that is a reasonable estimate?

Secretary KING. Again, the design of the proposal was to implement the requirement in the statute that the Federal dollars be used in a way that is supplemental. Districts have a responsibility to ensure that they are not using those Federal dollars to backfill State and local funds. To the extent that districts are today using Federal dollars to backfill State and local funds, that is not consistent with the very words "supplement not supplant."

Ms. FOXX. Let me now focus on how school districts would comply with your proposal. The Department's 2011 report indicates some of the Nation's largest school districts could have to increase spending by anywhere from less than 1 percent to as much as 20 percent.

Please tell the committee specifically how school districts are not able to increase spending by these amounts to comply with your proposal.

Secretary KING. Again, the frame of the question suggests that districts today are using the Federal dollars in a way that backfills local and State responsibilities so the requirement would be for districts to ensure that they are not doing that, that the State and local funds are allocated in a reasonable fashion that allows the Federal dollars to be used to indeed supplement. And to the extent that a district is spending 25 to 30 percent more in a school serving affluent kids than in a school serving high needs kids 10 blocks away, that cannot possibly be consistent with the very words "supplement not supplant," and the adjustment they will need to make is one that is required by the statute.

Ms. FOXX. If school districts are forced to change teacher hiring policies and somehow find the legal and contractual authority to do so in order to comply with the proposal, school districts, rather than school principals will assume more authority for personnel hiring decisions in local schools.

Tell us how this would benefit low-income students when we know that effective principals with greater staffing autonomy can be one of the most effective ways to increase student outcomes?

Secretary KING. If today districts are using the Federal dollars in a way that is not supplemental, then they need to correct that. They can do that in a number of ways.

They could create incentives for veteran, highly effective teachers to go to schools. They could invest in pre-K programs in a high-needs school.

They can ensure that high-needs school has access to counselors or launches advanced coursework. The reassignment of teachers is not a requirement of the proposal. As a general matter, I do not think anyone supports forced transfers of teachers. That is not re-

quired by the proposal. What the proposal requires is that the Federal dollars are used in a way that is, in fact, supplemental.

Chairman KLINE. The gentlelady's time has expired. Ms. Davis, you are recognized.

Ms. DAVIS. Thank you, Mr. Chairman. Good to see you, Mr. Secretary. Thank you for joining us, although we probably got to bed a little bit later perhaps than you did.

I wanted to follow up with Ranking Chairman Scott's question and ask about the "n" size, the number of students that we group to evaluate whether or not they are being properly served. And I think that there are some concerns that students perhaps, especially special education students, for example, might not be really properly seen within an accountability system.

Could you comment on that and, for example, if the number fell to 28, 29 for a group, what would that mean?

Secretary KING. We are very concerned about issues of "n" size. What we propose in the regulations is that States would set their "n" size, but they would need to provide justification to the peer review process if they set an "n" size above 30. The reason we use that is based upon research evidence on how we ensure that we capture subgroups as well as possible.

IES did a study that showed that if you use an "n" size of 40 or more, you would only get to about 32 percent of students with disabilities but if you use an "n" size of 30, you would get to about 79 percent. So we ask States for a justification if they want to go above 30.

We have heard feedback that there are stakeholder groups who are interested in requiring a justification at a lower "n" size and we do worry about subgroups getting missed and at the schools where a particular subgroup of students does not get the adequate services to make academic progress and that is never identified. One of the important elements of the law is requiring subgroup disaggregated data and we want to make sure that is enforced while preserving for States the flexibility to justify their "n" sizes.

Ms. DAVIS. Exactly. I mean, the disaggregation we know is key.

In looking back at the way this was done previously and States moving forward, are you confident that you are going to be able to have this be more a universal standard or, in fact, it sounds like there is quite a bit of leeway perhaps with some groups? I just wanted to throw that out there because I know that it is a concern and it will be very important not to have that slipping.

Secretary KING. Yes, that is a very fair concern. The vast majority of States today are at 30 or lower and we think the peer review process will provide an important check on the end sizes that States ultimately choose.

Ms. DAVIS. All right, thank you. And I wanted to go to the issue of teacher evaluations because we know that in ESSA, it is quite clear that this is really up to local school districts. And yet I wanted to sort of talk about the language a little bit because clearly, in this legislation, we want States and we certainly want school districts to do the very best they can in developing a program that engages teachers in the process and in addition helps them be better, helps them do what they really want to do and have it be meaningful. And that is where many districts and many States really do

not have a process to do that, so where is the Federal role in that now and what is certainly within the purview of the ESSA?

Secretary KING. We think it is very important that the Every Student Succeeds Act preserves the language of equitable distribution of quality teachers from No Child Left Behind, and so we have been working with States, as you know, on equity plans where States are working on initiatives to ensure that their teachers are well prepared, that they have a diverse supply of teachers, that they are getting teachers to high-needs schools.

There are State initiatives focused on rural schools. State initiatives focused on the necessity of teachers of English language learners where some States are struggling in shortages and we think those equity plans are very important. What we propose in regulations for comment is that States will adjust and update those equity plans based on some of the new language that appears in the Every Student Succeeds Act. But we want to make sure that our low-income students, students of color, students with disabilities, English learners are not disproportionally taught by teachers, for example, who are teaching out of field. And so that is an important, I think, requirement of ESSA and an important principle.

Ms. DAVIS. Yeah, I think I am equally concerned about that sharing of information because we know that we have peer evaluation systems that actually work very well, also, and they may require more substitute time, but I just want to mention that and go ahead and—

Chairman KLINE. Gentlelady's time has expired. Dr. Roe?

Ms. DAVIS. Thank you.

Mr. ROE. Thank you, Mr. Chairman. And congratulations, Dr. King, on your nomination and appointment as Secretary. And just a couple of comments about backfill. And in our State I was the mayor of our local community. Once we had raised the education spending, we could never go back, so there was no backfill at all.

Anything that came in was additional to what we had in the list, at least in the State of Tennessee. And for the first time since I have been a Congressman, 7–1/2 years, it is fun to walk into an elementary school or high school and see smiling teachers and smiling administrators finally. They do like this bill.

I spoke with one of my school directors yesterday and I think it is really the implementation of it and that is why we are talking today so that last night we went to a 1,000-page rule to define one word. I do not think we need that kind of weight down on these folks and distance where we are, the Department of Education is provided grants where for the Foundation where I live, it has done a great job of getting distance.

I want to revisit a conversation we had in February about the weights States apply or the indicators of their accountability system. It said, and I quote, "I think we have an opportunity where the States can broaden how they define excellent education and make their definition more well rounded than the narrow focus on English and math assessments like we saw during the No Child Left Behind era."

I was pleased that your proposal did not prescribe weights or offer a range of weights in which States would have to choose but

I am concerned about the parameters that did include to limit the way States waiver indicators.

Can you point to me the statutory language that supports your proposal and how the limitations imposed in your proposal fit with your commitment to give States an opportunity to broaden how they define success?

Secretary KING. Thanks. I appreciate your question. So, we carefully, consistent with the statute, do not prescribe the weights or percentages for different indicators. The statute does require substantial weight for the academic indicators and that the academic indicators are of much greater weight than the other indicators. And so we built into the regulations a set of checks that will be implemented through the peer review process to ensure that States are acting in ways that are consistent with the statutory language around substantial weight and much greater weight.

But we do think there is tremendous flexibility for States to think through what additional indicators they will use to supplement English and math and graduation rates and opportunity for States to look at things like whether or not they are providing access to advance coursework as that effort tries to do in Tennessee, whether providing access to advanced coursework in a way that is equitable for various subgroups of students.

Mr. ROE. We agree that local control is essential. Accountability is essential and desegregation of data is essential to find out that our children—their needs are not being met.

Mr. Secretary, as you know, the statute requires States to include in their accountability systems at least one indicator of school equality or student success. The point of this, of course, is to ensure the State accountability systems are taking into consideration more than just test scores in determining school performance.

The statute includes a few broad parameters for this indictor but your proposal goes beyond those parameters by requiring that this additional indicator be supported by research that performance or progress on such indicator is likely to increase student achievement or graduation rates. Could you provide the statutory justification for adding this additional requirement?

Secretary KING. This is really about the State plan and showing that as States do this work of identifying these other indicators, that the indicators are connected to students' long-term success, which is the goal of these additional indicators being a part of the accountability system. And as the peers and experts on the peer review panels review the State plans, we think it is important for them to look at the indicators in that context.

One quick example: in the CRDC data that I just described, we found that nationally 13 percent of students are chronically absent. That is 13 percent of students are missing more than 15 days of school each year.

We know that chronic absenteeism is closely connected to students' progress from grade to grade and their likelihood of graduation. That is a good example of an indicator that a State might consider. Obviously it is up to States to decide what those would be, but that is a good example of where there is very strong evidence based on the association between that indicator and long-term success.

Mr. ROE. Just one last comment before my time expires is that I think we have a great opportunity to put the fun back in education again.

I mean, the teachers were just absolutely—I would go into a group of educators and ask how many would do this job again and the majority would not and that is not good. And I think this gives us an opportunity to put the fun back in education and I hope we do not weight it down too much. I yield back.

Chairman KLINE. The gentleman yields back. Ms. Adams.

Ms. ADAMS. Thank you, Mr. Chairman, and thank you Ranking Member Scott and Secretary KING. I thank you for joining the committee again and congratulations.

I am very proud of the work that was done to get the Every Student Succeeds Act passed into law. The reauthorization of the Elementary and Secondary Education Act was long overdue and we owe it to our students and families around this country to update this important legislation. And now as we work toward implementing the act, I believe it is appropriate for us as members of Congress to monitor its progress, but I am absolutely opposed to efforts to undermine the Department of Education and the spirit of the law. We had our chance to write the law and now we should let the process move forward. Additionally, the Federal Government has an appropriate role in education policy and I believe that the Department will move it forward to fully realize it.

In States like my State, North Carolina, Federal policies are essential to protect our students from a number of State policies that in my opinion are ruining a State that has once been a leader in education. Since Republicans took over the General Assembly, we have passed a number of bills and I was there during the time that in my opinion would dismantle public education and that has been some of what I have seen.

We need to value our educators more and we have some questions in North Carolina about whether or not we do that. We pay them less than the national average and we are ranked as one of the worst States in per pupil spending and so provisions like supplement not supplant are really imperative. So without it I am sure that North Carolina might make even deeper cuts to education and we are very concerned about that.

If you can just expand a little more on the importance of Federal funds being used to supplement instead of supplant State funds, I would appreciate that.

Secretary KING. Thank you. At the end of the day really this is a question of ensuring that all students have access to a quality education. And we know that in places where there is disproportionate spending on affluent students and less spending on high-needs students, it translates into a real difference in students' experience in school.

For example in that CRDC data, the Civil Rights Data Collection data, we found that there are 1.6 million students who go to a school that has a school police officer but no school counselor. If you have no school counselor in your school, how are you going to support students' socioemotional needs? How are you going to ensure that students have access to good postsecondary planning?

We found that in many of the schools that served the largest numbers of African American and Latino students, you cannot even take calculus or physics. How are we going to ensure diversity in the STEM fields and that students have an equitable shot at STEM careers if their schools do not even offer those classes? And so money certainly is not everything, but in schools that have inadequate resources, that lack of funding translates into a real lack of educational quality for kids.

Ms. ADAMS. Yeah, thanks. So oftentimes students attending Title I schools are students of color. These same students also make up consistently underperforming subgroups. And so having said that, do you truly believe that allowing States to choose how to determine the success of subgroups will actually result in the improvement of subgroup outcomes?

Secretary KING. I think we really have to be vigilant in the peer review process to make sure that States commit to meaningful goals and targets for subgroups.

In the regulations, we try to set guardrails around that process but peer review of the State plans will be critical and vigilance in the part of the Department and ultimately in the part of Congress to make sure that States are attentive to the needs of subgroups and that where subgroups are struggling, they meaningfully intervene. We know the history that there are States that have long ignored the performance of subgroups, States that prior to No Child Left Behind did not even count their English learners in their accountability systems at all.

We have got to be vigilant. We think that we have set the right guardrails in the regulations, but we also are interested in folks' feedback on those.

Ms. ADAMS. So thinking about these same subgroups of students without requiring specific summative ratings, how will we hold schools accountable for improved outcomes for our lowest performing students?

Secretary KING. We think that summative ratings are critical for transparency for parents, for teachers, and ultimately for communities. Which schools are struggling and need that additional support and also which schools are excelling and can be models for other schools to replicate their best practices.

We also require transparent reporting on each of the indicators because we think it is important to have that summative rating but also to have good information at the school level and also the subgroup level and all of the indicators.

Ms. ADAMS. Thank you, Mr. Secretary. Mr. Chairman, I yield back.

Chairman KLINE. The gentlelady yields back. Mr. Guthrie.

Mr. GUTHRIE. Hello, Mr. Secretary, and I agree that the way you write the law and you implement and execute the law is what our Founding Fathers intended. However, it is our responsibility not just to write the law and let it go, it is to have oversight to make sure you are complying with the intent and the language of the law. So a couple of things.

One, today my commissioner from Kentucky is going to be here to speak to us and one of the things I know he has concerns with and others have concerns with is about the expedited timeline re-

quired in your proposal. The ESSA says No Child Left Behind's accountability provision officially end on August the 1st of this year and in the statute it says that new accountability systems will begin with the 2017–2018 academic year. And it is clear that Congress intended for 2016–2017 to be a transition year to allow States to develop their accountability systems, yet your proposal effectively requires accountability systems to be developed and implemented 2016–2017, in this academic year. And I asked you about this transition when you were before us in February and you answered, and I quote, "As we move into the 2017–2018 school year, States will be well positioned to move forward on their new plans."

And I interpreted your answer as meaning you understood congressional intent that accountability systems would become active at the beginning of the school year. The initial identification of schools would come at the end of the school year based on those new systems. Unfortunately, what you propose seems to contradict the statute and will short circuit the important consultation process taking place at the State and local level.

Can you make a commitment to us to revise this proposal in the final rule to align the requirement with congressional intent and ensure that parents and educators have the opportunity to fully engage in the policymaking process?

Secretary KING. Just to be clear on the proposed rule, under the proposed rule that is currently out for comment, there is no State that would need to have their accountability system in place prior to 2017–2018.

The question is what will happen in 2017–2018? And we are interested in folks' feedback on the timeline. We are eager, I think, as the country is to ensure that we move beyond just English and math test scores and graduation rates, that we actually begin to use those other indicators. That is our opportunity to expand the definition of educational excellence and we would like to move quickly to that expansion.

I understand that there are folks who would like to extend the focus just on those English and math test scores and graduation rates, but we want to make sure we get to this broader definition. But we are interested in folks' feedback on the timeline and will try to listen carefully to the input we receive.

Mr. GUTHRIE. My commissioner will be here this afternoon testifying. I am sure you will have people here to hear feedback and continue the dialogue.

One thing on the "n" size and I understand that there is information prescribed by law that needs to be provided, the disaggregation of data, we want to make sure that groups are followed and we understand the statistics.

I understand that, but the statute allows the State to pick that "n" size and this says as long as they meet the criteria, you cannot prescribe the "n" size. It is pretty clear on that and that is something that we debated and talked about and we will not—I know you talked about one of my colleagues about the information. We want you to have that information because we voted to put into law that the country gets that information.

We also voted to say that we want the States to determine what that end size is and if they do not do it correctly then you have

some opportunity to do so, but it seems like you are prescribing an end size of 30 up front, which I am not sure where the statutory authority for that is.

Secretary KING. Just to be clear, we are not requiring any specific end size. What we are asking is when States submit their plan, if they choose an end size above 30, they provide information with respect to why they made that choice.

Mr. GUTHRIE. Do you give them deference if they have—

Secretary KING. Again, the regulation preserves the right of States to set their "n" size. Now, the peer review process does create an opportunity for the plan to be reviewed and I do think it would be important in terms of civil rights protection.

For example, if a State were to set their "n" size in a way that would ensure that students with disabilities would never be counted in their accountability system, that would clearly be problematic and I am sure that the peers and the peer review process would respond negatively to them, but in the regulation we do not set the "n" size.

Mr. GUTHRIE. Maybe I misread that, but 30 was the default unless there was some—it did not seem like the States were able to—and you are right, if the States set an end size that did not comply with the rest of the law, there is something that we need to address because we want that information as well. That is why we voted to support the law and negotiation.

I only have 10 seconds left, so I will yield back. Thanks for coming today.

Secretary KING. Thanks.

Chairman KLINE. The gentleman yields back. Ms. Bonamici, did you want to ask a question?

Ms. BONAMICI. Yes, please, Mr. Chairman.

Chairman KLINE. You are recognized for 5 minutes.

Ms. BONAMICI. Thank you, Chairman Kline. Welcome to the committee, Secretary KING. I wanted to align myself with the comments from Dr. Roe and others who have said that they have perceived a real difference in visiting with schools and teachers, educators, parents, students knowing that the changes were made and the Every Student Succeeds Act that they were desperately needing—and thank you for the work that you are doing along with the Department to implement the Every Student Succeeds Act and support States that are redefining their assessment and accountability systems to meet their unique needs. Thank you for your leadership and I want to follow up on a question that was just asked by Mr. Guthrie.

I understand the need to prevent a gap in meaningful interventions for students, but I am concerned that asking states to identify schools for comprehensive and additional and targeted support in the 2017–2018 school year could discourage States from being innovative. And I know the Department will work with States to modify their accountability systems and add indicators as data from districts becomes available, a process that could take several years.

Nonetheless, asking States to implement accountability systems in time for the 2017–2018 school year seems to run the risk of hampering innovation, so can you please discuss the Department's alternatives? Is there a way that we can both prevent a gap in sup-

port for students and give States the time to put in comprehensive accountability systems that make good use of new data?

Secretary KING. One important point about the proposed regulations is that States would be able to use the 2017–2018 year as a planning year for those schools that are requiring comprehensive intervention, but I think ultimately, as I have said, we are interested in feedback on the timeline questions.

I think we, like many educators in schools, have a sense of urgency about broadening the indicators that are used for accountability and to the extent that States are prepared to move more quickly to incorporate an indicator like chronic absenteeism or there are some States that have put forth a very meaningful effort to try to reduce disproportionate suspensions, for example, for students of color.

If States are in a position where they want to introduce those indicators, we would like to see them do that more quickly so that they are moving beyond just the English and math scores and graduation rates. But we are interested in feedback and want to work with States and districts to think through the best timeline.

Ms. BONAMICI. Thank you, and I am glad that the Department's proposed regulations for accountability would direct schools identified for comprehensive and additional targeted support to evaluate resource inequities, but the proposed rule appears to focus on only two examples of discrepancies and resources: per pupil expenditures and access to out of field and inexperienced teachers.

So considering these inequities is important, of course, but I wonder whether States and districts would not consider other important inequities, for example, access to advanced coursework, technology, arts and music. How will the Department encourage States and districts to identify and address a broad array of resource inequities?

Secretary KING. Yeah, we tried in the regulation to balance wanting to make sure that States do the things that they must and then also offering additional options and there is "may" language around things like advanced coursework and access to preschool, which we think is a very significant equity issue. But again, this is a place where we are open to feedback with always trying to strike the right balance around State and local flexibility and real transparency around resource equity. And we are interested in feedback not only from States, but from civil rights community and advocacy organizations as we think through the right resource equity indicators.

Ms. BONAMICI. Terrific, and the Every Student Succeeds Act is clear that participation rates for a statewide assessment needs to be a factor in accountability systems and the Department's proposed rule for accountability systems would give the States four options for incorporating data on participation.

One of the options allows States to develop their own proposals for including participation rate in accountability systems. For States that pursue this route, how will your Department assist them as they contemplate actions that are perhaps less punitive but no less effective in ensuring that all students are counted?

Secretary KING. I think this issue of the participation rate is very bound up with how do we ensure strong parent understanding of

the role of assessments in schools? And I think there are clearly reasons that folks have seen over the last decade.

An increase in assessments, not the federally required assessments, but increase in assessments in schools that have driven a very legitimate set of concerns, that is why the administration proposed a testing action plan and has put forward guidance and helped to offer places where folks can use existing Federal resources to support reductions in assessment.

That is a feature of the Every Student Succeeds Act that we want States to take advantage of and districts to take advantage of so that they right-size the assessments and where they can, replace maybe low-level bubble tests with higher quality performance-based assessments. Those kinds of efforts we think will help ensure that States and districts are able to comply with the law's expectation that all students will participate in the assessments.

Ms. BONAMICI. As someone that has been talking about fewer, better assessments for a long time, I look forward to continuing to work with you on that and I yield back the balance of my time. Thank you, Mr. Chairman.

Chairman KLINE. The gentlelady yields back. Mr. Byrne?

Mr. BYRNE. Thank you, Mr. Chairman. Mr. Secretary, it is hard to remember all of us up here. I am going to remind you that I am a former member of the Alabama State Board of Education for 8 years. All four of my children attended the public schools in the State of Alabama. All four of them attended a magnet school in the city of Mobile, a large urban school system. So I have a great deal of interest in this and I have very high expectations for the performance of our public schools with regard to every student.

When you were here before the committee in February, I asked about the phrase of the new law "consistently underperforming and whose responsibility it is to define the term." I also wrote a follow-up letter on March the 1st that you responded to on June 17th, 3–1/2 months later.

Now, in your response, you pointed to the proposed rulemaking. When you were here before, you did not really answer my question and after reading the proposal, I think I understand why.

When you were here before, you did say to me, "I am committed to working with this committee, committed to ensuring that implementation is consistent with the letter of the law."

I would say to you, Mr. Secretary, if you are committed to working with the committee, taking 3–1/2 months to answer my letter is not consistent with that remark.

The letter of the law says the meeting of "consistently underperforming" is to be determined by the States.

The letter of the law also says that you are prohibited from prescribing "the specific methodology used by States to meaningfully differentiate identified schools under this part."

Now, taken together, the law prohibits you from constraining State flexibility around the definition of "consistently underperforming," yet your proposal does exactly that so help me.

Why would you violate the statute of your proposed rulemaking and give a definition when the Every Student Succeeds Act prohibits you from doing so and requires you to leave that up to the States? Why did you do that?

Secretary KING. To be clear, in our regulation, "consistently underperforming" is defined by the State, using goals and targets that the State would set.

Again, our role, we believe, is to try to gather feedback and input, which we did. And based on that input, we put forward a proposed rule that is now out for comment, but we were careful to comply with the letter of the law and "consistently underperforming" is left to States to define with their own goals and targets.

Mr. BYRNE. Well, I would ask you to go back and look at the rule because I think it does prescribe and I think you are setting yourself and the Department up for a lawsuit that you would lose.

I am not going to file it, but somebody will. And you talked earlier about legislative intent. I am giving you legislative intent right now. You need to go back and look at your rule because it clearly violates the letter of the statute and prescribing.

It needs to totally leave this up to the States and in any way that you prescribe to the States how they make that determination, you are clearly in violation of the statute. So I am asking you to go back and look at your rule, hear what a member of this committee that is a strong proponent of this law is telling you, and I think if you do, and you are a smart man and you are a fair man, if you go back and look at it fairly, you are going to see that you are in violation of the statute.

I do not want you to be in violation of the statute. I do not think you want to be in violation of the statute. But when you have a consistent pattern of this administration and putting out regulations after they have been warned that you are in violation of the statute as written by Congress and then somebody has to file a lawsuit, here is what happens when a lawsuit is filed. You spend a lot of resources, the people that file the lawsuit spend a lot of resources, and every penny of those resources is a penny that did not go to educating a child. And I want, and I think you want, every resource we can bring to bear to educate children in this country.

Somebody deep in the bowels of your Department or some smart lawyer that is working with you is taking you in a direction that the statute clearly prohibits you from going. And as someone that wants this to work, I am telling you, go back and look at your rule because I think you are in violation of the statute.

Secretary KING. I appreciate the feedback. We will look at the rule, but, again, I just want to underscore that States will set the goals and targets from which the determination of consistently underperforming will be made.

Mr. BYRNE. We are going to hold you to that and I yield back.

Chairman KLINE. The gentleman yields back. Mr. Rokita?

Mr. ROKITA. I thank the chairman. Thank you, Mr. Secretary. I want to continue on this line of questioning regarding your rules, but a different rule, supplement versus supplant. You recall that under the old SNS rules, supplement not supplant rules, that we differentiate between targeted schools and school-wide schools, and targeted schools have 3 specific tests and for schools that were less than 40 percent low income, correct? And the school-wide group was for schools that were more than 40 percent of kids—yeah, more than 40 percent schools.

And you acknowledge, don't you, that under ESSA, the Every Student Succeeds Act, that the methodology for distributing State and local funds to schools is just to be fair and equitable without regard to receipt of Title I funds? So we got rid of the targeted test in ESSA and had the school-wide test for all of SNS.

Secretary KING. It is written with the core requirement being that the Federal dollars are, in fact, supplemental.

Mr. ROKITA. Right, but it is the school-wide test now applied for all SNS. Your rule has a methodology applied to it that calls for Title I schools to receive at least as much input in per pupil funding as the average amount of per pupil funding received by the districts non-Title I schools.

So we specifically put prohibition in the new law that says you are not to apply methodology, yet you do. So how are you not in conflict, directly in conflict, with our legislative intent, similar to what Mr. Byrne was pointing out?

Secretary KING. So just to clarify on the timeline, so we have a proposed rule that was offered in negotiated rulemaking, feedback was given during negotiated rulemaking, the rule was suggested, and we continued to receive input and feedback and do not have currently a rule out for public comment, but—

Mr. ROKITA. Does that mean that—

Secretary KING. We anticipate issuing a regulation on this, but I just want to be clear that there is not currently a proposed rule that is out for comment.

Mr. ROKITA. They are negotiating rulemaking and you do realize that you are in direct conflict with—

Secretary KING. So with respect to negotiating rulemaking, we do not prescribe the methodology. In fact, the methodolgy is left to districts, districts could use, for example, a weighted student funding formula approach.

A district could use an approach that is based on the traditional assignment of staff model of budgeting, so we do not prescribe the methodology. What we were trying to do in the rule that was discussing negotiating rulemaking is ensure that districts are indeed using the Federal dollars in a way that is supplemental and not backfilling State and local responsibilities.

Mr. ROKITA. Do you agree that the only requirement we have in the Every Student Succeeds Act regarding the methodology and distribution of SNS funds is that the fair and equitable and agnostic as to a school's Title I status, that was the intent? I was in a conference committee and I helped write this law. That was our legislative intent.

Secretary KING. But clear history on supplement not supplant is—

Mr. ROKITA. I am not talking about history, I am talking about this new law.

Secretary KING. Including in the new law, the language in the new law is quite clear on the notion that the Federal dollars will be supplemental and in order to—

Mr. ROKITA. The methodology around that, the only requirement is that we have to be agnostic as to a school's Title I status and otherwise be fair and equitable.

Secretary KING. If the district is using the Federal dollars—

Mr. ROKITA. Correct.

Secretary KING.—in a way that supplements rather than supplants local and State obligations.

Mr. ROKITA. But you understand that you are defining what "supplement" means, though, through the methodology that it be fair and equitable. That would take in the school-wide test and applying it to all of SNS. And in doing that, the only requirement is that a district's method for allocating State and local funds be agnostic as to the school's Title I status, agreed?

Secretary KING. Not if they are supplanting. I think there are two things. There is the question of the district's methodology, which is up to the district, and then there is the question of whether or not the Federal dollars are being used in a way that is, in fact, supplemental and that is the plain language of the statute——

Mr. ROKITA. It seems like the Department and you, sir, are maybe using some comparability attempts to backdoor SNS, I mean—

Secretary KING. No, because comparability is focused around services and with supplement not supplant, we are focused on the allocation of funds.

Mr. ROKITA. I do not think so. I think the CRS document—are you familiar with Congressional Research Service's document? On that it explains how your supplement not supplant proposal is really a backdoor proposal to amend the statute's comparability provision, and they walk through legislative history of that provision during Congress deliberations on what became ESSA. And they said a relevant part, "ESSA did not alter the existing statutory language and prohibits the use of staff salary differentials when determining expenditures per pupil from State and local funds. Nevertheless, the proposed regulations appear to effectively require LEAs to use actual teacher salaries for SNS purposes despite the fact that ESSA did not address it in this manner." And I have to yield back.

Chairman KLINE. Gentleman yields back. Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman, and thank you, Mr. Secretary, for being here, and the discussions to the questioning that is going on is important for us to do. Northwest Ordinance stated about education, religion, morality acknowledged being necessary to a good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

That is not in the U.S. Constitution. That is in the Michigan Constitution, taking high priority for the necessity of having schools and education encouraged so that people will be happy and productive. And so a discussion today as we have passed ESSA is really an attempt to roll back the power of authority, direction, control of the Federal Government, and to really give, as we have talked about at least in a bipartisan way, the front quotient back, the exciting quotient back, to educators in the classroom, school board members on the board, parents with means, and aspirations for their kids to know that education is a neat, beautiful, fun, and productive priority in civilization and that the greatest control will come from with the creativity from the local schools, teachers in the classroom, school boards, parents who love their kids, State boards of education.

And so today as we are discussing this, it is becoming at least evident to me that this is a creative tension that we have when we have a powerful entity in the U.S. Department of Education, arguably wants to do right by kids in schools, but has a philosophical position to push and a pattern that has been developed over the years of, whether you believe it or not, we want to make sure that what we want to happen in our schools happen.

That is human and I think the reason for our discussion today in this hearing is to say the priority goes back to the States and that is what our law did. So along with that, that would be a creative tension that we have and will continue to have and hopefully make it productive.

To continue on similar questioning again and develop it further, Mr. Secretary, the statute requires States to assess 95 percent of students while protecting the right of parents to opt out and granting States the sole discretion for determining how the test participation requirement should be factored in the State's accountability system.

In fact, the statute explicitly prohibits you from prescribing how the State factors the requirement into the system, at least as I read it; that your proposal requires States to take at least one of four prescribed actions against schools that missed the requirement. Your proposal also requires schools that missed the requirement to develop a plan to address the failure and requires school districts with large numbers of such schools to also develop an improvement plan.

This may be indeed a laudable goal, but the law is a law, so let me ask you this question. Can you provide the committee the specific statutory language that gives you this authority?

Secretary KING. Let me first say, Congressman, as a former high school social studies teacher, I appreciate the quoting of the Northwest Ordinance. It does not happen often.

Mr. WALBERG. I am a Neanderthal, I guess.

Secretary KING. No, no, no, I appreciate it and I want to say I strongly agree with your point on importance of the flexibility in this law around the design of the accountability system and in the design of the interventions which is, I think, also an important area of flexibility for States.

On the question on participation rates, we often—

Mr. WALBERG. What is your statutory authority?

Secretary KING. Yeah, I just to make sure in your framing of the question.

Mr. WALBERG. I have 23 seconds, so.

Secretary KING. I will be quick. In the four options that are described in the regulations, one of them is for the State to determine how it will approach the enforcement. The other three are offered as means by which the State could enforce the 95 percent accountability requirements which is in the statute. And States could choose the fourth option, which is State-determined and that would go through peer review. So we were careful, as I have indicated before, to ensure that our regulations are consistent with the letter of the law—

Mr. WALBERG. I still did not hear your specific statutory—

Chairman KLINE. The gentleman's time has expired. Mr. Curbelo?

Mr. CURBELO. Thank you, Mr. Chairman, and thank you, Mr. Secretary, for being here this morning. I want to especially appreciate the Department's focus on English language. It was a major priority for me and the reauthorization, and you have certainly made some comments with regards to ELL students here today, but I want to ask you today about students in foster care. The Department has been active on this topic in recent weeks and I have had two specific questions, the first on the proposed regulation and the second on the guidance issued this morning.

The statute clearly lays out a process for school districts and child welfare agencies to develop an agreement for paying transportation costs for students in foster care who remain in their schools of origin. Contrary to that language, the proposed regulations require school districts to pay for transportation costs with no mention of the process established in the statute. Please explain why the Department ignored the statutory text and is proposing to require school districts to cover transportation costs.

If you do not think the Department ignored the statutory language, let us know how this provision complies with the clear language in the statute. And again, I think this is an issue where the legislation, the intent is for States to have the flexibility to work this out with their own agencies, school districts, and child welfare agencies.

Secretary KING. So, importantly, I think the foster youth provisions of the law are very important. And it is clear that foster youth are at risk and part of the reason they are at risk is because they are often moving between schools. And so the evidence is clear that students are better served when they can have educational stability or where there would have to be transitions that those transitions are smooth. And the guidance that was issued today we not only describe our interpretation of the law, but we also offer examples of best practice around the country, including places, States that have set up very clear dispute resolution processes, but where the guidance points us towards collaboration between the LEA, the school district, and the child welfare agency to both ensure that they are evaluating the best interest of the students, and then creating a reasonable plan for smooth transitions and transportation where necessary.

In the proposed rule, we are looking for feedback and comment and we expect to get it and the guidance. Again, what we tried to do was point to exactly what you were describing, the need for LEAs and child welfare agencies to work collaboratively. The proposed rule offers some more specificity on processes to resolve those disputes. We are looking for feedback and input, and we certainly appreciate yours.

Mr. CURBELO. So you believe that, ultimately, States will have that flexibility where the child welfare agencies and the school districts can collaborate and figure out amongst themselves how the transportation costs will be addressed?

Secretary KING. I think the hardest question is if there is a dispute, ultimately, how will we ensure that the student has educational stability? And we try to offer a path in the regulation on

which we are looking for feedback. And the guidance we try, just as you described, to underscore the importance of that collaborative relationship and also describe examples of effective dispute resolution processes that are in place around the country.

Mr. CURBELO. Well, thank you, Mr. Secretary, and I strongly encourage you to pay attention to the feedback and this comment period because I think it is pretty clear that all over this legislation, we have been focusing on State flexibility, trusting States and local communities to make the best decisions for these kids. And I think especially when it comes to kids in foster care, which we all want to make sure that they have access to a quality education, we want to give the States the opportunity to figure out the solutions that work best for the kids in those States and in those communities.

So thank you again for your presence and your time here this morning. Thank you, Mr. Chairman. I yield back.

Chairman KLINE. The gentleman yields back. Mr. Allen.

Mr. ALLEN. Thank you, Mr. Chairman, and thank you, Mr. Secretary. It is good to have you here this morning.

Mr. Secretary, ESSA requires schools with one or more subgroups performing at or below the level of all students and any school identified in the State's bottom 5 percent to be identified for targeted support. The statute then requires certain schools to be further identified for comprehensive support if they fail to adequately improve within "State-determined number of years." And as has been mentioned several times before, ESSA also prohibits you from prescribing the methodology used by States to identify schools, yet your proposal requires schools I just described to be identified for comprehensive support within three years if they have not improved.

How is this proposal consistent with the plain language of the statute which says the length of time is to be State-determined and the Secretary is prohibited from prescribing the identification methodology?

Secretary KING. Well, here the question is what happens if a school has been identified for targeted support and the subgroups are not making progress, so it is a bit different from the original identification.

States will need to develop a process for how they will respond when schools are not making progress with those subgroups and the intention is that States will intensify their State-selected interventions based on evidence to ensure that those subgroups improve their performance.

Mr. ALLEN. But again, the questions was, it looks like we have two methodologies here, the law versus the rule. And I did not quite understand exactly, I know the States are responsible for dealing with this particular issue, but your rule applies that the Federal Government is responsible for dealing with this particular issue. There seems to be a conflict here.

Secretary KING. I do not think so. I think the statute ultimately requires that States increase the intensity of the intervention when the intervention is not effective in improving subgroup performance and the regulations are trying to enforce that requirement of the statute. But again, these regulations are out for public comment.

This is a place where we are interested in feedback from States and districts as well as civil rights groups and others.

Mr. ALLEN. And that is important because obviously Congress writes the laws and, as you mentioned earlier, and what has amazed me in my short time here is, where we have intent on a law, that somehow it gets totally misinterpreted by the time it gets to one of the Departments. So I think it is great to have you here this morning and it is great to have this discussion, but I also think that we definitely need to follow up on these conflicts with the staff and our staff to make sure that we implement this law the way it was intended. And I yield back.

Chairman KLINE. The gentleman yields back. Mr. Courtney, you are recognized.

Mr. COURTNEY. Thank you, Mr. Chairman, and I thank you, Mr. Secretary, for being here. And again, I applaud the chairman for holding this hearing, I think looking back at the 114th Congress, getting the ESSA done and signed into law I think is probably going to be viewed as one of the more unexpected pleasant surprises in a good way in terms of the accomplishment here. And as I am sure my colleagues have said, the action now has kind of migrated to the State level. And in Connecticut, there are working groups under the commissioner hard at work in terms of trying to, again, align State education policy with, again, the flexibility with some guidance from the Federal Government. So I just want to report to you that is full speed ahead in terms of what is going on there.

One issue which I think is very important in the State of Connecticut is that as a result of desegregation lawsuits, Sheff v. O'Neal, Connecticut was, I think, very aggressive in terms of moving towards magnet schools as a solution to racial isolation, particularly in the city of Hartford, which I live about 17 minutes away from on the highway. And as the New York Times reported, there actually has been really encouraging progress made in terms of the magnet school model in terms of integrating—my daughter actually went to one of those schools that followed in the Sheff v. O'Neal, and I just can tell you that it was a life-changing experience. It is not something her parents pushed her into. She kind of found it on her own and so I personally would have liked to have seen us been a little more aggressive about helping promote magnet schools, particularly because the city of New London is now going all magnet and there is a provision that allowed transportation costs and some other expenses that make this still a bit of a challenge for local communities and States.

And I am just sort of wondering, I never talked to you about your perspective on that and just sort of asked you how you see that approach, and at least the signals that the legislation sent out to be supportive.

Secretary KING. I mean, I am very pleased with some of the adjustments that were made to the magnet school program and in ESSA. I think that will help make it easier for communities to take a magnet school's approach.

I would love to see us go further. That is why the President proposed the Stronger Together Initiative, which would be $120 million. That is in his 2017 budget to support locally led voluntary ef-

forts around school diversity. And I think Hartford's magnet school program is, in many ways, a great national model that folks should take a close look at, both quality of options that are being offered to families that are diverse and the two-way feature of the Hartford approach, that students are able to go from suburban communities into urban schools and from urban schools into suburban communities. I think that is a very promising approach.

We are also looking at how we can use other grant programs to encourage, again, voluntary, locally led efforts. And my hope is that some States will use the school improvement flexibility that they have under ESSA to pursue school diversity strategies because we know they can significantly improve academic outcomes, graduation rates, particularly for the students that are most at risk.

Mr. COURTNEY. I appreciate your last comment there which is that the batting average for these new models has not really just been about sort of the racial composition of the student body. It is also about academic achievement and a number of magnet schools score higher than any other either private or public high schools and K–8 schools in the State of Connecticut. So again, I just want to again tell you a lot of us are rooting for the Department to continue that work in terms of promoting what I really think is a solution to the future success of this country using the magnet school model. And with that, I would yield back.

Chairman KLINE. Mr. Grothman?

Mr. GROTHMAN. Thank you for coming over here. When you were here in February, I asked you a question about teacher licensure and, more importantly, about teacher evaluation. We mentioned that in the Students Success Act, we believe that we prohibited you from any involvement in teacher evaluation systems.

At the time I asked you about it, I said, "Can we be confident now that those days are gone since that is what the new statute said?" And you said, "Yes, we are very clear that the law puts teacher evaluation in the hands of State and districts."

Nevertheless, you have now come back with a regulation that states that your Department requires States to establish the definitionary (sic) guidelines for defining ineffective teachers. The proposal also requires States to annually identify the percentage of teachers in each category with its ineffective definition.

Now, just on the face of it, this looks completely contrary to what you told us in February, not to mention completely contrary to what is in the statute.

What is your statutory authority for this proposal? And if there is no statutory proposal, please explain how you expect the State to meet this requirement without establishing a teacher evaluation system.

Secretary KING. The statute requires States to provide information on equitable access to quality teachers. We require, in the regulation, for States to define those terms as they comply with statutory requirement to report on disproportionate access to those quality teachers. They could not report if they did not define those categories.

Mr. GROTHMAN. So you are going to assure us that you have no concern about how quality teachers are defined?

Secretary KING. States are required to put forward— their definitions, and that would be a part of the—

Mr. GROTHMAN. You are never going to question what their metric is?

Secretary KING. The proposal that they will submit as part of the State plan goes to peer review, which is not the Department, but it is other States and experts who will engage in peer review of the State plan.

Mr. GROTHMAN. Does the State of Wisconsin have to worry, regardless of what they use for teacher evaluation, that you will ever question that?

Secretary KING. Well, if they were not complying with the statute if they were not ensuring that students have equitable access to quality teaching. Yes, I would hope the future Department would ensure that the law is enforced.

Mr. GROTHMAN. You are kind of dodging this a little bit here. The question is, okay, the State of Wisconsin says such and such is a quality teacher, the question is are you ever going to question the definition of a quality teacher as defined by the State of Wisconsin?

Secretary KING. They have a set of terms that they have to define. For example, if they have teachers who are teaching outside of their license area, is it possible that in the future the Department might find that a State is evading their responsibility under the law to ensure equitable access to quality teaching? Yes, that is possible.

Mr. GROTHMAN. Obviously you collect tons of data, more data than I think you have any business constitutionally collecting, but nevertheless you do.

As maybe you know, when I look at a lot of the problems in society, including problems of poor educational performance, I blame a lot of it at the breakdown of the family. And I just wonder when you collect data on all these students and you collect data on race, which I am not sure what that—do you collect data on family background of the kids? And if not, why not?

Secretary KING. There may be an IES study in which those kinds of issues are looked at, but I do not believe that ESSA has requirements around that.

Mr. GROTHMAN. I know it does not have requirements. I am saying in your tenure as Secretary, has there ever been a suggestion that maybe we ought to at least do a limited study on the family background of students and seeing if some family backgrounds are more conducive to educational achievement than others?

Secretary KING. There may be IES studies that address that.

Mr. GROTHMAN. I mean, you have just reams of data that you are collecting here. I just wonder whether you or anybody else in your Department has ever thought that might be an interesting topic to look into.

Secretary KING. I will look at whether there was an IES study in that subject and I will be sure that we get that to you.

Mr. GROTHMAN. Okay, I yield the remainder of my time.

Chairman KLINE. The gentleman yields back. Mr. Carter?

Mr. CARTER. Thank you, Mr. Chairman, and thank you, Mr. King, Mr. Secretary, for being here. We appreciate it very much.

Mr. King, what I wanted to talk about was what the Department of Education has proposed with respect to backend checks on the weighing of indicators for State accountability systems.

The statute that was passed in ESSA requires the States to establish the criteria that the schools must make to exit certain identification categories, but after having my staff read your proposal and after I read some of your proposals, it just seems like they go well beyond the scope of the statute by requiring those criteria to include improvements on the State's academic indicators. That appears to contradict what the statute's prohibition was against the Secretary prescribing exit criteria.

Could you explain how you envision States and school districts implementing this portion of the proposal?

Secretary KING. Yeah, just to be clear again, we do not prescribe the weights or percentages for the indicators. The function of the backend checks is to ensure implementation of the statute, which requires that the academic indicators have substantial weight and then further requires that the academic indicators must have a much greater weight than the other indicators, so the backend checks are a way to do that. But as I have said, they are out for public comment and we look forward to reviewing the comment on those and I am sure you will get from States, from districts, from civil rights organizations, from parents, and others.

Mr. CARTER. Again, I want to make sure that the Department is not overstepping their bounds from what we intended for it to be through this legislation.

Can you assure me that the Department is not going to go contrary to what is in the statute?

Secretary KING. Yes, we have been careful throughout this process to ensure that the regulations comply with the law. We also have been careful throughout this process to listen carefully to the feedback that we have received from stakeholders and will continue to do so.

Mr. CARTER. So you have received the feedback? Are you continuing to receive the feedback?

Secretary KING. We chose the areas for regulation and guidance based on feedback we received. We have had over 200 meetings, we have received comment from over 700 individuals and organizations. We held 2 public hearings in which there are over 100 folks who testified and we continue to gather feedback.

Now, the accountability regulations are out and State plans and data reporting regulations are out for public comment. That public comment period closes in August and we will review the feedback that we have received.

Mr. CARTER. Have you reviewed any of it yet? Do you have any indication of what are the concerns?

Secretary KING. I mean, we had a very strong concern, particularly from the civil rights community and organizations that are focused on kids who are at risk, that enforcing the requirements in the law for what I would characterize as civil rights guardrails is critically important, including the language that says that the academic indicators must have much greater weight and substantial weight.

Mr. CARTER. Okay, I am just concerned, okay? I want to make sure that you are not overstepping the bounds by what we intended for it to be through this legislation and I want you to assure me and the committee that the Department's proposals, that they align with the statute and that we are not going to have you back here trying to ask any more questions about what is going on. I do not want another example of the Department of Education overstepping their bounds.

Secretary KING. I appreciate that. We are being very careful to ensure that the regulations that we propose comply with the law.

Mr. CARTER. Okay, fair enough. Just full disclosure, I want to make sure we are on the same page here of what the intent was and what it is that you are doing.

Secretary KING. Understood. Again, I want to underscore that we have been very careful that the regulations we proposed comply with the law.

We also are being very careful to gather feedback and I want to make clear that these proposed accountability regulations are a draft that is currently out for feedback and we are going to listen carefully to the feedback we receive.

Mr. CARTER. Okay, thank you, Dr. King. Thank you, Mr. Chairman. Now I yield back.

Chairman KLINE. The gentleman yields back. Mr. Bishop?

Mr. BISHOP. Thank you, Mr. Chairman, and thank you, Mr. Secretary, for your time and your testimony today. Building on my colleagues' questioning, in particular the questioning by Mr. Allen and Mr. Carter, I just would reiterate what those others have said.

I talk to educators and parents all the time. They are very concerned about the students' learning environments and are very attentive to this new law that we have passed, the ESSA. And they are skeptical in many ways because they do not believe that even though the law was written in such a way with such plain language and unambiguous language, that we will be able to implement it in a way that was intended.

That government agencies tend to take liberties with whatever law is passed by Congress and we have seen that up and down the chain, not just in the Department of Education, but in other departments as well, in other agencies as well. So there is a bit of skepticism here and I am wondering, you have indicated that you have got the regulations out right now for comment. When you have completed those, are you prepared to come back in here with your final draft of those regulations to review them with us?

Secretary KING. I mean, I will certainly make myself available for committee meetings like this one. I think of this as a collaborative effort. I believe the law was passed through a collaborative effort between bipartisan leadership and Congress and the President and the Department, and we want to continue that collaboration.

Mr. BISHOP. In good faith, I think that is a wise position to take and one that I think is good for this committee as well as all of us have a sense of skepticism as to whether or not the law that we passed is the law that would be implemented.

I have confidence that you are here today in good faith and I look forward to further dialogue. I had one specific question as well with

regard to the ESSA, Mr. Secretary. It requires States to include the 4-year adjusted cohort graduation rate as an indicator in their accountability system. The statute also requires States to report annual data on the 4-year adjusted cohort graduation rate.

The statute does not, however, require States to use the graduation rate when calculating which high schools are identified for comprehensive support based on low graduation rates. The statute leaves the calculation of the graduation rates for identification purposes, as Mr. Carter had indicated, earlier to the States.

In addition, as you know, the statute prohibits you in particular from prescribing the specific methodology for identifying schools.

How is your proposal that we discussed today that has been outlined consistent with the plain language, the unambiguous language of the statute in the prohibition against prescribing methodologies?

Secretary KING. The key with graduation rates is to have a graduation rate indicator that is present in all schools and the only graduation rate indicator rate present in all schools as required by ESSA is the 4-year graduation rate. That said the regulation provides for States' ability and their plan to create exceptions for schools that might serve new arrival English learners, schools that might serve students with very significant severe disabilities, schools that might serve students who dropped out and are now returning to school.

But again, the 4-year graduation rate is the rate that is required for all schools to report under ESSA.

Mr. BISHOP. You believe when you are talking about the inception that you are speaking of—give you, despite the fact that there is a prohibition against prescribing methodologies, that fits within that exception that you are speaking of?

Secretary KING. Yes, and we are not prescribing the methodology, but we are using a data point that is available for all schools as the starting place for the State plan.

Mr. BISHOP. Okay, thank you, Mr. Secretary. Mr. Chairman, I yield back.

Chairman KLINE. The gentleman yields back. Mr. Thompson?

Mr. THOMPSON. Thank you, Chairman. Mr. Secretary, when you testified before the committee in February, you said, "The law rightly shifts responsibility for developing strategies to support the highest need students in schools to State and local decision-makers and away from the one-size-fits-all mandates of No Child Left Behind, and it creates opportunities for States to reclaim the goal of a rigorous, well-rounded education for every child."

I could not agree with your words more at that point and I appreciate hearing that perspective, yet your proposal would require State accountability systems to provide a single summative rating for each school.

How is this proposal not a one-size-fits-all mandate that will stifle State efforts to reclaim the goal of, your words, a "rigorous, well-rounded education"? And can you commit to upholding your original commitment to this committee when you publish the final rule or are you veering away from that original promise that you made?

Secretary KING. We believe that the draft rule reflects that commitment. Again, we are going to take comment and try to respond to the comment that we receive.

On the single summative rating, States have flexibility with how they would approach that. They could use an A–F approach as some States do today. They could use a numerical index as some States do today or they could use a categorical approach as many States do today.

They will need such an approach in order to identify the bottom 5 percent of schools clearly, but we also require that States provide information to parents and teachers about all of the accountability indicators so there will be robust information about all of the accountability indicators. And this is a place, again, where we will take public comment and try to be responsive to the comments we receive. But it is clear that in order for the law to work, parents and educators and the community need to have a clear understanding of which schools are struggling and a need of more support and which schools are excelling and can be models of best practice.

Mr. THOMPSON. I think the intent of Congress was very clear and, in the end, this is very bipartisan, as you know, as we finished.

It tends to work that way in that process here through refinement and I think at all costs, we want to avoid a cookie cutter, a one size fits all. Does that really describe what No Child Left Behind became, especially in the outer years beyond the authorization time for it when it was allowed to continue? And we really, really need to make sure that we are providing that type of flexibility. And I think it really comes down to, and I have talked about this among my colleagues here, it is a question of trust and, in the end, members of Congress demonstrated in a bipartisan way, bicameral way, which is really unusual these days, a trust of the States and the local governing boards. And we expect that you will do the same thing and that your department will do the same thing to have that trust.

I wonder, the recent issue came to my attention. Last week, your accreditation staff announced it was recommending to terminate the Federal recognition of the Accrediting Council of Independent Colleges and Schools, and the National Advisory Committee on Institutional Quality and Integrity is meeting right now to decide their independent recommendations. It is somewhat related, a little bit outside the ball park here today, but I just wanted to take the opportunity to ask you on this since you are here and I appreciate you being here.

Now, these actions are only recommendations. However, as you have the ultimate authority to decide the fate of ACICS, as you know, the ACICS is one of the Nation's largest accreditors responsible for accrediting approximately 250 schools, serving 320,000 students, and terminating the recognition of an accreditor this large would be unprecedented. And, therefore, I am concerned that the Department is ill-prepared to respond to the potential impacts of this move.

Is the Department prepared with a plan to assist goals if they lose accreditation? And does the Department have the capacity

available to process a change of accreditation requests for schools that seek alternative accreditation?

Secretary KING. So as you indicated, there is a potential that I would hear an appeal in the ACICS case, so I cannot comment on the specifics of ACICS. I will say that the time that the recommendation was made by Department staff, we posted information for the institutions and for students about potential consequences.

There is a process over the next several months for deliberation by Masiki for an appeals process and then there is a final agency determination on an accreditor, there is an 18-month period in which schools can seek an alternative accreditor and the information we posted provides details on that.

Mr. THOMPSON. Should this go into a final recommendation by you then, you would certainly allow the schools to give him the sufficient time to find a new accreditor to make that transition.

Secretary KING. Yes, we believe that schools that are doing a good job by their students will be able to manage transitioning to another creditor in that 18-month period any time an accreditor were to lose its authority, not just specific to ACICS. But we can certainly have staff follow up with you on that information that we will provide.

Mr. THOMPSON. That would be very good. I would love to talk offline with you about how schools are doing great by their students but some are having problems with their accreditors.

Chairman KLINE. The gentleman's time has expired. All members have had an opportunity to engage in the discussion. I want to thank you again, Mr. Secretary, for your time here today and your engagement with each of the members.

I would underscore that there is a theme here that I am sure was not lost and that is that we put a lot of effort, bipartisan effort, a lot of struggle as you mentioned and included in the administration in getting the language of the statute very, very clear. And so we will continue to be watching. We would like to stay engaged with your staff as we go for it to do everything we can to make sure that the regulations that the Department is required to publish are not just sort of, like, semi-consistent with but exactly consistent with the lettering and intent of the law. So thank you very much.

We are going to let you go back to work and start taking a look at all that feedback from those regulations and we thank you very much for being here today.

Secretary KING. Thank you.

Chairman KLINE. We will be seating the second panel here momentarily.

Mr. SCOTT. Mr. Chairman, can we submit to the record a letter from the Tri-Caucus on accountability to the Secretary?

Chairman KLINE. Without objection.

[Recess]

Chairman KLINE. Welcome to our second panel today. It is now my pleasure to introduce our distinguished witnesses and I recognize Mr. Guthrie to introduce our first witness.

Mr. GUTHRIE. Thank you, Mr. Chairman. I appreciate it. Today I am going to introduce the Kentucky Commissioner of Education, Steven Pruitt, as a witness for today's hearing. In September of

2015, the Kentucky Board of Education unanimously voted to hire Steven L. Pruitt as Kentucky's sixth Commissioner Of Education.

Commissioner Pruitt came to Kentucky with extensive background in standard assessment accountability. He started as a high school chemistry teacher in Fayetteville, in Tyrone, Georgia, and later served as a science and math program manager and director of academic standards with the Georgia Department of Education, and he was associate State superintendent for assessment accountability.

Most recently, Commissioner Pruitt served as a senior vice president for ACHIEVE, a national nonpartisan, nonprofit education reform organization based in Washington. He is a native of Georgia, but he is a proud Kentuckian. And Commissioner Pruitt holds a bachelor's degree in chemistry from North Georgia College, a master's in science from West Georgia, and a doctorate from Albany University.

I think he is sitting next to an Alabama Crimson Tide graduate so we will see how that works. Commissioner Pruitt and his wife are parents of two children and their son attends University of Colorado and their daughter is a high school senior attending public schools in Kentucky. And welcome to Washington, thank you.

Chairman KLINE. Thank you, Mr. Guthrie. I will continue now with the rest of the introductions. We would like to avoid any conflict down there.

Ms. Cassie Harrelson serves as a math teacher on a special assignment with the exceptional student services for Aurora public schools in Aurora, Colorado. In this role, she built special education teachers' capacity to increase student math achievement through a student-centered instructional coaching model.

Ms. Harrelson also serves as an affiliate faculty at Regis University where she instructs teachers on using formative assessments to support linguistically diverse students in their language acquisition.

Ms. Daria Hall serves as the interim vice president of government affairs and communications with the Education Trust in Washington D.C. Previous to this, Ms. Hall served as the organization's director of K–12 policy development and worked as an analyst for the Texas Legislative Council in the Milwaukee office of U.S. Senator Herb Kohl, so quite a bit of geographical movement there.

And Dr. David Schuler serves as a superintendent for a township high school in District 214, blue ribbon high school district, located in Arlington Heights, Illinois. Prior to this, he served as a Wisconsin teacher, coach, student activities and athletic director, principal, and superintendent.

Dr. Schuler also serves as president for AASA, the School Superintendents Association. Welcome, all.

Now, I ask our witnesses to please raise your right hand.

[Witnesses sworn.]

Chairman KLINE. Let the record reflect the witnesses answered in the affirmative. Just a reminder in our lighting system. We will keep track of it right here. When you start your testimony, you will have a green light. When you get down to after 4 minutes, a yellow light will come on, please start thinking about wrapping up. When

a red light comes on, please wrap up as expeditiously as you can. And then when you finish, members will have 5 minutes to ask questions and engage in the discussion.

We will start with Dr. Pruitt. You are recognized for 5 minutes.

TESTIMONY OF STEPHEN L. PRUITT, COMMISSIONER OF EDUCATION, KENTUCKY DEPARTMENT OF EDUCATION

Mr. PRUITT. Chairman Kline, Representative Scott, and members of the committee, I would like to thank you for inviting me to testify today on the recent efforts to implement the Every Student Succeeds Act.

As chief State school officer for the Commonwealth of Kentucky, I am excited about the future of education in our State under this new law, any opportunity to build on the significant progress that Kentucky has made to date.

We have already started that work by engaging on a broad spectrum of education stakeholders. We have held 11 regional town hall meetings and one virtual town hall with a total participation in excess of 3,000 people.

Kentuckians have told us what they value in their schools and how they define schools' success. We have listened and we are using those comments to shape our work under the ESSA.

The alterative promised by the ESSA is a welcomed departure from the prescriptive nature of No Child Left Behind and I appreciate the continued focus on closing the achievement gaps.

In Kentucky, we are working to move all children to higher levels of learning while also determining the root cause of achievement gaps which we believe stem from opportunity gaps and access to rigorous, high-quality learning opportunities. I commend the U.S. Department of Education for its quick response in drafting regulations and releasing them in a timely manner for public comment, but when one examines these regulations, they contain so many restrictions and requirements, State choices remain severely limited.

The proposed regulations stifle creativity, innovation, and sovereignty of States to govern their own education policies. Additionally, the volume of complex regulations are in direct opposition to Kentuckians' desire for a simple system that provides a broad view of scope performance.

Implementing a new accountability system is a monumental task. Despite our best efforts, I am concerned about the timeline and the State's ability to implement a new quality system that takes full advantage of ESSA.

While we understand accountability under the new law would start at the beginning of 2017–2018, the proposed regulations would require using data available in 2016–2017 generated under the current accountability system to identify schools for comprehensive support and improvement, possibly even prior to U.S. Ed's approval of the new system. As a result, schools will not accurately be identified.

We would suggest continuing the support, the concurrent priority schools, through the 2017–2018 school year and identifying new schools for the 2018–2019 school year based on the measures of the new system.

I believe that is the intent of ESSA. While the proposed regulations claim to replace NCOB's narrow definition of school success, requiring a single summative score goes beyond what the statute calls for.

The proposed regulations limit States' ability to take a dashboard approach which is broader, fairer, and a more accurate representation of school performance and more likely to lead to school improvement.

In Kentucky, we found that a summative score leads to ranking and creates an unhealthy sense of competition rather than collaboration that supports school improvement. We also found in some instances it becomes more about adults chasing points and trying to game the system to manage the appearance of performance, rather than actual performance.

Finally, I am concerned that the U.S. Ed's recent regulatory proposal in Title I supplement not supplant will exceed the statutory authority under ESSA and will promote harmful consequences for students. So when the Department publishes its proposed rule of supplement not supplant, I urge you to review it closely and encourage that it informs and conforms to congressional intent and avoids the unintended negative consequence promoted by the Department's earlier proposals in this area.

There are many other points in the proposed regulations that I have addressed in my written comments and that Kentucky will be addressing in its formal comments submitted to U.S. Ed. Now more than ever, what States need to implement ESSA is honest two-way communication, consistency, and to be trusted to make good decisions.

We need a commonsense approach that supports a quality system of assessments, accountability, and school improvement measures that will be implemented with fidelity and will promote doing what is right for students. However, a compliance mentality prevails.

For example, even though our NCOB waiver allows Kentucky to give a no reference test in science, recently U.S. Ed told us that the science test was not aligned with the current—required to give a science test not aligned with current academic standards and the poor performance levels that are not truly reflective of student learning or we must face consequences in order to meet the compliance element.

I could not in good conscience comply with this and as a result, we have been placed on condition for our Title I, Part A, and IDEA Part B Federal fiscal year 2016 grant awards all because we wanted to do what was right for students and not waste money on a meaningless test.

We have now quality tests that are scheduled to be implemented in the same year as the ESSA. Kentucky is committed to fully realizing the congressional intent of ESSA.

If this is all true and this represents a new day in education for America, States must have the support to take action based on quality and what is best for students and move away from compliance mentality.

The Commonwealth of Kentucky looks forward to revised regulations that empower States with the freedom to plan, innovate, de-

sign, and implement quality education systems that will ensure opportunities for all students and promote the pillars of equity, achievement, integrity within the education policy in Kentucky.

As a final reminder, quality implementation is critical and I would remind you that no great education initiative ever failed in the vision stage. It failed in the implementation stage.

[The statement of Mr. Pruitt follows:]

Written Testimony of
Kentucky Commissioner of Education Stephen L. Pruitt, Ph.D.
on
"Next Steps for K-12 Education: Examining Recent Efforts to Implement the *Every Student Succeeds Act*"
House Committee on Education and the Workforce
Thursday, June 23, 2016

Chairman Kline, Representative Scott, and Members of the Committee,

Thank you for inviting me to testify about the implementation of the Every Student Succeeds Act (ESSA).

I appreciate the support of the House in the passage of this law. It is important for Kentucky and other states to have a stable federal law that enables state and local decision-making so that we can effectively support our schools and districts in their efforts to educate all children.

In Kentucky, our Constitution mandates an efficient system of common schools throughout the state and ESSA supports that idea with a focus on the success of every student.

I believe we have both an ethical and moral responsibility to our children to provide them with a world-class education regardless of the color of their skin, their heritage, the language they speak, their family income, where they live, or whether they have a disability. We educate children – ALL CHILDREN – because it is the right thing to do for them, for our state and for these United States.

As the Chief State School Officer for the Commonwealth of Kentucky, I am excited about the future of education in our state under ESSA and the opportunity to build on the progress we have made to date.

Kentucky has a long history of taking action in the best interest of our children. We don't believe in doing what is easy. We believe in doing what is right for our students. We understand that also was the intent of Congress in passing the ESSA.

In Kentucky:

- We value **equity** so that all of our students will have the opportunity to graduate from high school with the education and skills they need to go to college or start a career of their choice.
- We value **high achievement** in academics as well as a well-rounded education for every student.
- We believe in **integrity** – being open, honest and transparent with our students and the adults who support them. Sugar-coating data so everyone feels good about themselves is a disservice to our children, our parents and our educators.
- And finally, we value **quality** in the programs and systems that support excellence in teaching and learning, support continuous improvement and support our schools and

districts in meeting our goal of every student graduating high school truly prepared to take the next step in life, whether that be college, a career or service in the military.

These values have served us well.

Not so many years ago, Kentucky ranked near the bottom of states on education indicators.

Today, by many measures, Kentucky has become a national leader in improving student achievement. We have climbed to 27th place overall according to the latest *Quality Counts* report from "Education Week."

- Kentucky students outperform their peers at most levels in reading, mathematics and science on NAEP – the National Assessment of Educational Progress.
- While a wide achievement gap between low-income students and their wealthier counterparts exists in every state in the nation, according to the *Quality Counts* report, with 60 percent of Kentucky's students being considered low income, the poverty gap is lower in Kentucky than in the majority of other states.
- Our graduation rate is among the top 10 in the country. In fact, the *2015 Building a Grad Nation* report released annually by the Alliance for Excellent Education, America's Promise Alliance, Civic Enterprises and the Everyone Graduates Center at Johns Hopkins University called Kentucky "a beacon to all other states."
- According to the report, our graduation rate for low-income students is nearly identical to the graduation rate for middle/high-income students and well above the national rate for all students.
- And, we have seen significant increases over the past five years in our readiness rates for postsecondary education and the workforce.

Despite this progress, we readily acknowledge that we still have achievement gaps – all states do. That is why I am excited about the opportunity ESSA presents. In Kentucky, we are working to determine the root cause of achievement gaps, which we believe stem from opportunity gaps and access to rigorous, high quality learning opportunities. Kentucky's plan for closing gaps is to move all children up, but to do so faster for those at the lowest performance levels. We do not want to sacrifice the performance of any child for the sake of another. We believe all boats should rise and ALL children should perform at the highest levels. We will make changes to not only close the gaps but eliminate them whenever possible.

In Kentucky, we seized the opportunity that ESSA presents. Before the U.S. Department of Education (USED) even released the proposed regulations, Kentucky started working to engage a broad spectrum of education shareholders, through a series of 11 face-to-face Town Hall meetings held across the state and one conducted virtually. More than 3,000 people participated. They told us what they value in their schools and how they define school success. We listened and are using those comments to shape the work ahead.

Also, we have been intentional in making sure we have representation from all shareholder groups at the table – on our steering committee and work groups – as we build a new accountability system under ESSA that will promote quality programs, school improvement,

educational access and create more opportunities for low-income and minority students. We plan to go back out to the public, in Secretary King's words, "early and often" for feedback on the new system as well as to advise on the development of District and School Report Cards.

I assure you that Kentucky is invested in its young people and is up to the challenge and opportunity that comes with the reauthorization of the Elementary and Secondary Education Act.

Positive Aspects of ESSA Proposed Regulations
I commend the United States Department of Education (USED) for its quick response in drafting regulations on the implementation of ESSA and releasing them in a timely manner for public comment.

I am heartened by a number of items in the proposed regulations on accountability and state plans published in the Federal Register on May 31.

In regard to supporting all students and providing a well-rounded and supportive education and equitable access to such for students *(Section 299.19 (a) –p. 34620)*, I am excited that career and technical education finally gets its due. Education and the economy are inextricably linked. For many of our students, career and technical education is a pathway to their future, and it is time we recognized it as such through challenging standards and rigorous coursework. The business community also is very enthusiastic about this as it will result in a better prepared workforce.

The folks who spoke during our town hall meetings or who submitted written comments will be very happy that the regulations recognize the importance of subjects beyond math, reading and science. They consistently told us how much they valued student participation in the visual and performing arts, along with the benefits of health and physical education. For many students, these are the areas that keep them engaged in school and persisting to graduation.

I wholeheartedly agree with Secretary King's prior statement on the proposed regulations that they "give educators room to reclaim for all of their students the joy and promise of a well-rounded educational experience."

I appreciate Representative Scott's assessment that, "The Secretary's proposed regulations fulfill the federal obligation to protect and promote equity, ensuring that ESSA implementation will uphold the civil rights legacy of the law." In many respects, I couldn't agree more.

I further welcome the statutory provision and the congruent regulatory guidance on Subgroups of Students *(Section 200.16(b)(i) – p. 34600)* that maintains the inclusion of English Language Learners in accountability up to 4 years to provide a more accurate picture of how schools are continuing to support these students.

Additionally, allowing students with alternate diplomas *(Section 200.34(a)(1)(ii), p. 34612)* to be counted in the graduation rate is a much needed change. Formerly, only students graduating with a "regular" diploma counted in the graduation rate, which discounted the hard work of students participating in an alternate assessment who achieved the alternate diploma. We are happy to see that change reflected in the statute and the proposed regulation.

Concerns over ESSA Proposed Regulations
But, a law is only as good as its regulations and their implementation. No education initiative ever died in the visioning phase; it lives or dies dependent on its implementation.

As we saw under No Child Left Behind (NCLB), states do not achieve quality teaching and learning or improved student outcomes simply by checking a box that they complied with a law. There also must be fidelity in the implementation of the law, which is especially important with the autonomy that the ESSA provides states and local school districts.

The autonomy promised by ESSA was a welcome departure from the prescriptive nature of NCLB. But, in reality, when one examines the proposed regulations, they contain so many restrictions and requirements that state choices remain severely limited. These regulations stifle creativity, innovation and the sovereignty of states to govern their own education policies.

Additionally, the volume and complexity of these regulations are in direct opposition to Kentuckians' desire for a system that is simple and yields clear, concise messages to the public and parents and provides a broad view of school performance.

I question, based on the proposed regulations, do states truly have the autonomy to develop an accountability system and state plans that reflect their goals and values and are in the best interest of children as was intended under ESSA? As the saying goes, the devil is in the details.

I am concerned about several issues that have emerged in the proposed regulations that could undermine our efforts to continue on a path to genuine improvement for all students and clearly communicate where on that path a school and district is. Certain of the proposed regulations simply do not seem to be consistent with the intent of Congress or Kentucky's values.

As a preface, it is important for the record to reflect that Kentucky has no intention of backing off of accountability in any way during our transition to the new law. Accountability is important to ensure public dollars are spent wisely and that all students have equitable opportunities to achieve at high levels.

Point 1 – Identification of Schools in Need of Comprehensive Support and Improvement
Statutory Summary: Section 5(e)(1)(B) indicates that states which receive Title I funding must develop and implement a single, statewide state accountability system beginning with school year 2017–18. *Section 1111(c)(4)(D)* of the ESEA, as amended by the ESSA, requires states to begin identifying schools in need of comprehensive support and improvement in the 2017-18 school year and to do so at least once every three years.

The proposed regulation would: Require states to use data available in 2016-17 that was generated under the current accountability system to identify schools for comprehensive and targeted support and improvement under the new system beginning in 2017-18.
(Section 200.19(d)(1) – p.34603)

KY Reaction: Implementing a new accountability system in 2017-18 is already a monumental task on an aggressive timeline, and I have concern that states will be able to implement new

systems that take full advantage of ESSA by the 2017-18 school year. Instead, states will be forced into continuing the status quo of their current systems or make only minor tweaks to existing systems.

The requirement to identify schools for the 2017-18 school year would necessitate using data available in 2016-17 generated under the current accountability system to identify schools for comprehensive support and improvement under the new system. If states are forced to identify schools prior to the new system being approved by USED, schools might not be accurately identified under the new system. This means those schools that most need intensive help may be prohibited from getting it, while those not really needing additional resources could receive them.

In addition, misidentification can create confusion among educators, parents and students and erodes confidence in the accountability system. For example, when Kentucky transitioned to its current accountability model, one high school was identified as a Priority School under the former system. However, under the new system it became high performing and has continued to improve. Since there was no "reset" based on the measures of the new system, this school is simultaneously identified in the bottom 5 percent and the top 5 percent – sending mixed signals and creating distrust of the current accountability system. We do not want to repeat this problem in the transition to a new accountability system under ESSA.

If we are forced to implement an accountability system that does not closely align with state policy priorities, it will strike a devastating blow against the integrity of this agency and our state as a whole. Our schools will suffer and stay mired in compliance rather than accepting the shared responsibility for educating the students of the Commonwealth. I am a firm believer in accountability, but I will not allow the new system in our state to reflect anything other than Kentucky's values and what is best for our students.

Point 2 – Annual Differentiation of School Performance: Performance Levels and Summative Ratings

Summary of the Statutory Language: Section 1111(c)(4)(C) requires that a state, on an annual basis, meaningfully differentiate its schools using all the indicators in the state accountability system.

The proposed regulation would require that state accountability systems provide a single summative rating from multiple measures of school performance. *(Section 200.18 (4) – p 34601)*

KY Reaction: While the proposed regulations claim to replace NCLB's narrow definition of school success with a more comprehensive picture of school performance, the requirement of a single summative score seems to go well beyond what the statute calls for and would limit states' ability to leave data at a dashboard level, which is a broader, fairer and more accurate representation of school performance. While composite indices tie up school performance in a neat little package, reporting school performance as a single number – like reporting different student groups as one group – can mask true performance on the various indicators.

In Kentucky, we found that a summative score leads to ranking and creates an unhealthy sense of competition rather than collaboration and collegiality among our schools and districts. We also found that, in some instances, it takes the focus away from decisions based on what's best for students. Instead, it becomes more about adults chasing points and trying to "game" the system to manage the appearance of performance, rather than actual performance. This is not good for students and is diametrically opposed to Kentucky's desire to provide a transparent system that has integrity and on which people know they can count to get accurate information about school performance.

Furthermore, research[1] shows that use of a summative score does not spur improvement, whereas, quality feedback on multiple indicators leads to greater improvement.

Point 3 – Annual Differentiation of School Performance: Weighting of Indicators
Summary of the Statutory Language: Section 1111(c)(4)(B) requires state accountability systems to include certain indicators. Most of those are academic indicators (e.g., results on reading and math assessments, high school graduation rates), but states also are required to have one or more additional indicator(s) of school quality, referred to as non-academic indicators. *Section 1111(c)(4)(C)(ii)* specifies that each academic indicator has to receive "substantial" weight in the state's accountability system, and that in the aggregate, "much greater weight" than the non-academic indicators in the aggregate.

The proposed regulation: Requires states to perform back-end checks to demonstrate their weighting systems meet the "substantial" and "much greater" standards required in the law, even though the regulations do not prescribe the weight or offer a range of weights states assign to each indicator, or the aggregate weights for the academic and non-academic indicators. *(Section 200.18 (6)(d)(1-3) – p 34602)* For example:

- A school that gets the lowest score on one of the academic indicators must get a different summative rating than a school performing at the highest level on every academic indicator.
- A school identified for statutorily-defined comprehensive support (bottom 5 percent, high schools with graduation rates below 67 percent, and schools with very low performing subgroups) or statutorily-defined targeted support (consistently underperforming subgroups) cannot be removed from those categories based on the performance on non-academic indicators unless significant forward progress is happening on one of the academic indicators. The proposal does not, however, define "significant forward progress," thereby leaving that determination up to states.

KY Reaction: The regulation goes beyond the scope of the statute and adds additional provisions to what is supposed to be a state determination. The back-end checks negate a state's ability to determine the impact that "substantial" and "much greater" weights have in the overall accountability system.

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[1]Lipnevich, A. A., and Smith, Jeffrey K. (2008, June). Response to assessment feedback: The effects of grades, praise, and source of information. Princeton, NJ: ETS.

Point 4 – Identification of Schools – Schools identified for comprehensive support and improvement
Summary of the Statutory Language: Each state must create a methodology, based on a system of annual meaningful differentiation, for identifying certain public schools for comprehensive support and improvement and must include three types of schools:

- The lowest-performing 5 percent of all Title I schools in the state;
- Any public high school failing to graduate one-third or more of its students; and
- Title I schools with a consistently underperforming subgroup that, on its own, is performing as poorly as all students in the lowest-performing 5 percent of Title I schools and that has failed to improve after implementation of a targeted support and improvement plan.

The proposed regulations would: Reiterate the statutory requirement for identifying three specific types of schools for comprehensive or targeted support and improvement. They do not extend the authority of states to identify schools for improvement beyond what is in statute. The regulation should provide states further guidance on how they may be able to provide support to schools in need beyond those currently recognized. *(Section 200.19(a)(1-3) – p. 34602)*

KY Reaction: States are currently able to identify schools for supports if they are Title I eligible; however, due to the prescriptive nature of the proposed regulations, states are no longer afforded that option. Since many, if not all, districts run out of Title I money before getting to high schools, the result would be there would be middle and high schools that would not receive assistance, in spite of really needing it.

Point 5 – Identification of schools – Methodology to identify consistently underperforming subgroups
Summary of the Statutory Language: Section 1111(c)(4)(C)(iii) provides that each state must establish and describe in its state plan a methodology to identify schools for targeted support and improvement and leaves the determination of consistently underperforming up to the state.

The proposed regulation would: Define consistently underperforming as failing to make progress for 2 years. *(Section 200.19(c)(1) – p. 34602)*

KY Reaction: The regulation oversteps the bounds of the statutory language which leaves the definition of consistently underperforming up to the states.

Point 6 – Resources to Support School Improvement
Summary of the Statutory Language: The statute authorizes the SEA to reserve 7 percent of the State's Title I allocation to serve schools identified for Comprehensive or Targeted Support and Improvement. At least 95 percent of these funds must flow through to LEAs, unless the SEA and an LEA agree to have improvement activities carried out by the State or an outside provider. The statute provides other requirements regarding local applications and the targeting of these funds.

The proposed regulations would: Require that the SEA, in allocating funds, provide at least $50,000 for each Targeted Support and Improvement school and at least $500,000 for each

Comprehensive Support and Improvement school, unless the SEA can conclude (based on a demonstration by the LEA in its application) that a smaller amount would suffice. *(Section 200.24 (9)(c)(2)(ii) – p. 34608)*

KY Reaction: With the proposed regulation setting an arbitrary minimum allocation of $500,000 for Comprehensive Support and Improvement Schools, there is no consideration of student population. For small rural schools, this would likely be more than they need, but the state would have no discretion in awarding less unless the district requested and justified less, which few are likely to do. The result would be less money for schools that may have larger student populations and need more than the $500,000 to effect comprehensive improvement, thus creating a funding inequity.

Furthermore, the state should not be forced through the onerous process of establishing a $500,000 minimum, to have each LEA either apply for the $500K or request and justify an exception, and then consider each such request on a case-by-case basis – all when the state knows from the beginning that $500K will be more than needed in many cases.

By setting the minimum allocations in regulation, states do not have the autonomy to make decisions based on actual school needs.

Point 7 – Report Cards
Summary of the Statutory Language: The law requires that each LEA participating in Title I produce and disseminate a report card, containing information for the LEA as a whole and for each of its schools.

The proposed regulations would: Require that the local report card (for the LEA as a whole and for each school) begin with a clearly labeled and prominently displayed overview section, be developed with parental input, include certain information and be distributed to parents on a single piece of paper. *(Section 200.31 (3)(d)(2)(i) – p 34610)*

KY Reaction: With the volume and complexity of the reporting requirements, a single sheet of paper is not adequate if we are to use a font size that we expect parents and others will be able to read.

Point 8 – Supplement, not Supplant: Section 1118(b)
Finally, while I understand the proposed regulations on assessments and "supplement, not supplant" will be forthcoming, based on what we have seen so far with the proposed regulations on accountability and state plans, I have concerns.

Kentucky is committed to supporting equitable educational opportunities for all students. I am concerned, however, that USED's recent regulatory proposal on Title I's Supplement, not Supplant (SNS) requirement exceeds the scope of the Every Student Succeeds Act (ESSA) and will promote harmful consequences for students.

SNS is a long-standing rule that requires that Title I funds not be used to replace the state and local funds an LEA would have spent in a Title I school if it did not participate in Title I. ESSA

retained the SNS rule, but changed how compliance is tested. ESSA prohibits USED from prescribing the specific methodology an LEA uses to allocate state and local funds.

ESSA also contains a "rule of construction" stating nothing in Title I shall be construed to mandate equalized spending per-pupil for a state, LEA, or school. USED's proposed regulation on Supplement, not Supplant purports to permit each LEA to determine its own methodology for allocating state and local funds to schools, but would require that the methodology result in the LEA spending an equal or greater amount per-pupil in its Title I schools than the average amount it spends per-pupil in its non-Title I schools.

The Congressional Research Service recently released an analysis that found "a legal argument could be raised that USED will exceed its statutory authority if it promulgates the proposed SNS rules in their current form."

In addition to exceeding the statutory scope of ESSA, the proposal that USED presented during negotiated rulemaking may require districts to force place teachers in schools to comply, place existing state and local initiatives to promote diverse public schools at risk of noncompliance, and penalize states and districts that use a weighted funding methodology.

When the Department publishes its forthcoming proposed rule on Supplement, not Supplant, I urge Congress to review it closely to ensure that it conforms to Congressional intent and avoids the unintended negative consequences promoted by the Department's earlier proposals in this area.

There are many other smaller technical points in the proposed regulations that Kentucky will be addressing in its formal comments submitted through the Federal Register website. Individually they may seem benign, but collectively they add up to a very inflexible, prescriptive and authoritarian approach to school improvement – the very thing that doomed NCLB and the very thing ESSA was meant to avoid.

Conclusion

Now, more than ever what states need to implement ESSA is a common sense approach that supports a quality system of assessments, accountability and school improvement measures that can be implemented with fidelity and will promote doing what is right for students.

States need honest two-way communication, consistency and to be trusted to make good decisions.

Let me share with you, however, an issue we recently encountered concerning Kentucky's current science assessments. On March 31, 2015, as part of the ESEA flexibility waiver renewal process, USED approved Kentucky's plan to give only a Norm Referenced Test (NRT) at the elementary and middle school levels in science, since the state had implemented new science standards and aligned assessments were in development, but not yet vetted and available for administration. The alternative, a delay in teaching the new, more rigorous science standards until a new test was complete, was not a decision Kentucky entertained, since it would not be in students' best interest.

This spring, despite Kentucky's approved ESEA waiver, USED staff informed the state that under a new interpretation by USED, the state was out of compliance, unless it gave a science test for which student performance levels could be assigned. USED staff suggested giving an old test, not aligned to the new science standards and for which student performance levels would not be an accurate reflection of what they were learning.

This would be a violation of *federal requirements* that assessments be aligned with the state's challenging academic content and student academic achievement standards, and provide coherent information about student attainment of such standards. In order to maintain the integrity of Kentucky's accountability system and to be honest with our students, parents and teachers, I could not in good conscience agree to USED demands.

Although informed that new high-quality science tests aligned with the new standards would be field tested in spring 2017 and implemented statewide in spring 2018, I received a letter last week that USED has placed a condition on Kentucky's Title I, Part A and IDEA Part B Federal Fiscal Year 2016 grant awards – all because we wanted to do what was right for students, and not waste money on a meaningless test.

In one of our many conversations with USED on this issue, I was told that if everyone took time off testing when new standards are implemented it would be a problem. My response was no, it would be a solution because we would have time to develop high quality tests that assess student knowledge at a much deeper level and provide more meaningful feedback as a basis for improvement. We wouldn't just be giving tests for tests sake.

Kentucky is committed to fully realizing the Congressional intent of ESSA. If this law truly represents a new day for education in America, states must have the support to take action based on quality and what is best for their students and move away from a compliance mentality.

The word accountability ends with "ability," which is what Kentucky is seeking in proposed regulations – the ability to take action to put OUR students at the center of the decision-making process.

The Commonwealth of Kentucky looks forward to revised regulations that empower states with the freedom to plan, innovate, design and implement quality education systems that will ensure opportunity for all students and promote the pillars of equity, achievement and integrity within education policy in our state.

Thank you for your time and consideration.

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Chairman KLINE. Thank you. Ms. Harrelson, you are recognized for 5 minutes.

TESTIMONY OF CASSIE HARRELSON, MATH TEACHER, AURORA PUBLIC SCHOOLS, AURORA, COLORADO

Ms. HARRELSON. Okay, thank you, Chairman Kline, and members of the committee, for inviting me to join you today. My name is Cassie Harrelson and I am currently a math teacher on a special assignment working with special education teachers in Aurora public schools in Colorado.

In my role, I am in classrooms daily, collaborating with teachers to best support students with disabilities. My entire career in education has been spent working with students who are behind their peers on grade level academic standards.

I have also worked in diverse environments from Aspen, one of the State's top performing to Aurora, which will enter its fourth year of a priority improvement plan later this summer.

Students at my school district speak over a 130 different languages and our free and reduced lunch is at 71 percent.

Every child, regardless of family income, ethnicity, or home language deserves to attend a school with opportunity. This belief is what drives me daily. It is also why I am here today to speak on the promise of ESSA and not only for our students in Colorado, but across the Nation.

NCOB had its strengths, such as the use of disaggregated data to help problem-solve around closing achievement gaps, but it was a one-size-fits-all approach that did not work for my students.

The passage of ESSA last December offered a new promise, an explicit shift from the top-down NCOB style decision-making to bottom-up State and local control. Finally, educators closest to the students they teach would determine how to best help students succeed. ESSA offered flexibility at the local and State level and required engaging stakeholders to assess community assets and challenges to drive score improvement. We were also promised relief from NCOB's excessive focus on standardized testing that was not timely or meaningful to educators or students.

In order to ensure the appropriate intersection of local, State, and Federal policy that is best for our students, all stakeholders must be engaged, including educators, students, parents, and community members.

As strong as I feel the legislation is about giving local leaders back their voice and the accountability process, I am worried that extensive areas dictated under the proposed Federal regulations take away my voice. For example, the accountability regulations tell us that Colorado must have a summative rating system with three levels of proficiency overall and with each subgroup of students. I know this requirement is nowhere in the law and something we were supposed to decide at the State level.

The proposed regulations also seem to upset the balance to find legislation and return the focus to standardized tests by diminishing the importance of the student and school support indicator. We shift back to a failing system that is overly focused on tests as opposed to truly helping students achieve.

As an educator in a school with a high number of English language learners, I am also concerned about the proposed regulations that set expectations for attainment of English language proficiency within a period of time after students' identification. This timeframe should be determined by educators, not an arbitrary number.

In Aurora, some English learner students arrive with comprehensive educational backgrounds, but some arrive with interrupted or limited formal schooling. We must respect educator discretion on this issue.

Finally, I am concerned about the proposed regulations that dictate consequences for districts that fail to meet the 95 percent requirement for testing. While the law retains the requirements to ensure that students are participating in the test, the proposed regulations go beyond by dictating the actual consequences that schools must face.

Instead of punishing districts, we should be helping districts find solutions to solve the lower participation rate and our assessments. And again, how to handle lower test participation rates was supposed to be determined at the State level and once again the Department is taking away that opportunity.

I ask that you honor your commitment to our students and ESSA by respecting the legislation to include educator voice at the local and State level as we know our students best. It is time to get those with actual teaching experience the opportunity to have a say.

This work ahead of us is extensive but imperative so that every child, regardless of family income, ethnicity, or home language has an opportunity to attend a great public school and succeed.

[The statement of Ms. Harrelson follows:]

Testimony of
Cassie Harrelson
Secondary Math Teacher on a Special Assignment
Aurora Public Schools, Colorado

Before the
United States House of Representatives
Committee on Education and the Workforce
June 23, 2016

Thank you, Chairman Kline and members of the Committee for inviting me to join you today.

My name is Cassie Harrelson and I am currently a math teacher on a special assignment working with special education teachers in Aurora Public Schools in Colorado. In my school district, our students speak over 130 different languages and our free and reduced lunch is at 71%. We are the poster children for being a diverse community. In my role I have the privilege of being in classrooms daily collaborating with teachers to best support students with disabilities. I also am an affiliate faculty member at Regis University facilitating coursework for educators around using assessments to support English Language Learners in language acquisition. My entire career in education has been spent working with students who are behind their peers on grade level academic standards. However, my experience in the classroom ranges from working in Aspen, Colorado in a school district that is labeled one of our top performing in the state to most recently in Aurora Public Schools who will enter year four on a priority improvement plan in July of 2016.

I strongly believe that every child, regardless of family income, ethnicity, or home language, deserves to attend a school with opportunity. This belief is what drives me daily while teaching students, working collaboratively with teachers, reflecting on assessment data and planning for the instruction that our students deserve. It is also why I am here today to speak on the promise of ESSA for not only our students in Colorado but across the nation.

My experience is similar to millions of educators in our schools across the country. Since the implementation of the No Child Left Behind Act, we have thoughtfully engaged in some of the positives of NCLB such as problem solving when the disaggregated data has shown achievement gaps but we were also quickly caught in the one size fits all mentality of the law that did not work for our students. However, in December of 2015 both students and teachers were delivered the promise of ESSA. This was seen as an opportunity for educators closest to the students they teach at the state and local level to be included in the conversation on determining what our schools and students need to succeed. We were promised flexibility to trust the stakeholders on the ground who know our students, community assets and challenges to drive school improvement. There was an explicit shift from extensive federal directives that were experienced throughout the NCLB era to allowing local and state level decisions to be made. We were promised relief from extensive time

focused on standardized testing that was not timely or useful to guide meaningful instruction with our students. Instead we were promised more time for teaching and learning in the classroom.

I am excited about the flexibility and the promise of ESSA, I know the work will be complicated and take time at all levels. I am committed to getting implementation right; as I am certain that my colleagues at the local, state and federal level are as well. I ask that this time is honored. We must adequately engage in meaningful consultation and rich dialogue with educators, students, parents and community members to ensure the appropriate intersection of local, state and federal policy that is best for our students. The recently proposed federal regulations rightly focus on the importance of stakeholder engagement. We know that engaging educators, parents and community members up front will make for a successful process in the long run.

However, as a teacher, I worry that the extensive areas dictated under the proposed federal regulations take away my voice. We were promised that so many of these decisions would take place at the state and district level, ensuring that Colorado educators had a seat at the table to advocate specifically for our students. Yet, the proposed accountability regulations tell us that Colorado must have a summative rating system with three levels of proficiency overall and with each subgroup of students. I know this requirement is nowhere in the law and something we were supposed to decide at the state level.

As an educator in Aurora I have been excited for the accountability system to not only focus on student outcomes but also on closing the critical opportunity gaps that exist in so many of our schools. Yet, once again in the proposed regulations we see a return to increasing the focus on the standardized tests. By diminishing the importance and the lack of decision options of some of the indicators, including the student or school supports indicator, we will return to a system where we are overly focused on the numbers game of tests instead on focusing on what students need to succeed.

The proposed regulations call for English Language Proficiency goals that set expectations for attainment of ELP within a period of time after a student's identification as an English learner. As an educator, my concern with this is that in Aurora we have a diverse population in which some students arrive with comprehensive educational backgrounds, and some arrive with interrupted or limited formal schooling. Research tells us in the language acquisition process the task is much larger and will require more time. Currently, we do not distinguish language learners and the expectations of language acquisition based on students' first language acquisition levels or educational backgrounds. We would appreciate the opportunity to take a student's situation into account when setting individual goals.

In addition, while the law retains the requirements to ensure students are participating in the test they go beyond by dictating the actual consequences that a school must face. In Aurora, we do not have an active opt-out movement however our participation rate at the high school level is still only

90%. This means we will be subject to the proposed sanctions. And that is what they are, sanctions. All of them are designed to punish us rather then help us find solutions to solve the lower participation rate in our assessments. This was supposed to be determined at the state level but once again the department is taking away that opportunity.

Finally, as educators we were happy to see that decisions about our evaluations were moved back to the state and district level. We know that the most effective evaluation systems are about helping teachers improve their practice. Therefore we were happy to see that ESSA was moving away from the top down approach; an approach that was replicated in CO through Senate bill 191 due to the federal mandates. However, I remain concerned about the calls in the proposed regulations about the requirement for states to develop a system of continual growth and improvement. This seems in manner of the words to be a requirement for the continuation of the state teacher evaluation systems. This not only seems to go against the federal prohibition in the law against mandating teacher evaluation systems but it also goes against what we know to be best practice.

I ask that you honor your commitment to our students in ESSA in that you would honor educator voice at the local and state level, as we know our students best. Last week in Colorado, 42 school districts from around the state met for an ESSA Summit to create a shared understanding of ESSA and to develop a collective voice that will help shape our state policy. These district teams were made up of educators, school board members, superintendents and other administrators. We engaged in meaningful conversations about learning and experiences from the last decade, collaborated with other school districts and developed recommendations for Colorado's Department of Education and state legislature to meet the needs of our students, especially those most in need.

This is what the new law promised: engaging collaboration to design solutions and supports for our students to succeed. The last 14 years let Washington make these decisions, now it is time to give those with actual teaching experience the opportunity to have a say. This work is extensive but imperative so that that EVERY child, regardless of family income, ethnicity, or home language, has the opportunity to attend a great public school and succeed.

Mr. ROKITA. [Presiding] Thank you for that. I realize by the look in some of the witnesses' faces that I probably should introduce myself. I am Todd Rokita, chairman of what we colloquially call the kindergarten to 12th grade subcommittee on education, so welcome to each of you.

Ms. Hall, you are recognized for 5 minutes.

TESTIMONY OF DARIA HALL, INTERIM VICE PRESIDENT, GOVERNMENT AFFAIRS AND COMMUNICATIONS, THE EDUCATION TRUST, WASHINGTON, D.C.

Ms. HALL. Thank you, Chairman Kline, Ranking Member Scott, and members of the committee. Thank you for the opportunity to share my perspective on implementation of the Every Student Succeeds Act.

This perspective is informed by the Education Trust's long history of working alongside educators, advocates, and policymakers to close gaps and opportunity and achievement. Let me begin as we always do at the Ed Trust with some data.

In the year since we have had Federal requirements for annual testing, full public reporting, and serious accountability for the results of every group of children, results in the national assessment of education progress and high school graduation rates are up, especially for low-income students and students of color.

Now, of course, policies themselves do not close gaps and they do not raise achievement. Only the hard work of educators, students, and families can do that. But smart policy is a source of urgency to address problems that would otherwise languish and it is critical that we do not lose that urgency because, despite gains in the data, the data is also abundantly clear that far too many young people are still not getting the quality education they need and deserve.

So what does this all mean for ESSA implementation? In short, we need to pick up the pace of improvement, not back off. Thankfully, the law you crafted contains a number of important levers that can help with that, including statewide standards and assessments aligned with the demands of college and the workplace, accountability systems that expect more progress from groups of students who have been behind and prompt action when any group is struggling, and rich public reporting on academic outcomes, and opportunities to learn for all groups of students.

Implementing these levers must be done in a way that is responsive to unique State and local contexts and in a way that builds on the insights of educators and communities. But the need for State and local decision-making does not mean that from now on the U.S. Department of Education should simply recede into the background. Indeed the Department has the authority and the responsibility to ensure that the equity goals of ESSA are honored.

I will note here that the consensus reached on the assessment regulations during the negotiated rulemaking process is an important example of both confidence in the regulatory process and the need for clarification with the statute.

Looking to the Department's proposed regulations on accountability, public reporting, and State plans, they clarify and bolster the law's equity provisions in many important ways including the requirement that all indicators in the accountability system be de-

segregated by each group of students so schools cannot sweep the performance of some students under the rug; clarity that supergroups cannot take the place of individual student groups so progress among one group cannot match stagnation or declines for another, the prioritization of academic outcomes so the main purpose of schooling stays in focus; the expectation of full participation in State assessments so schools cannot return to the old practice of opting lower performers out on test day; and the requirement that all schools receive a summative rating so parents get an at a glance view of school performance.

Now, it is important here to dispel this emerging narrative that we can have either summative ratings or rich public reporting through dashboards, but not both. That is simply not true. Summative ratings can and should exist alongside rich public reporting of all of the data that goes into the ratings and measures beyond those ratings, too.

There are also areas where the proposed regs must be improved. For example, the definition of consistent underperformance for subgroups is essential to assuring that struggling students get the support they need, but some of the options for this definition undermine the expectation that when any group and any school is not making process, those students must get support. Instead, the option signal that it is okay to act only in some schools where students are struggling and leave students and others to languish.

The importance of rules to clarify and bolster ESSA requirements has been made clear. In recent months, States have begun their implementation efforts. Already, there have been suggestions that would undermine the intent of the law, such as including indicators that cannot be disaggregated or using supergroups in place of individual student groups.

We will work alongside partners in the business, civil rights, and disability communities to remain vigilant in ensuring the equity provisions of the law are upheld and we urge leaders in Congress and the Department to do the same. Thank you.

[The statement of Ms. Hall follows:]

United State House of Representatives
Committee on Education and the Workforce
Next Steps in K-12 Education: Examining Recent Efforts to Implement the Every Student Succeeds Act

June 23, 2016

Prepared Testimony of Daria Hall, Interim Vice President for Government Affairs and Communications
The Education Trust

Chairman Kline, Ranking Member Scott, and members of the House Education and Workforce Committee, thank you for the opportunity to share my perspective on implementation of the Every Student Succeeds Act (ESSA). This perspective is informed by The Education Trust's long history of working alongside educators, advocates, and policymakers to close gaps in opportunity and achievement separating low-income students and students of color from their peers.

Allow me to begin as we always do at Ed Trust, with the data. It's become popular to characterize the No Child Left Behind (NCLB) era as lost years for our nation's students — years in which "unrealistic goals" and "test and punish" systems shackled educators' hands and yielded nothing but rote instruction and shallow learning. But the data suggest a different story altogether: Since we've had federal requirements for annual testing, full public reporting, and serious accountability for the results of every group of children, achievement among black, Latino, and low-income students has improved.

On the longest standing national measure, the National Assessment of Educational Progress (NAEP) Long-Term Trends, results for black and Latino students improved faster than at any time since the 1980s. Instead of the gap-widening we saw during much of the 90s, we have seen gap-narrowing since that time.

On the main NAEP exam, the percentage of low-income fourth-graders at the Below Basic level in math was reduced by more than half between 2000 and 2015, while the percentage performing at the Proficient or Advanced levels tripled. There was similar improvement among students of color. Among black fourth-graders, for example, the percentage at the Below Basic level in math declined from 65 percent to 35 percent; among Latinos, the Below Basic numbers declined from 59 percent to 27 percent.

High school completion rates are also up, especially for black and Latino students. In 2003, only an estimated 59 percent of black students and 66 percent of Latino students graduated on time. In 2014, 73 percent of black students and 76 percent of Latino students graduated in four years. Among students with learning disabilities, a group of students that many continue to write off as being unable to learn, the percentage earning a regular high school diploma rose from 57 percent in 2002 to 68 percent in 2011.

Let's be clear that laws and regulations themselves don't close gaps and raise achievement. Only the hard work of educators, students, and parents can do that. But smart policy has proved to be an important source of urgency to attend to the needs — and potential — of low-income students, students of color, English learners, and students with disabilities. The NCLB expectation that a school could not be considered successful unless it was successfully improving achievement for all groups of students sparked action in schools and districts that had long been content to coast by on overall averages.

Now to be sure, whether we're talking about reading and math achievement or graduation rates, the gains we've seen as a nation are nowhere near enough.

- When the chances that a young black man will be imprisoned by age 34 drop from 68 percent to 21 percent with high school completion — and fall to 7 percent with a college degree — we cannot stop until we ensure that every young person graduates ready for postsecondary education.
- When elementary reading is one of the most important predictors of post-high school opportunities, yet almost half of our black, Latino, and Native children are still reading below the basic level, we cannot stop until we equip every child with the reading skills they need.
- When African American high school students are less than half as likely to reach college readiness benchmarks as white students, and gaps between Latino and white students persist, we cannot stop until we eliminate the deep inequities within our education system that perpetuate — and even enlarge — these gaps, and provide every single child in American with the education they need to climb the rungs of opportunity in this country.

What does all this mean for ESSA implementation? In short, we need to pick up the pace of improvement — not back off.

Thankfully, the new law crafted by this committee along with your Senate counterparts contains a number of important levers that education leaders, parents, members of the civil rights and business communities, and advocates can use to advance education equity, including:

- Consistent, state-adopted standards for all students that are aligned with the demands of postsecondary education and work;
- Statewide annual assessment aligned with statewide standards;
- Clear requirements that statewide accountability systems must expect more progress for the groups of students who have been behind, base school ratings on the progress of all groups of students, and expect action when any group of students is consistently underperforming;
- An expectation that states and districts report on and address inequities in the rates at which low-income students and students of color are assigned to ineffective, out-of-field, or inexperienced teachers;
- Continued targeting of federal funding to the highest poverty schools and districts; and

- Richer public reporting on academic outcomes and opportunities to learn for all groups of students, including, for the first time, school-level, per-pupil spending and access to rigorous coursework.

Taken together, these levers represent key building blocks of an equity-focused school system — one that sets high expectations for all students, provides resources necessary for meeting those expectations, measures and reports progress toward them, and ensures action when any school, or any group of students, falls off track. We thank members of this committee for including them.

The challenge now is to translate the potential of ESSA into improved state and local policies and practices, and, ultimately, improved outcomes for all students. Doing this means that systems developed under ESSA must be responsive to unique state and local contexts and build on the insights of local stakeholders — especially the low-income communities and communities of color with the most at stake.

If these systems are to help generate real improvements, they must build on insights from successful educators, too. We all know that compliance with expectations is one thing, broad ownership of those expectations is quite another. This difference was painfully clear during the NCLB era.

But let me be clear: Recognizing and honoring the need for state and local decision-making does not, as some have suggested, mean that from now on, the U.S. Department of Education should do nothing more than cut checks. Under ESSA, the Department has an important role to play through enforcement, regulation, and guidance, especially when it comes to ensuring that states and localities are taking seriously their responsibility to all of their children.

Because in all the celebration of "a return to state and local control" surrounding this law, let's not forget that the state and local track record of serving the interests of vulnerable students is not a good one. To be sure, there are examples of state, district, and school leaders moving the needle for their low-income students, students of color, students with disabilities, and English learners. But even today, when such students represent the majority of our young people, there are many more examples of states and localities dragging their feet and shirking their responsibilities to these children.

In too many places, state and local leaders have let well-documented inequities in access to opportunities to learn — from rigorous coursework to education funding to strong, well-supported educators — fester.

They've made decisions aimed at getting around, rather than living up to, the expectations set by Congress.

- Under the Improving America's Schools Act, the 1994 reauthorization of ESEA, states were required to hold schools accountable for the "continuous and substantial improvement" of all students, particularly economically disadvantaged and limited English proficient students. Yet

only a handful of states actually included subgroup performance in their accountability system. And the majority didn't even report performance by group.

- Under NCLB, states were required to set goals for the percentage of English learners making progress toward English proficiency. Nine states expected fewer than half of their ELs to make progress toward English proficiency.

- Also under NCLB, states were required to hold high schools accountable for graduation rates. Not only did states game the definition of graduation rates, but they also set exceedingly low expectations for improvement. Over half of states set their improvement target at any progress over the past year, meaning that an increase from 50 percent to 50.1 percent was acceptable. Two states and the District of Columbia actually defined improvement as not losing ground. And as low as these expectations were, when the law was first implemented, states applied them only to students overall, not individual groups of students despite the fact that graduation rates were lowest among low-income students, students of color, English learners, and students with disabilities.

Unfortunately, this reluctance to expect much of schools vis-à-vis their low-income children and children of color didn't end when states got more flexibility under NCLB waivers. When given the opportunity to do so, most states chose to create school ratings systems that outright ignore the performance of individual student groups. Rather than holding schools accountable for serving each student group, many states created "supergroups," which treats students with vastly different needs — such as students with disabilities and English learners — the same.

This track record is why ESSA includes the levers noted above, many of which we at Ed Trust fought for alongside partners in the business, civil rights, and disability communities. It's why we'll continue to work alongside our partners to inform state and local implementation. And it's why the U.S. Department of Education cannot recede into the background and must continue its historic focus on looking out for the children who are likely to come last in state improvement efforts.

Smart federal involvement can and should establish guardrails for state and local action, assure that the equity goals of federal education law are honored, and ensure responsible stewardship of the $15 billion investment in Title I that federal lawmakers make every year.

The consensus on assessment regulations reached by a diverse set of stakeholders through the negotiated rulemaking process is an important example of both confidence in the Administration's ability to regulate and the agreed-upon need for clarification of the statute to ensure successful implementation.

There are many areas where the regulations on accountability, public reporting, and State plans proposed by Secretary King clarify and bolster the equity levers in ESSA, including:

- The requirement that all indicators in the accountability system be disaggregated by each group of students, so schools can't sweep the performance of some students under the rug;

- Clarity that "supergroups" can't take the place of individual student groups, so progress among one group can't mask stagnation or declines for another;

- The prioritization of academic outcomes, so the main purpose of school stays in focus;

- The expectation of full participation in the state assessment and action when fewer than 95 percent of any student group participates, so schools can't return to the old practice of opting lower performers out on test day;

- The requirement that all schools receive a summative rating based on each groups' performance on all the indicators, so parents get an at-a-glance view of school performance.

  It's important here to dispel the emerging narrative that we can have either summative ratings or rich public reporting, not both. That is decidedly untrue: Summative ratings can and should exist alongside rich public reporting of all the data that goes into the rating, as well as of measures beyond those included in the rating;

- The expectation of statewide definitions and procedures for reporting on opportunities to learn such as teacher qualifications and per-pupil expenditures, so that these critical data will be consistent from school to school and district to district;

- Clarity that equitable access to strong teachers for low-income students and students of color is a central part of each state's ESSA plan, rather than something to be ignored — as it was for much of NCLB — or an on-the-side project as it's been treated in recent years. This includes clarity that states can require LEAs to use Title II funds to address inequities in teacher assignment.

The importance of these rules to clarify and bolster ESSA requirements has been made clear in recent months as states have begun their implementation efforts. Already, some states have made suggestions for their new accountability systems that would undermine the law's equity provisions, such as including indicators that can't be disaggregated in their accountability system, using supergroups in place of individual student groups, or providing merely a dashboard of data with no meaningful indicator weighting.

We'll work with our partners, Congressional leaders, and Department officials to preserve these important features of the proposed regulations.

That said, there are also areas where the proposed regulations miss the mark and must be improved.

- Some of the options for defining consistent underperformance for any student group undermine the expectation — and the Congressional requirement — that when *any* group in *any* school is not making progress for multiple years, that must be clear in the school's rating, and the struggling group must get support.

  By allowing states to define consistent underperformance as having among the largest achievement gaps to statewide averages, the proposal signals that only the very largest gaps matter, regardless of whether individual groups are stagnating or even losing ground.

  And by allowing states to limit the definition of consistent underperformance for a group to being in the lowest performance level on at least one indicator, or being the farthest away from statewide average performance, the proposal signals that it's okay to help only the lowest of the low-performing groups, or groups in a limited number of schools.

  This definition of consistent underperformance is at the very heart of the law and is essential to assuring that struggling students get the support they need. The Department of Education can and should base the definition on the statewide goals and interim progress targets for each individual group that the law requires every state to set.

- By requiring that the first comprehensive support and improvement schools be identified based on data from the 2016-17 school year — which is a year earlier than the full accountability system must be implemented — the proposal makes it likely that states will simply re-identify schools that have already been identified under state systems, such as Priority Schools under state waiver systems. Students in these already-identified schools absolutely need, and should receive, continued support and intervention. But if these schools are re-identified for 2017-18 and the subsequent two years, other schools with chronically low performance for students overall may not get comprehensive support and improvement until 2020-21.

- By not including a set timeframe for English-language acquisition, the proposal signals that it's okay if English Learners never actually reach English language proficiency as long as they're making progress.

- The proposal raises concerns about the calculation of graduation rates for students with disabilities, both those earning regular and alternate diplomas. It also raises concerns that students with disabilities might be taken off-track to a meaningful diploma.

- The teacher equity provisions can and should be strengthened by requiring states to set clear, ambitious goals for reducing inequities. As it stands, states are required to report data and identify inequities but not to make any measureable commitment to addressing those inequities.

We'll work with partners and policymakers to make necessary improvements and ensure the final regulations reflect the responsibilities that the federal government, states, districts, and schools have to all children, especially the most vulnerable.

ESSA presents an opportunity to develop policies and practices in a truly inclusive way — in a way that responds to the different needs of states and localities, but that never loses sight of the ultimate goal of equity for all students. As the hard work of implementation begins, we urge states and districts to be thoughtful about their new systems. We urge state and district policymakers to involve the community — from civil rights to business to parents to educators — in a meaningful way, from start to finish.

And we urge leaders in Congress and the Department to remain vigilant in ensuring the equity provisions of the law are upheld and the needs — and potential— of low-income students, students of color, students with disabilities, and English learners are central to every implementation decision.

Mr. ROKITA. Thank you, Ms. Hall. Mr. Schuler—excuse me, Dr. Schuler, you are recognized for 5 minutes.

TESTIMONY OF DAVID R. SCHULER, SUPERINTENDENT, TOWNSHIP HIGH SCHOOL DISTRICT 214, ARLINGTON HEIGHTS, ILLINOIS

Mr. SCHULER. Thank you very much. I would like to extend my deep appreciation to Chairman Kline, Ranking Member Scott, and the entire Committee on Education and Workforce for your tireless work to complete the reauthorization of the Elementary and Secondary Education Act.

This new law holds States and school districts accountable while still allowing significant flexibility. Tight on goals and loose on means is a well-researched philosophy that correlates positively to student achievement.

Under SO, the role of the Federal Government is one of supporting and strengthening our Nation's public schools, not prescribing and dictating to us, and as it realigns the balance of authority so that the Federal Government can maintain it is appropriate limited focus on closing achievement gaps while empowering State and local education leaders to make the day-to-day decisions that most directly impact the school systems we lead.

State and local education agencies now have an opportunity to examine schools with the inclusion of a nonacademic indicator. This represents a dramatic shift from the NCOB focus on snapshot testing to a more comprehensive, well-rounded system to assess school quality. In February, at the National Conference on Education, AASA, the school superintendents' association, launched a new research-based multi-metric initiative to redefine what it means to be college and career ready, called "Redefining Ready." That could have never happened under the waiver process or NCLB.

Under ESSA, you have given us permission to dream and lead and transform public education in this country, and we will do just that. I applaud the Department's proposed regulation leaving the end size determination to the States.

I would say that I am concerned about the proposed regulation regarding the 2-year timeframe for States to identify consistently underperforming schools as statutory language in ESSA states that decision should be made at the State level.

It is my belief that the determination of a timeframe should be made as part of a broader context of the State accountability system.

I am equally concerned about proposed regulation 201.8 that requires a State plan to include one summative rating for at least three distinct rating categories for each school.

ESSA does not require each school to be rated by a single indicator. States should be allowed to create balanced accountability systems and move away from reducing our schools and teachers down to one single letter or number.

Another concern I would note is the proposed regulation that would require States to identify schools in need of support or improvement for the start of the 2017–2018 school year.

States are just developing their implementation plans now. How can schools be held accountable this coming school year for metrics not yet developed.

I would suggest that it is unfair to students, teachers, parents, and our communities to be judged and rated by unknown metrics.

While I am very pleased that the proposed regulations did not attempt to define much more than regarding the weight of academic indicators and nonacademic indicators, I do have a concern with the extent to which the proposed regulations include restrictions that indirectly ascribe weights to those academic indicators.

While I strongly support the right of students in foster care to have transportation to their school of origin, I do oppose the proposed regulation regarding the transportation of foster children. The Department's proposal deems that when it comes to transporting children in foster care, if the child welfare agency in the district cannot reach an agreement, it is the district's responsibility to cover transportation costs. In these challenging fiscal times, it is deeply troubling that this proposal would create a new financial burden for many districts, especially in a manner that at such direct odds with what ESSA requires.

ESSA's carefully crafted statutory language requires a collaborative approach between child welfare agencies and LEAs, and provides that if there are additional costs for transporting students in foster care, the district will provide transportation for the child under three specified conditions. I believe the proposed regulation is in direct conflict with the statutory language of ESSA that was negotiated in a very collaborative and purposeful manner, and I would suggest that there is really no need for the regulation as the statutory language is very clear.

I would note that I have strong reservations about the Department's proposal regarding supplement not supplant.

I am concerned that the proposal being advanced by the Department blurs the lines between two distinct but equally important statutory provisions. Supplement and not supplant and comparability, both target at maintaining the integrity of Title I dollars.

Finally, I would urge the Department to use restraint in issuing regulations, but playing a critical role in supporting State and local implementation of assets through the sharing of best practices and technical assistance.

The sheer volume of new practices, programs, and approaches that State and local education agencies will be considering and adopting means that States, schools, and school districts will need a clearinghouse to share what is working, what is not working, and what we learned along the way. Imagine the Department being a repository for what is working in our Nation's schools in regards to career pathways, coding, closing the achievement gap, grade level readiness, a digital curricular transformation, resource efficiencies, and other issues facing U.S. schools.

America's teachers and school district leaders will not let you down. I applaud the committee's work on ESSA and am confident that our public education system will be better as a result of the Every Student Succeeds Act being the law of the land. Thank you.

[The statement of Mr. Schuler follows:]

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Dr. David R. Schuler
Superintendent

June 23, 2016 – Written Statement

I would like to extend my deep appreciation to Chairman Kline, Ranking Member Scott, and the entire Committee on Education and the Workforce for your tireless work to complete the reauthorization of the Elementary and Secondary Education Act. It is my belief that the language of the Every Student Succeeds Act is an exceptional piece of legislation and I applaud Congress' overwhelmingly bi-partisan support for ESSA.

This new law holds states and school districts accountable, while still allowing significant flexibility. 'Tight on goals and loose on means' is a well-researched philosophy that correlates positively to student achievement. ESSA restructures the balance of authority between the federal government and state and local governments. Under ESSA, the role of the federal government is one of supporting and strengthening our nation's public schools—not prescribing and dictating to them—and ESSA realigns the balance of authority so that the federal government can maintain its appropriate, limited focus on closing achievement gaps while empowering state and local education leaders to make the day-to-day decisions that most directly impact the school systems they lead. Past conversations regarding innovation and inspiration always started, and usually ended, with the construct of "Will this comply with our State Waiver or NCLB?" Now, with those constraints lifted and ESSA the law of the land, states and districts can focus once again on truly meeting the needs of every student who walks through our schoolhouse doors on a daily basis and for that, I am truly thankful to the Committee.

In February, at the National Conference on Education, AASA, The School Superintendents Association launched a new research-based, multi-metric initiative to redefine what it means to be college and career ready called Redefining Ready (www.redefiningready.org). That could have never happened under the waiver process or NCLB. Now, we have the ability to acknowledge that we all learn in a variety of ways, our students learn in a variety of ways, and they should be able to demonstrate readiness in a variety of ways. Under ESSA, you have given us permission to dream and lead and transform public education in this country and we will do just that, and my district, my state association and my national organization have already begun that process, including with the Redefining Ready initiative.

State and local education agencies now have an opportunity to examine schools with the inclusion of a non-academic indicator. This represents a dramatic shift from the NCLB focus on snapshot testing to a more comprehensive, well-rounded system to assess school quality. Rather than solely focusing on compliance and reporting to our State and the Department of Education, which at times felt like all we were doing under NCLB, we can now direct and target our energies and resources where they can have the most impact… on our students and schools with the most needs.

While ESSA itself is a statute that numbers more than 1,000 pages in length, the reality is that meaningful, successful implementation will require some additional federal clarification. As the Education Department (USED) works to provide this information, I want to encourage the USED to be mindful of three distinct approaches it has to providing information: regulations, nonbinding guidance and technical assistance. Beyond the specific regulations required under ESSA, it is critical that the USED use restraint when issuing regulations and guidance and to ensure those regulations meet the letter, spirit, and intent of the law. I appreciate the Department's guidance and rules and regulations where necessary, but only where necessary and when there is agreement between the state and local education agencies that additional regulation is needed. It would be disheartening, frustrating and discouraging to see the final rules and regulations released that go beyond the letter, spirit, and intent of the hard work of this Committee and your colleagues. Further, unnecessarily prescriptive regulations run the risk of hindering state and local innovation before it has time to be implemented. State and local education agencies are emerging from fifteen years of a compliance-based mentality as it relates to education policy. ESSA represents the first time these education agencies have the opportunity to innovate and demonstrate what we are capable of as it relates to accountability and educating students absent the federal overreach rampant in NCLB and the waiver process, and early federal overreach under ESSA increases the likelihood that the changes state and local education agencies make will be more peripheral adjustments rather than the broader redesign that I believe your committee envisioned and codified under ESSA.

I applaud USED's proposed regulation leaving the N-size determination to the states. I am concerned about the proposed regulation regarding a two-year timeframe for states to identify 'Consistently Underperforming" schools. I believe the determination of a timeframe should be made at the state level as part of the broader context of a state's accountability system. I am more concerned about proposed regulation 200.18 that requires a state plan to include one summative rating from at least three distinct rating categories for each school. ESSA does not require each school to be rated by a single indicator. It is critically important that states should be allowed to create balanced accountability systems and to move away from reducing our schools and teachers down to one single letter or number. States should have the flexibility and support to create a multi-metric, research-based balanced accountability system if they so choose. Reliance on a summative indicator mirrors current reporting requirements and unnecessarily hinders the ability of state and local education agencies to consider new innovative, research-based approaches.

Another concern I would note is the proposed regulation that would require states to identify schools in need of support/improvement for the start of the 2017–2018 school year. States are just developing their implementation plans now. How can schools be held accountable this coming school year for metrics not yet developed? It would seem to reason that since ESSA is to be implemented beginning in the 2017–2018 school year, that we implement in 2017–2018 and that after data has been collected to comply with each state's implementation plan, states would then look to identify schools in need of support or improvement beginning with the 2018-2019 school year. I would suggest that it is unfair to students, teachers, parents, and our communities to be judged and rated by unknown metrics.

While I am very pleased that the proposed regulations did not attempt to define "much more than" regarding the weight of academic indicators and non-academic indicators, I do have a concern with the extent to which the proposed regulations include restrictions that indirectly ascribe weights to the academic indicators. The proposed regulations stipulate that a school identified for improvement cannot move off the list based solely on improvement in a non-academic indicator, and that a school receiving the lowest performance level under any of the academic indicators must receive a different (lower) summative score than a school performing at the highest level of all indicators. My concern with this proposed regulation is that it is prematurely prescriptive. This is the first time in fifteen years that schools, districts, and states can demonstrate what we can do in the accountability arena absent federal overreach. The academic indicators are already required to weigh much more than non-academic indicators. More items that weigh more individually will weigh more in the collective. Adding layers of prescription, like those in this proposed regulation, indirectly ascribe federal weight to academic indicators and increase the likelihood of small, peripheral changes to state implementation plans, rather than bold and innovative approaches supported under statute.

While I strongly support the right of students in foster care to have transportation to their school of origin, I strongly oppose the proposed regulation regarding the transportation of foster children. The Department's proposal deems that when it comes to transporting children in foster care, if the child welfare agency and district cannot reach an agreement, it is the district's responsibility to cover transportation costs. In these challenging fiscal times, it is deeply troubling that this proposal will create a new financial burden for many districts, especially in a manner at such direct odds with what ESSA requires. ESSA's carefully crafted statutory language requires a collaborative approach between child welfare agencies and LEAs and provides that if there are additional costs for transporting students in foster care, the district will provide transportation for the child under three specified conditions: if the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation; if the local educational agency agrees to pay for the cost of such transportation; or if the local educational agency and the local child welfare agency agree to share the cost of such transportation. I believe this proposed regulation is in direct conflict with the language of ESSA that was negotiated in a collaborative and purposeful manner. It also reduces the responsibility of child welfare agencies to work with and negotiate with school districts. Furthermore, I would suggest that there isn't a need for this regulation as the statutory language is very clear.

I would note that I have strong reservations about USED's proposal regarding supplement not supplant. Congress was as deliberate in making changes to supplement not supplant as it was in not making changes to comparability. Congress did not draft a 1000+ page bill and accidentally forget to update the comparability provisions. I am concerned that the proposal being advanced by USED blurs the lines between two distinct and equally important statutory provisions, both targeted at maintaining the integrity of Title I dollars. I am concerned that a push to equalize spending assumes that a school can control for all factors that teachers consider when deciding where to apply. To the extent that those factors are beyond a school district's control, the only functional way to equalize spending is forced teacher transfers. The flawed inherent assumption

behind this proposal is that only teacher salaries directly correlate to the quality of teachers and the fit between a school and a teacher. Schools administrators are well aware of the cost differentials that exist between schools within their district. The factors that influence where a teacher applies are not something that school districts control. Some schools are seeking teachers with specific skill sets that may be unique to a specific school. To not consider candidates that meet that necessary skill set because that individual's salary might be too low or too high to meet a threshold under supplement not supplant (as could be the case under a USED proposal) could prove very detrimental to the students who could greatly benefit from a teacher whose skills fit the needs of the school regardless of their salary. An arbitrary requirement to equalize spending is draconian, against statute, and could result in forced transfers that would be extremely detrimental to our mission of finding the best fit for our students and our schools.

Circling back to something I referenced earlier: while I urge the Department to use restraint in issuing regulations, I believe that the Department is uniquely positioned to play a critical role in supporting state and local implementation of ESSA through the sharing of best practices and technical assistance. The sheer volume of new practices, programs, and approaches that state and local education agencies will be considering and adopting means that states, schools, and school districts will need a clearinghouse to share what is working, what isn't working, and what we learn along the way. The Department is best positioned to manage this clearinghouse to support schools, districts, and states. Imagine the Department being a repository for what is working in our nation's schools in regards to career pathways, coding, closing the achievement gap, grade level readiness, a digital curricular transformation, resource efficiencies, and other issues facing U.S. schools. Wouldn't that be awesome? The Department being the 'go-to' place schools and districts could find best practices from across the country.

I know that there have been concerns raised by some regarding schools, districts, and states lowering standards and expectations with the implementation of ESSA and I just don't believe that will happen. We have been examining student group data for years, and the overwhelming majority of school districts have used data to improve instruction. That will continue. With Congress being the face of the implementation of ESSA, you have the oversight to ensure that ESSA is implemented with fidelity and in a manner consistent with the language, spirit, and intent of the legislation.

America's teachers and school district leaders will not let you down. I applaud the Committee's work on ESSA and am confident that America's public education system will be better as a result of the Every Student Succeeds Act being the law of the land. Thank you again for the opportunity to share these thoughts with you this morning.

David R. Schuler, Ph.D.
Superintendent
AASA President

Mr. ROKITA. Thank you, Dr. Schuler. I would like to start with you, recognizing myself for 5 minutes. You are hitting on your last comments there on something that I was trying to get out of Dr. King, but I myself ran out of time in the questioning, and that is using SNS as a backdoor to comparability to come in. You mentioned that just now in your testimony, Can you go into some more detail there about your concerns? Because you remember that in the Every Student Succeeds Act, we specifically said our comparability formulas or intentions were not changing from the old law to the new law, yet they want to change comparability it seems.

Mr. SCHULER. It is a concern because comparability allowed us the opportunity to not have to focus intently on ensuring salaries, were included as part of the supplement and not supplant.

Mr. ROKITA. Mm-hmm.

Mr. SCHULER. And so we cannot dictate who applies to our schools. And so if that regulation ends up really happening, the end result of that will end up being forced transfers and that is a huge concern.

Mr. ROKITA. Forced transfers because isn't it true that the most significant part of any school budget is personnel cost?

Mr. SCHULER. Absolutely.

Mr. ROKITA. So if you are going to balance that through comparability, then you are transferring teachers from one school to the other?

Mr. SCHULER. Correct, which may not be a good fit for that school.

Mr. ROKITA. Why not?

Mr. SCHULER. Because you could have a school, let's say, when I was superintendent in central Wisconsin, I had a school that was an elementary school, Title I, focused completely around technology. The skill sets of the teachers in that school looked very, very different from a traditional elementary school.

Mr. ROKITA. Mm-hmm.

Mr. SCHULER. And as a result, the people that applied to be in that school setting had a very specific skill set. If I would have been forced to ensure that the salaries of all of my elementary schools for Title and non-Title would have been the same, I would have been forced to move people with the skill set I needed in that school out—

Mr. ROKITA. Right, or hurting the Title I students that are supposed to be helped by all this.

Mr. SCHULER. Correct.

Mr. ROKITA. So your testimony is that the Department's proposal here is actually going to—it has a strong potential of hurting low-income students that Title I is supposed to help?

Mr. SCHULER. It definitely could.

Mr. ROKITA. Yeah. Ms. Harrelson, thank you for your testimony as well. Ms. Hall talks about the ability to have summative indications as well as the retrieval of rich data as well. You were sort of negative on the summative aspect of the data collection. Can you go into more detail there? Because I agree with you.

Ms. HARRELSON. So you are asking on data collected on students?

Mr. ROKITA. Yes, and use your microphone, please.

Ms. HARRELSON. Okay, you know, I think that we have to be cautious of the data that we are looking at, and a lot of times that when we are looking at some of the summative measures, they are not fully aligned to what is actually happening in our schools because of the nature of some of the standardized assessments that we were using so—

Mr. ROKITA. Could you give examples?

Ms. HARRELSON. Some examples?

Mr. ROKITA. Yeah.

Ms. HARRELSON. Well, if you look at some of the assessment items that are used on tests that were allowed to create standardized assessments, they do not always get at that rich understanding that we really want to see that kids are showing, so I support, as a teacher, more of a formative local level type of assessment where teachers can really use that to guide next instructional steps. And I just always err to being a little bit cautious that a lot of the data that we receive from these assessments really cannot be used to guide instruction and improve outcomes, so we have to be really cautious of too much emphasis on that.

Mr. SCHULER. Thank you, Ms. Harrelson. Dr. Pruitt, you were critical in your testimony of the accountability proposal proffered by the Department. Do you want to go into any more detail there?

One point specifically, were you witness to the—not a witness on, but were you witness to the first panel with Dr. King?

Mr. PRUITT. I was.

Mr. ROKITA. Do you want to comment on that panel at all in terms of accountability systems or supplement versus supplant or anything else you observed?

Mr. PRUITT. I think it would be fair to say that his interpretation of some of his regs are different than ours. I think—

Mr. ROKITA. "Ours" being who?

Mr. PRUITT. Ours in Kentucky in particular. Of course, we have been supported by the Council of Chief State School Officers as well.

We have had a lot of conversations but for us around the accountability in particular, it is easy to say, of course, 2017–2018 will be the first year because that is what ESSA requires. However, actually the fact that we have to identify schools in 2016–2017 for 2017–2018 means that you actually are perpetuating the old system for at least another year.

We in Kentucky actually have two schools that because they were caught in that same issue when our waiver went through, we have two schools that are at the same time listed in our top 5 percent and bottom 5 percent because the systems were significantly enough different. And what it does is it creates a distrust of the system itself which means that people really do not pay attention and we do not see the kind of movement that we really need to see.

Mr. ROKITA. Thank you and final question. Do you have any reason to believe that Dr. King or the Federal Department of Education know you or your kids better than you do?

Mr. PRUITT. Absolutely not. My kids are my kids.

Mr. ROKITA. Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. I guess this is for everybody. I just wanted to know if there is any situation where it would

be good policy to withhold school improvement resources and technical assistance to help improve a school just because a school is actually improving one school climate equality indicator, but is still failing to perform for the children? Should we be able to withhold school improvement resources?

Anybody think that we ought to be able to withhold school improvement resources just because they may be improving on one, but failing on many others?

Ms. Hall, on the participation rate the statute requires a meaningful factor. Assessment participation rates requires States to meaningfully factor in assessment participation rates for their accountability systems.

How do you require a school-level consequence if they miss their participation rate?

Ms. HALL. Absolutely. I think it is important to remember why that requirement is there in the first place, because of the value of the statewide annual assessments is to provide a common measuring stick that applies for all students across classrooms, schools, and districts.

If we do not have full participation either because students are opting out or because, as history has shown, schools are opting out low performers on test day, we undermine the value and credibility of that information.

When it comes to ensuring that test participation is clear in the school accountability system, it can happen in a number of ways, including making that clear in the rating as a school that was previously going to get, for example, an A could become a B. There are options that are allowed for States, but I believe that it is incredibly important to make sure that the value of the information in the accountability system is not undermined by having only some of the students participate in the assessment and if there is low participation, that must be clear.

Mr. SCOTT. Thank you. Mr. Pruitt, you have been working on accountability equality and equity and made the point that just calculating a summative score does not spur improvement. How can you use—well, two things. One, how do you ascertain the bottom 5 percent that have to be addressed and how do you use the assessment to actually spur improvement?

Mr. PRUITT. So I would say to your second question first, the reason I am in support of a dashboard is that it actually allows us to desegregate what I would consider school behavior, so we disaggregated student achievement in the past with No Child Left Behind and that was absolutely fantastic. In doing so, we allowed schools to sort of hide other things, in particular not guaranteeing a whole, well-rounded education for all students. So for me, the dashboard allows us to actually take a look across.

And I realize that with our school report cards we have had extra data other than the summative score, but in Kentucky, people do not look past the summative score. They look at that and sure they can say you are better than 80 percent of the other schools, but what is it about that really means that you need to be improving?

And for me, a dashboard really casts a spotlight on assuring that we are actually focusing on the right things. It is more of a laser-like focus to ensure that we actually see improvement as opposed

to a scattershot approach. As to the bottom 5 percent, this is where I think the States actually meet that opportunity for us to be able to make that determination.

For us, I have got 166 people on eight different committees who are focused on building a completely new system. And part of that is us determining how we would actually identify that bottom 5 percent in a way that holds people's feet to the fire, that ensures that kids are going to graduate literate, numerate, and that they have a well-rounded education. But, at the same time, I think that we are at a point, in Kentucky anyway, where we need a little bit more of an innovative way to do it than just simply applying numbers to it.

Mr. SCOTT. Thank you. Mr. Schuler, you have suggested that a multi-metric accountability system is important. The ESSA encourages that, so I want to ask you what the draft regulation, including guardrails, to ensure low performance of traditionally underserved students is not masked, to make sure that your overall score does not mask the subgroups.

What multi-measure system do you envision with a low-achieving subgroup but a high graduation rate, for example? How do you make sure that you are not submerging the underperforming group?

Mr. SCHULER. That is a great question. That is one of the things I love about the system that we have developed and the use of the dashboard as well.

You develop the architecture of your dashboard for each different indicator, including graduation rates, grades, success in algebra II, for example, because we know that is such a gateway course. You build all that up and as you populate, you can desegregate by each student group per variable. That is why it gives you such a more well-rounded comprehensive understanding of what is happening in that school.

And then, if you still have your annual test, if those lines are going in the same direction and both up, that tells you one thing. If they are both going down, it says the States are really going to need to engage. And if you are going in opposite directions, we really need to dig into that date and see what is going on.

So I love the idea of developing that multi-metric approach that—research-based, but then populates the dashboard that allows really to drill down into the data to improve instruction opportunities for kids.

Mr. ROKITA. I thank the gentlemen. The gentleman's time has expired. Dr. Foxx, you are recognized for 5 minutes.

Ms. FOXX. Thank you, Mr. Chairman. I want to give a very strong thank you to our practicing professional witnesses here today for your strong, positive commitments to educating the young people in their purview.

I think it comes across very, very strongly that you care, that you understand the subjects, and that you are really committed to serving the children that you serve, so it is so refreshing—it is not refreshing, it is great to hear it. I hear it a lot when I am at home from people in your same position, so I know there is a lot of good going on in education in this country. And the good that is going

on is being done by people like you, and so I appreciate you very much.

Dr. Schuler, I want to ask about the foster care regulations you raised in your testimony. I know Dr. King said the Department has also released guidance on that subject just this morning. Could you talk more specifically about the current process between school districts and child welfare agencies and what impact that the Department's proposal would have on you?

Mr. SCHULER. Yes, so thank you for that question. And I have not obviously had a chance to see what came out this morning, but right now what happens is we sit down with the child welfare agency and we engage in a conversation about how can we best serve the needs of that child.

The concern with this regulation is it really precludes the child welfare agencies from being compelled to participate in that conversation because at the end of the day, if they do not support, we are going to have to come up with the money. And did I think back to my first superintendents outside of Madison and I had a student homeless under McKinney-Vento, very appropriate, we had to provide transportation.

I was in a very, very small district outside of Madison. The student's home district was Milwaukee.

I paid every day for students to be transported, over an hour and 15 minutes one way, back and forth. And in that district where I had 80 teachers at the end of the year, that total cost was over a teacher. And so I am very concerned about the impact that this proposed regulation could have, especially on brothers and sisters, colleagues of ours, and smaller rural districts.

Ms. FOXX. Now, thank you very much for that response.

Dr. Pruitt, in your written testimony, you talked about the restriction the Department was proposing to place on State flexibility to define "consistently underperforming". I think it is pretty clear you have been talking about this already in the State of Kentucky, but would you expand on that just a little bit?

Mr. SCHULER. Absolutely. As some of my colleagues here have even already mentioned, the fact that we have been so focused on math and reading for such a long time and not to say that we still should be, but at the same time there are other factors that are equally as important.

For me personally, and I think we are hearing this more and more in our State, it is the issue of opportunity. So for us, when we look at our persistently low-scoring schools, yes, we need to look at the math and reading scores, but we also need to see what they are offering. The days of offering algebra I, algebra I lite, and algebra I low carb need to end.

We need to actually start guaranteeing every kid is getting the education they need and that every kid is actually getting a level of expectation that will only serve to help them be successful.

So for us, I want us to be able to really have an open playbook where we can say, you know, your kids are doing horribly in achievement, but I think we are going to find some that are doing decent in achievement, but they are doing horrible in what they are offering, especially our underserved populations. So I want to have more of that latitude that we can really take a good hard look

at that school behavior that I mentioned earlier and guarantee that every kid is getting the offering of high expectations and education that they deserve.

Ms. FOXX. Thank you very much. For anybody who is taught, we all know that it is so important to teach at the level that the students are able to perform or at least, I mean, that is what we understand.

And Ms. Harrelson, I want to make a particular thank you to you for being a math teacher. Every time I meet great math teachers, I say you are worth your weight in gold. We need a lot more of you in the schools, so thank you for doing that as well as having such a well-rounded perspective. I yield back.

Mr. ROKITA. I thank the gentlelady and associate with her remarks. Ms. Bonamici, you are recognized for 5 minutes.

Ms. BONAMICI. Thank you very much, Mr. Chairman, and thank you to all of the panelists. I want to align myself with Dr. Foxx' comments about your commitment and I can sense that as well. Your commitment to education and your commitment to making certain that the Every Student Succeeds Act is implemented in a way that does provide that opportunity to all of our students.

I am not an educator, but I spent 16 years as a very involved public school parent. It got to the point where my kids said, Mom, do you always have to be at school? But I had the opportunity to spend a lot of time volunteering and then served on our State legislature on the Education Committee and then came here to Congress where I find myself still going back to school on a regular basis and visiting and talking to students and teachers.

And Ms. Harrelson, in your testimony you talk about providing relief from extensive time focused on standardized testing and use of assessment to guide meaningful instruction. I cannot tell you how many times I heard that over the years since No Child Left Behind passed and that focus on testing. But the high stakes associated with the testing were what I saw as incredibly problematic and I share in your hope that the new education law will spur better use of assessments, fewer and better assessments. I worked very hard to get a provision in the law to allow states and districts to eliminate duplicative tests and give educators more time to plan and design instruction based on data from high-quality and timely assessments.

So, Ms. Harrelson, can you discuss how the Department and State leaders and local school districts can work together to make sure that assessments do provide useful information to teachers and families, including the statewide assessments that were authorized in the legislation by partisan members of Congress? And then I am going to ask Ms. Hall to respond to that as well.

Ms. HARRELSON. Okay, so I have had the privilege of working on some of our former assessments and I do think we started out with the idea of making sure we really have educators involved in these conversations. And this goes at the local, the State and the Federal level, so I think it is really important that we continue to really look at how we are developing our assessments because it is really educator voice that really narrows kind of what this actually looks like in the classroom and the type of information we would want back to be looking at how we are doing.

Ms. BONAMICI. Thank you. My State of Oregon is a pretty early adopter of adaptive testing in America. There is a tremendous potential there.

Ms. Hall, you want to discuss that as well? Because I share your perspective, it is important to assess students. We just need to make sure we are doing the right thing with those assessments.

Ms. HALL. Absolutely, and I will start by saying we appreciate your leadership on efforts to support States and to confirm States to audit assessments and eliminate low-quality, duplicative, unaligned assessments. We know that there are too many assessments in some of our districts right now and that is a waste of money and, worse, it is a waste of time both for teachers and for students, and we appreciate your support on that.

That said, it is important not to go too far, right? We do need that consistent measure from an assessment that is aligned with State standards to be able to tell educators, tell parents, to tell policymakers how every student is doing relative to State-set standards and that allows to identify both of those students, those schools, those districts that are struggling to target resources and support to those areas. It also allows to identify consistently students, schools, districts that are doing an exceptional job, particularly with low-income students, students of color, English learners, and students with disabilities.

Those are areas that we both need to celebrate and we need to learn from because they are getting the kinds of results of all students through high levels that is the goal of all of our work here.

Ms. BONAMICI. I do not mean to interrupt here. I want to get another quick question in. Dr. Pruitt, I want to talk about the alternative diploma for students with the most significant cognitive disabilities. The alternative diploma described in ESSA has some very specific requirements.

Our intention is not to pigeonhole students into alternative diplomas, but to provide a pathway to meaningful diplomas. So how does your State plan to develop a high-quality pathway for the students with the most significant cognitive disabilities and will you be working to prevent this pathway from becoming a loophole that prohibits students with disabilities from achieving a regular diploma?

Mr. PRUITT. Yeah, absolutely. We have to protect our students that are most vulnerable, but we also need our diplomas to mean something.

I do not want to ever have a child walk a stage in Kentucky and get a diploma that is not even worth the paper it is printed on, so we are going to work really hard with our special ed community, our exceptional children community, our civilized community to put some pretty hard places in there to say this is exactly what we are expecting with these diplomas.

We will work really closely with our districts, but we are going to do our level best to ensure that nobody can game the system in such a way that the adult gets the benefit when the student does not.

Ms. BONAMICI. Thank you. My time is expired, but I am going to follow up with Dr. Schuler in writing about the transportation of foster students.

Mr. ROKITA. Mr. Guthrie is recognized for 5 minutes.

Mr. GUTHRIE. Thank you, Mr. Chairman, I appreciate it, and thank you all for being here. First of all, let me point out that when we are talking about and discussing this, the three people that have concerns with the rule are practitioners and public education.

They are not a think tank, they are not policy in the high-level policy. People who want children to learn, they want to make the public school system learn. And we can talk about other stuff later, but public schools, investment in the public school system, and those are where the concerns are coming from. So I just wanted to point that out.

And like the N equals 30 discussion where the Secretary said if we cannot accomplish all these things the law requires when the law allows you to set your own number, but if we do not send it from Washington, they will not be able to comply with everything else, and it assumes you guys do not know what you are doing and that is really frustrating because it assumes that a few smart people in a room in Washington, D.C., figured it out and it works for everybody.

The next example is trying to find the bottom 5 percent. The Secretary said you could not do it without a summative rating. That is what he said earlier and you are saying I have got committees of people across our great Commonwealth trying to figure out how to set up a rating system that gives you what you need according to the law, but also gives you what you need to make sure that kids learn better. And I think that is the beauty of our country and what you guys are doing is taking your ideas and bringing them up. And that is exactly what we tried to do in a bipartisan way, and my friend just said that she fought for certain parts to be in there.

This was really a collaborative effort and we are afraid that the rules are coming down and taking away what we wanted to have is you guys to have your input in. So one thing that kind of struck because you kind of answered some of my questions I was going to ask is that you said that under the old system and new system, because of the year, you had one that was top 5 percent and in the new system it would say bottom 5 percent or how does that work—I mean how do two systems generate such different results? What are the details of that?

Mr. PRUITT. Well, in the old system actually they were in the priority, they were in the bottom 5. And so because of the exit criteria, they had to stay in that going into the new system, so those two systems overlapped in such a way that they did not allow a reset button or a refresh button if you will. So under the new system where there was a much greater view of quality of the programs and not just the achievement, but actually the quality of the programs, what we found was that these schools are actually some of our best performers when you look at them in a broader range of criteria, so as a result they are stuck.

Now, they will probably come off of the priority list in the next year, but because they were stuck there to start within the old system, it really just created a sense of distrust in that system by the

fact that when you look at any list from Kentucky, you see these schools as distinguished and as priority.

Mr. GUTHRIE. When you went across our Commonwealth and had town hall meetings, tell me about that process, and people showed up for those town hall meetings, practitioners, parents concerned. It was really well attended and well promoted and you did a really good job with it, so talk about that process. And then what happens when you have a system that the people just do not trust?

Mr. PRUITT. Sure. So we decided early that the thing that we had to do was be out in the field. If we really wanted to develop a system that reflected the values of Kentuckians, I need to go listen to Kentuckians. I cannot make good decisions sitting in Frankfurt. It is one of the reasons that I think it is important that States have the authority to do this because you cannot make those decisions in Washington. So we had 11 town halls and all of our town halls, we never had less than about 200 and we had over 300 in several cases, so we had well over 3,000 people that showed up to these. We had parents, teachers, superintendents, local board members, legislators, community members, civil rights members that came and told us what they valued in the education system, so we took that.

We videoed each one, we took notes on each one, we have posted those up for everybody to be able to see.

Mr. GUTHRIE. So what did you learn> What have you learned from that you have implemented or tried to bring in to—

Mr. PRUITT. We learned that Kentuckians want a simple system that makes clear what performance is and not the appearance of performance. We learned that the education of the whole child must be critical and not just focused on math and reading.

We learned that we have got to cut down on competition between our districts and embraced the idea of our children our Commonwealth so that we actually perpetuate a system where the districts are willing to work together to ensure kids get what they need as opposed to I have to better than you for me to get my better writing.

Mr. GUTHRIE. And like I said, when you have all these town halls of people out there, I may think I—personally I say how can you rate a school if you do not have a summative rating? But you may come with ideas and say, wow, I never thought of that. And that is the beauty of what this law is trying to do. So we have people who really care about what they are doing, passionately about what they are doing, and trying to be innovative and it helps everybody.

Mr. Chairman, I just ran out of time. I yield back.

Mr. ROKITA. I thank the gentleman. The gentleman's time has expired. Mr. Allen, you are recognized for 5 minutes.

Mr. ALLEN. Thank you, Mr. Chairman. And Dr. Pruitt, I am fascinated by your—I am only reading your testimony, but you seem to be ahead of the curve as far as what I understand. A lot of States have been unable to address how we implement this new law.

One of the things that I was interested in reading, the testimony was how you had engaged in business community. What I have seen, the business community obviously benefits from an educated

society and, of course, business communities make their decisions where they locate based on a skilled workforce, an educated workforce.

So, in fact, in several areas in my district, people ask me, so how do we recruit industry? And I said, well, we have got to have an educated and skilled workforce. Well, how do we do that?

It is a challenge and as far as your experience in the business community, what have you seen and how is your business community address this incredible need to get folks back to work in this country?

Mr. PRUITT. Great question. Workforce is inextricably linked to education, and so I think we are very lucky in our State that we have a governor who, in our legislature, who is very focused with the workforce and that is an area of mind that I have a particular interest in as well.

One of the things we like about the regs is that they do give career and technical education. It is just we are actually recognizing it as a major portion of our students' educational experience. I think we are recognizing that simply graduating from high school is not enough. There should not be a terminal degree or diploma.

We actually need to be training students to be able to go—whether they go into university or 2-year technical college or directly into the career workforce, we have to provide all those opportunities laid out for students and do a good job counseling them.

We have had a great relationship with our cabinet workforce and education in that we are working with our Kentucky Workforce Innovation Board to actually have the business community tell us so that we can actually develop pathways for specific jobs that are needed in the different regions of Kentucky, So as we work with our KWIB, we are actually asking now, which of these pathways are important, so that we can attract better business to our communities. Because we actually have a workforce that is able to meet the needs because we are not just randomly giving career tech credit, we are actually focused on getting the credit that is necessary to be able to fill the job needs.

Mr. ALLEN. I congratulate you on your work. Dr. Schuler, in traveling throughout my district which you are close to the kitchen in your district, in your area, and one of the things—and, of course, Dr. Pruitt mentioned in his testimony educating the whole child, and I was shocked in asking questions. I said I always ask what is your biggest challenge and everywhere I went, they talked about the emotional health of these young people. And, of course, we are talking about how do you educate the entire person?

Do you care to comment on any issues you are having and maybe how you are addressing that?

Mr. SCHULER. Well, we just engage in our district and the entire community conversation on that exact topic. In talking about what does make sense, how are we ensuring the emotional, mental health of our kids and are we putting too much stress and pressure on them? And it has been an awesome conversation, so starting in two years, we are going to start our high schools later in the day based on the research.

We have found a way to compact the day, shortening the lunch periods, so that kids are not still there late at night. We also put

parameters and limits on how long practices and activities can last, and we are providing some opportunities during the year where we are asking our staff and our students not to do work.

Four weekends during the year we say go be a kid. Staff, focus on your family. Because we need people to step away a little bit so that they come back and completely reengage. And that has been—I am really excited about that, to track that and see if that has an impact.

But we have to do something to ensure that we are providing for that whole child and that is what has been so frustrating, I think, the last couple of years and at least why a couple of us are up here today concerning—none of that conversation is about the score. None of this stuff that Dr. Pruitt is doing is talking about a score. We have to provide access and opportunities to rebuild our communities.

Mr. ROKITA. The gentleman's time is expired. The gentleman from Wisconsin, Mr. Grothman, is recognized for 5 minutes.

Mr. GROTHMAN. Thanks much. The first one is for any one of you, so we will see who talks first. I do not know if you were here and happened to hear Secretary King's testimony but I wonder if any of you, and you can start with Dr. Pruitt and work our way across the table, if there is anything he said that you would like to respond to?

Mr. PRUITT. I think, I mentioned this earlier, I think some of his interpretations of what are in the regs are different than our interpretations; "ours" being Kentuckians. I really do not think that he sees the timeline issue the same way we do. Having the conflation between 2016–2017 identification and 2017–2018, he mentioned that 2017–2018 was a planning year, which was new to me. I had not heard that before. My understanding was that 2017–2018 was the year that you started.

If it is a plan year, then I think maybe we can have a little bit more time to actually engage more stakeholders and build a better system, but maybe I missed that part. But for me, that was a bit of news, so maybe I have to go back and reread, but the way I understand it is actually they have accelerated it. And in my opinion, the current regs would actually cause the current system to actually stay in place because it limits my ability to be innovative. It limits my ability to be able to do something special.

Mr. GROTHMAN. Okay.

Ms. HARRELSON. Okay, I would just like to emphasize again the importance of teacher voice. And, you know, as you probably read in my testimony, I do work in some of our lowest performing schools in Colorado, and with teachers on the ground floor daily and what we would like to see is allowing our teachers to elevate their voice and what to do to actually improve outcomes for our students in these conditions. So once again, teacher voice. It is really hard for someone up here in D.C. to start dictating what we should be doing in our low-performing schools. It is really hard.. Thanks.

Ms. HALL. I think we heard the Secretary talk many times about the importance of stakeholder engagement and getting feedback through this entire implementation process, and I believe that

there are many instances where the Department has made good on that and is continuing to make good on that.

We also heard the Secretary talk about putting guardrails in place, but still allowing State and local decisions in key places and I believe that the regulatory kind of proposal in many instances allows for that.

One of the examples that he talked about was identifying schools that are consistently underperforming based on State-set goals, not federally prescribed goals, but those that are based on an analysis of State data. We really appreciated that.

Mr. SCHULER. Okay, this is the first time in 15 years that we have the opportunity as people in the field and in the States to develop some innovative creative ways to address the goals of ESSA. And I am super concerned about the tight timelines, almost ending up—not giving us that time to go out and collectively engage stakeholders in authentic ways and plant for that implementation.

We want to transform and lead, and we can do that. We just need time to engage in that process. So I am very concerned that a tight timeline is going to result in a continuation of what has been and that is not what we want.

Mr. GROTHMAN. Okay, I have a question for Ms. Harrelson because I always liked math and I recently had a discussion with somebody who is very involved in the system. He has been a teacher. I think he is a tutor, been involved for many years, and feels how much worse the students are doing than in the past. Kind of interesting that you thought we would get more input from the teachers.

When I was in the State legislature, he used to go, and I still think it is right, that they would bar the use of calculators on standardized tests. Part of it, I felt, was one of the reasons why our children were having such a hard problem with math and they were not developing the ability to play with numbers in their head.

I wondered what your comments were on that, whether you felt like my friends, that was one of the reasons why our kids are underperforming in math. And while I do not like the Federal Government imposing anything, something at least on the State level, we ought to take those calculators away and force those kids to play with numbers in their mind. In 15 seconds, please.

Ms. HARRELSON. All right,. I support a balanced approach when it comes to calculators. It depends on what you are doing. And so I do think that it is important for kids to be flexible with numbers, but there is also some problem-solving that is at a higher level that we might want to incorporate the use of a calculator to reach some more complex problem-solving situations.

Mr. ROKITA. The time is expired. Mr. Scott, you are recognized for a closing.

Mr. SCOTT. Thank you, Mr. Chairman, and thank you for convening the hearing. A lot of issues were brought forward, one of which was the idea of supplement not supplant. As I indicated, since the Brown decision, there is a constitutional responsibility to provide an equal educational opportunity, and supplement not supplant should be supplemental over and above, not an unconstitutionally underfunded level. But what it should have been, at least a bare minimum under the Constitution providing equal edu-

cational opportunity and then it should be supplemental because under the Elementary and Secondary Education Act of 1965 we recognized some challenges that occur when there is a significant concentration of poverty. So we need to make sure that we do not excuse those localities that are not funding education up to at least a constitutional level.

There are a lot of other issues that came up, but I think the Secretary indicated that we are in the comment period and if comments need to be made on regulations, now is the time to make those comments known. He also indicated that he is going to be seriously considering all of those comments and there is no reason to believe that he will not.

So, Mr. Chairman, thank you for giving me, the witnesses, the Secretary, and the panel the opportunity to comment on the regulations. We did a lot of work to enact the Every Student Succeeds Act. It is a bipartisan effort and we hopefully can continue to go forward in a bipartisan manner.

Mr. ROKITA. I thank the gentleman. I thank him for the letter and spirit of his comments. We both sat at the final negotiating table and the fact of the matter is the law is the law and I was very clear on supplement and supplant. And from the testimony even yet today, as we have heard for several years now, to do so otherwise than what is in the current law is to have a high likelihood of hurting those very kids that we are supposed to be helping.

So with that, I want to thank each one of you for your leadership, both locally and nationally. I am inspired and I am motivated as well as the members here are by the words we have heard today from each of you and the leadership that you provide.

We do hope and expect that leadership will continue because it is going to be needed now in the implementation as well as the oversight phases of what is a very promising law, as Dr. Roe said during the first panel, that is actually inspiring teachers at the local level to continue teaching and maybe even come back to the profession, and what a great sign that is and will continue to be.

I agree also with Mr. Scott about the need to engage stakeholders as you said. Dr. Pruitt and I think you all mentioned the comment period is live. The deadline is August 1st.

For those of you at the witness table who are represented by associations, those associations will definitely be making comments for sure, but that does not prohibit any of you as individuals or your counterparts or peers as individuals from making comments as well.

Ms. Hall is also correct that we have all heard how often Dr. King just today used the word "feedback" and we should make sure there is no excuse on the table for him, for us, or for anybody in this process to not have that feedback. Ad so again, August 1st being the deadline, the time is now. And as you are all leaders, I hope you and your counterparts and peers will all step up.

With that, seeing no further business before the committee, this committee stands adjourned.

[Additional submissions by Mr. Scott follow:]

Press Release

FOR IMMEDIATE RELEASE / LINK
June 22, 2016
Contact: Scott Simpson, 202.466.2061, Simpson@civilrights.org

Statement of 31 Civil and Human Rights and Education Groups Draft ESSA Accountability Regulations

WASHINGTON – Today, The Leadership Conference on Civil and Human Rights and 30 organizations listed below released the following statement regarding draft accountability regulations for the Every Student Succeeds Act (ESSA) issued by the Department of Education in May:

"The regulations the Department proposed in May are a good first step towards ensuring that all students are counted and that parents and communities can hold their schools accountable for meeting the needs of their students. While we continue to prepare more detailed comments both together and as separate organizations, we wanted to highlight areas where we think the Department took important steps to protect the interests of low-income students, girls and boys of color, students with disabilities, English learners, and other historically marginalized students, and to identify areas where the Department should go further. We have long supported the authority and responsibility of the Department to regulate and we are encouraged by the direction this regulation has taken.

Among the issues in the draft regulation we support, but about which we may submit comments to further strengthen, are:

- Requiring states to consult in a timely and meaningful way with parents and families, community-based organizations, civil rights organizations, Indian tribes, teachers, and school leaders.
- Reinforcing that individual groups of students must each count in accountability systems and that "super subgroups" are not allowed.
- Ensuring that school ratings are summative and also ensuring schools, parents, and communities have access to data regarding multiple school quality measures to support their efforts to strengthen and improve schools.
- Reinforcing the inclusion of all students in the state's assessment system through the 95 percent participation rate requirement.
- Clarifying important guardrails around the meaningful use of the 'other indicator of school quality or student success.'
- Reinforcing the focus on student academic achievement and high school graduation, even while multiple measures of school performance are used.
- Defining 'consistent' in the 'consistent underperformance' definition as no more than two years.

We believe the draft regulations fall short in these areas:

- Some of the options for measuring 'underperformance' in the 'consistent underperformance' definition undermine the expectation to provide supports and interventions when any group is not making progress toward state goals in any school.
- Although setting an upper limit for 'N-size' (the minimum number of students needed to include a subgroup of students) is critically important to unmasking subgroup performance, a maximum 'N-size' of 30, as allowed in the draft regulation, is far too high.
- The regulations should include a time period for English language acquisition which, in order to be consistent with the definition of 'long-term' English learners, should be five years.
- A state's 'regular high school diploma' should only be one that is fully aligned with state standards and a state's 'alternate diploma' should only be one that is standards-based and meets all other criteria as required by the statute. Basing any diploma wholly or in part on meeting Individualized Education Program (IEP) goals, regardless of whether a student's IEP goals are standards-based, is contrary to the purpose of an IEP, undermines the definition of both a 'regular high school diploma' and the 'alternate diploma,' and equals a 'lesser credential,' as stated in the statute.
- The regulations should provide more direction on how states should assist local educational agencies with improving school environments for student learning, including by reducing incidences of bullying and harassment, school disciplinary practices that push students out of school, and seclusion and restraint.

We look forward to working with the Department to strengthen this regulation and move this process forward so that states, districts, schools, and advocates have the information they need to comply with the Every Student Succeeds Act and preserve its civil rights legacy."

Signed,

The Leadership Conference on Civil and Human Rights

American-Arab Anti-Discrimination Committee

American Association of University Women (AAUW)

Association of University Centers on Disabilities

Children's Defense Fund

The Council of Parent Attorneys and Advocates

Disability Rights Education & Defense Fund

Easter Seals

The Education Trust

Judge David L. Bazelon Center for Mental Health Law

Lawyers' Committee for Civil Rights Under Law

League of United Latin American Citizens

MALDEF

NAACP

NAACP Legal Defense and Educational Fund, Inc.

National Center for Learning Disabilities

National Center for Special Education in Charter Schools

National Council of La Raza

National Down Syndrome Congress

National Indian Education Association

National Urban League

National Women's Law Center

New Leaders

PolicyLink

Southeast Asia Resource Action Center

Southern Poverty Law Center

Stand for Children

Teach For America

Teach Plus

TNTP

UNCF

HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

June 22, 2016

The Honorable John B. King, Jr.
The Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary King,

We write to encourage the U.S. Department of Education (Department) to use its regulatory authority to provide clarification to States, districts, and schools regarding the "supplement, not supplant" provision in Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA).

For more than half a century, the ESEA has served American students and schools by helping to ensure that all students have access to equitable educational opportunities. The ESEA contains myriad provisions impacting many educational matters; however, its highest and best purpose remains as a civil rights law. It was signed in 1965 by Lyndon B. Johnson as a key piece of legislation in the "War on Poverty" and has remained a landmark civil rights achievement. Since its enactment, the purpose of the ESEA has remained steadfast: to protect the civil rights of and promote educational opportunity for all students, particularly our most vulnerable students. In order to ensure that this critical legacy is upheld, the Department must provide the necessary rules and regulations to ensure that the ESSA's promise – that all students will have access to equitable educational opportunities – is realized.

We believe that this promise can only be realized when students and schools are provided their fair share of State and local funds. At its core, this is the meaning of Title I's supplement, not supplant provision – to ensure that students and schools are not denied the State and local funds that they would receive but for their Title I status. Currently, we know that there are States and districts that are providing more State and local dollars to schools that are not receiving Title I funds than to those schools that are receiving Title I funds. Doing nothing to right this wrong is simply unacceptable. The very purpose of Title I is "to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps." It is neither fair nor equitable to provide fewer dollars to lower-income students.

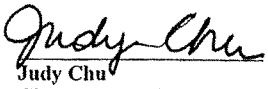
The Department has a rare opportunity to correct this deficiency and should move quickly to do so by issuing strong regulations that clarify compliance with the ESEA's "supplement, not supplant" provision.to ensure that states and districts are fulfilling the historic and bipartisan

intent of Title I. Only by doing so, can the Department fulfill the purpose and intent of this law. We voted for the Every Student Succeeds Act knowing that it provided the Department with the authority to ensure that the ESEA's civil rights roots are enforced, and we now expect the Department to fulfill that responsibility.

Today, a majority of the United States' public school students live in low-income households. We know that poverty, particularly when coupled with in-school resource inequities, can have severe and long-lasting effects on students' academic achievement, attainment, and life outcomes. The Department therefore not only has the authority, but also the responsibility, to avail itself of every tool at its disposal to mitigate these inequities such that students living in poverty are not further short-changed by attending under-resourced schools. These tools include providing clear regulations and guidance, coupled with robust oversight, to give meaning to the ESSA's supplement, not supplant provision.

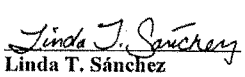
We welcome the opportunity to work with the Department, States, districts, and schools to ensure that ESSA implementation maintains the civil rights legacy of this law such that all students have equitable educational opportunities.

Sincerely,



Judy Chu
Chair, Congressional Asian Pacific American Caucus (CAPAC)

G. K. Butterfield
Chair, Congressional Black Caucus (CBC)



Linda T. Sánchez
Chair, Congressional Hispanic Caucus (CHC)

HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

June 23, 2016

The Honorable John B. King, Jr.
The Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary King:

The Congressional Asian Pacific American Caucus (CAPAC), the Congressional Black Caucus (CBC), and the Congressional Hispanic Caucus (CHC)—also known as the Congressional Tri-Caucus—write to share our views on the Notice of Proposed Rulemaking (NPRM) for accountability, state and district report cards, and state plans under Title I of the Every Student Succeeds Act (ESSA), published in the *Federal Register* on May 31, 2016.

At its heart, the Elementary and Secondary Education Act (ESEA) is a civil rights law, and as states and districts begin to implement the ESSA, the latest reauthorization of the ESEA, it is imperative that all children—regardless of their zip code, race, socioeconomic status, disability, or proficiency in English—maintain their right to receive equal opportunities and a high-quality education. Throughout the debate on ESSA's passage, we fought to ensure that the final bill included essential protections for the historically disadvantaged students and communities the ESEA is intended to serve, including strong accountability and data collection and reporting for subgroups of students. Now, state and local educational agencies must implement the new law in a manner that reflects these protections, and that will help to eradicate persistent inequities within our nation's schools. As you begin the regulatory process, we urge the Department to uphold these vital protections in the law and ensure that states and school districts will address educational inequities as they implement it. Specifically, we are pleased that the proposed regulations would:

1. Ensure that parents and local communities are meaningfully consulted and actively engaged in multiple aspects of ESSA implementation. Rather than the top-down policy approach of No Child Left Behind, these provisions encourage an inclusive process, learning from those who will be most affected by the law's policies. For example, we commend the proposal for requiring that a diverse coalition of stakeholders must be involved in the initial design, development, and ongoing implementation of state ESSA plans, including parents, educators, civil rights organizations, and community leaders. Similarly, the NPRM recognizes that the new data states and districts will be reporting on student achievement, graduation rates, per-pupil spending, access to advanced courses and preschool, student discipline, and other measures must be useful and accessible for parents. We are pleased that states must consult with parents in designing these report cards, and make the data available to parents and the public in a timely fashion—when it will be useful, rather than after the fact. Finally, we appreciate that when schools are

identified for improvement, the proposed regulations would ensure that parents are promptly notified and receive information on how they can be involved, with educators and school leaders, in efforts to turnaround the school. In this way, improvement plans will reflect local needs and contexts—rather than follow a prescriptive, one-size-fits-all model.

2. Hold states and districts accountable for meeting the needs of all students. Strong subgroup accountability was one of our top priorities during the passage of the ESSA, and we are pleased that the proposed regulations would ensure that every child matters in school accountability decisions.

By prohibiting the use of "super-subgroups" in place of the individual subgroups of students specified in the law for accountability and for reporting, the proposal in the NPRM would help ensure that the academic performance of disadvantaged students cannot be masked by averages. In addition, the proposed regulations would also help ensure subgroups of students are included by requiring states to justify their student group size ("n-size")—with data showing how many schools are held accountable for each subgroup—in order to be approved to use an n-size above 30. When states set their n-sizes too high, we know that historically disadvantaged subgroups of students are overlooked and effectively "disappear" from the accountability system, at odds with the purpose of ESSA to promote educational equity and close achievement gaps.

3. Require states and districts to take timely action in any school with at least one low-performing student subgroup. We commend the proposed regulations for ensuring that interventions are required whenever any subgroup is consistently underperforming for no more than two years, ensuring that the performance of an entire cohort of students in a school cannot be overlooked and taking steps to help them improve before they exit the school and it is too late to provide supports.

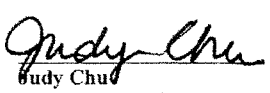
4. Maintain the requirement that states hold schools accountable for assessing at least 95% of their students and subgroups. By expecting meaningful action, and a plan to address the situation, whenever participation rates are low, the proposed regulations would help ensure that parents continue to receive annual information on how their child is progressing, that educators continue to have essential information on student learning, and that school quality information is accurate, fair, and representative of the school. Annual statewide assessment data is a critical tool in diagnosing and addressing school and student challenges, but it is not the only tool. We are pleased that the Department maintains the focus on student academic achievement, while also promoting multiple measures, helping to recognize that a high-quality education also includes equitable access to a well-rounded education.

The Every Student Succeeds Act is a tremendous opportunity for states and local communities to address educational inequities and support historically underserved children—specifically, students with disabilities, low-income students, minority students, and English learners—but that opportunity will not be realized in the absence of strong regulations and inclusive, thoughtful implementation.

We look forward to working with the Department over the coming months to maintain and strengthen the provisions in these, and other, proposed regulations, in order to ensure the

principles of the Congressional Asian Pacific American Caucus, the Congressional Black Caucus, and the Congressional Hispanic Caucus are fully reflected in the ongoing implementation of the ESSA.

Sincerely,



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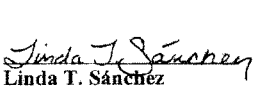

Linda T. Sánchez
Chair, Congressional Hispanic Caucus (CHC)

[Questions submitted for the record and their responses follow:]

MAJORITY MEMBERS:

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July 18, 2016

Ms. Cassie Harrelson
Math Teacher on a Special Assignment
Exceptional Student Services
Aurora Public Schools
1366 Garfield Street
Unit 509
Denver, CO 80206

Dear Ms. Harrelson:

Thank you for testifying at the June 23, 2016, hearing on "Next Steps in K-12 Education: Examining Recent Efforts to Implement the *Every Student Succeeds Act*." I appreciate your participation.

Enclosed are additional questions submitted by members of the Committee after the hearing. Please provide written responses no later than Monday, August 8, 2016, for inclusion in the final hearing record. Responses should be sent to Shearíah Yousefi on Committee staff, who can be contacted at (202) 225-6558.

Thank you, again, for your contribution to the work of the Committee.

Sincerely,

JOHN KLINE
Chairman
Committee on Education and the Workforce

Enclosure

cc: Additional Member Questions

Rep. Salmon (R-AZ)

1. Under the *Every Student Succeeds Act* (ESSA), a 95 percent participation rate in standardized tests is required as in *No Child Left Behind.* However, schools are given the ability under ESSA to choose how the failure to meet that standard factors into a school's overall rating in a state's accountability system. The Department of Education (the Department) issued a proposal with four options allowed to states on how to weigh a school who fails to meet this requirement, despite the flexibility granted them in the law. How do such proposals from the Department interfere with states' autonomy? What sort of effect do such proposals have on States' confidence in the Department's ability to faithfully execute the law?

2. ESSA placed a number of prohibitions on the Secretary of Education (the Secretary) to limit his authority. These included provisions to block the Secretary from manipulating states into adopting any certain set of standards, as we saw with Common Core, and other efforts to infringe on state flexibility and autonomy. Has the Department's implementation of ESSA remained true to the intent of the law? In what ways has the Department taken liberties beyond the constraints of the law?

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MARK DESAULNIER, CALIFORNIA

July 18, 2016

The Honorable John B. King, Jr.
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary King:

Please find enclosed additional questions submitted by members of the Committee after the June 23, 2016, hearing on "Next Steps in K-12 Education: Examining Recent Efforts to Implement the *Every Student Succeeds Act*." Please provide written responses no later than Monday, August 8, 2016, for inclusion in the final hearing record. Responses should be sent to Sheariah Yousefi on Committee staff, who can be contacted at (202) 225-6558.

Thank you for your prompt attention to this matter.

Sincerely,

JOHN KLINE
Chairman
Committee on Education and the Workforce

Enclosure

cc: Additional Member Questions

Chairman Kline (R-MN)

1. Secretary King, your proposal grants states the authority to establish an exhaustive list of state-approved, evidence-based interventions for use in schools implementing comprehensive or targeted support and improvement plans. While this is a state option and not something the proposal requires, I am concerned about the potential impact on school districts' authority in schools implementing targeted support plans. Under the statute, those plans are approved by the school district, not the state. But if a state establishes an exhaustive list of interventions for use in schools implementing targeted support plans, in what way would a school district retain the authority to approve a school's plan?

Rep. Salmon (R-AZ)

1. The *Every Student Succeeds Act* (ESSA) provides very specific provisions for the Charter Schools Program (CSP), especially regarding the priorities and selection criteria for grant competitions. However, the Act does not create an opportunity for the Department to create any additional priorities or requirements for the program. My understanding is that the Department is planning to run another CSP Grants to States competition this fall--is that accurate? If so, will the Department require any priorities or selection criteria that were not included in the statute? Under what authority will you add these priorities? Will the Department provide an opportunity for public comment before anything is made final?

Rep. Messer (R-IN)

1. In 2013, the Department issued guidance that protects and ensures timely federal funding for new and expanding charter schools, and we codified that guidance in ESSA. We did that because there have been examples of states not providing fair funding to charter schools, including in Indiana. What is the Department doing to ensure that states understand how to apply the funding requirements to ensure all charter schools in their states receive their full share of funding?

Rep. Stefanik (R-NY)

1. Secretary King, the last time you testified before the Committee we spoke about your time as the Commissioner of Education in our home state of New York. I asked you what lessons were learned from the failed and rushed roll out of Common Core and how you were going to take those lessons with you. I was extremely concerned by your response that there were no lessons to be learned, and I have grown increasingly so after seeing the proposals coming from your Department. When I speak to administrators, school board members, teachers, parents and even middle school students, I am still told about the failed roll out of Common Core and the diminishing trust that is ripping communities apart. Improvements are needed and trust must be rebuilt not just in the North Country but across the country. That is why it was so important to pass ESSA. By returning control back to our communities we can begin to rebuild this lost trust and get our schools and students back on track.

   This goal becomes difficult to achieve when the Department does not follow congressional intent or the law. Your interpretation of supplement, not supplant has caused a flurry of attention, specifically from New York State school boards and school administrators. In

fact, in a letter sent to you on June 8, 2016 by the New York State School Boards Association, they not only urged you to reconsider the proposal but said it was, "impractical in New York and inconsistent with the *Every Student Succeeds Act*." They go on to say that even if your proposal "did not exceed the authority of federal law it ignores the legal and practical realities of operating a school district in New York State." My question for you Secretary King is this, at what point will your Department cease to ignore clearly written federal law and begin to shift control back to the states where this bipartisan Congress so clearly put it?

MAJORITY MEMBERS:

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July 18, 2016

Dr. Stephen L. Pruitt
Commissioner of Education
Kentucky Department of Education
500 Mero Street
1st Floor CPT
Frankfort, KY 40601

Dear Dr. Pruitt:

Thank you for testifying at the June 23, 2016, hearing on "Next Steps in K-12 Education: Examining Recent Efforts to Implement the *Every Student Succeeds Act*." I appreciate your participation.

Enclosed are additional questions submitted by members of the Committee after the hearing. Please provide written responses no later than Monday, August 8, 2016, for inclusion in the final hearing record. Responses should be sent to Sheariah Yousefi on Committee staff, who can be contacted at (202) 225-6558.

Thank you, again, for your contribution to the work of the Committee.

Sincerely,

JOHN KLINE
Chairman
Committee on Education and the Workforce

Enclosure

cc: Additional Member Questions

Rep. Salmon (R-AZ)

1. Under the *Every Student Succeeds Act* (ESSA), a 95 percent participation rate in standardized tests is required as in *No Child Left Behind.* However, schools are given the ability under ESSA to choose how the failure to meet that standard factors into a school's overall rating in a state's accountability system. The Department of Education (the Department) issued a proposal with four options allowed to states on how to weigh a school who fails to meet this requirement, despite the flexibility granted them in the law. How do such proposals from the Department interfere with states' autonomy? What sort of effect do such proposals have on States' confidence in the Department's ability to faithfully execute the law?

2. ESSA placed a number of prohibitions on the Secretary of Education (the Secretary) to limit his authority. These included provisions to block the Secretary from manipulating states into adopting any certain set of standards, as we saw with Common Core, and other efforts to infringe on state flexibility and autonomy. Has the Department's implementation of ESSA remained true to the intent of the law? In what ways has the Department taken liberties beyond the constraints of the law?

Rep. Guthrie (R-KY)

1. Recently the Department placed Kentucky on "conditional status" for its FY16 Title I and IDEA grants for allegedly being out of compliance regarding Kentucky's science assessment. What actions by Kentucky led to this designation by the Department? What does this status mean for the students in Kentucky?

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MARK DESAULNIER, CALIFORNIA

July 18, 2016

Dr. David R. Schuler
Superintendent
Township High School District 214
2121 S. Goebbert Road
Arlington Heights, IL 60005

Dear Dr. Schuler:

Thank you for testifying at the June 23, 2016, hearing on "Next Steps in K-12 Education: Examining Recent Efforts to Implement the *Every Student Succeeds Act*." I appreciate your participation.

Enclosed are additional questions submitted by members of the Committee after the hearing. Please provide written responses no later than Monday, August 8, 2016, for inclusion in the final hearing record. Responses should be sent to Sheariah Yousefi on Committee staff, who can be contacted at (202) 225-6558.

Thank you, again, for your contribution to the work of the Committee.

Sincerely,

John Kline

JOHN KLINE
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Committee on Education and the Workforce

Enclosure

cc: Additional Member Questions

Rep. Salmon (R-AZ)

1. Under the *Every Student Succeeds Act* (ESSA), a 95 percent participation rate in standardized tests is required as in *No Child Left Behind.* However, schools are given the ability under ESSA to choose how the failure to meet that standard factors into a school's overall rating in a state's accountability system. The Department of Education (the Department) issued a proposal with four options allowed to states on how to weigh a school who fails to meet this requirement, despite the flexibility granted them in the law. How do such proposals from the Department interfere with states' autonomy? What sort of effect do such proposals have on States' confidence in the Department's ability to faithfully execute the law?

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[Responses to questions submitted for the record follow:]

Question 1

Thank you for this question. I agree that the regulations proposed by the Department seem to overstep the authority ESSA provides, particularly the language in the final bill that allows states to determine the degree to which 95 percent participation in assessments is a factor in accountability systems. As I explain in my written testimony, the law retains requirements to ensure that students participate, but the proposed regulations go well beyond that—they dictate consequences for schools. That is especially troublesome where state or local laws allow parents to opt out of tests.

Even though we do not have an active opt-out movement in my school district, Aurora, the high school participation rate is only 90 percent, so we would be subject to the proposed sanctions—and they are designed to punish, not help us increase participation. States should determine how to address low participation rates. Districts with low participation rates should have the flexibility to dig into the problem and determine why that is the case: Is it due to over-testing? A lack of connection between tests and curriculum? Something else? We will not find out unless we engage in conversations about these issues. Sanctioning us instead of giving us flexibility to determine the way forward silences the teachers and parents who are supposed to be integral to the process.

Question 2

I appreciate this question about the Secretary's authority. Since we are just beginning to implement ESSA, it is difficult to say whether the Department's approach to implementation is true to the spirit of the law. Certainly, the proposed regulations raise many questions about the Department's interpretation of state flexibility and autonomy. For this law to be successful, all stakeholders, including educators and parents, must be included in key decisions. Those decisions must be made by people who know their communities and students.

ESSA expressly authorizes states to develop their own accountability systems. It is the product of careful, bipartisan compromises designed to move us away from the unsuccessful policies of No Child Left Behind. Unfortunately, the proposed regulations seem to want to return to many of those unsuccessful policies. They impose restrictions not in the law itself and dictate actions that are not part of the statute. Key areas in which the Department's proposed regulations overstep ESSA include:

- **How states set goals for achievement (200.13(a)(1) and 200.13(a)(2)(iv).** The proposed regulations narrowly define goals and say they must align with grade level proficiency on annual assessments, which the law does not require.

- **School support and student success indicator.** The proposed regulations require research showing that the new indicator improves student achievement, which the law does not require.
- **Participation in assessments (200.15(b)(2).** The proposed regulations require states to punish schools when parents choose to opt their children out of tests and suggest possible punishments for districts, neither of which the law requires.
- **N size.** The proposed regulations say that N size cannot exceed 30 students (200.17), an arbitrary restriction on state flexibility that is not part of the statute.
- **Differentiation of schools.** The proposed regulations mandate a single, summative score (200.18(b)(2) and (4). This is a decision that should be left to the states. Requiring a single, summative score conflicts with ESSA's language about letting states create their own systems for differentiation among schools.
- **Identification of schools (200.19 (c)(1)**. The proposed regulations define terms that should be left to the states to define, and set parameters for how long a school has to improve. Again, neither is part of the statute.

Chairman Kline (R-MN)

1. Secretary King, your proposal grants states the authority to establish an exhaustive list of state-approved, evidence-based interventions for use in schools implementing comprehensive or targeted support and improvement plans. While this is a state option and not something the proposal requires, I am concerned about the potential impact on school districts' authority in schools implementing targeted support plans. Under the statute, those plans are approved by the school district, not the state. But if a state establishes an exhaustive list of interventions for use in schools implementing targeted support plans, in what way would a school district retain the authority to approve a school's plan?

   Like the statute, the proposed regulations would require that any school with at least one consistently underperforming subgroup be identified for targeted support and improvement and that such a school develop an improvement plan in consultation with stakeholders, including parents, teachers, principals, and other school leaders, which must be approved by the school's local educational agency (LEA). The LEA would review each plan and take all actions necessary to ensure that each school is able to meet the requirements for a targeted support and improvement plan.

   Under the proposed regulations, each school's targeted support and improvement plan would be required to include at least one evidence-based intervention that meets the statutory definition of "evidence-based" under section 8101(21) of the Elementary and Secondary Education Act (ESEA), but would be permitted to include additional interventions that are designed to address the reason the school was identified and to improve student outcomes for the lowest-performing students in the school – even if those interventions do not meet the statutory definition of "evidence-based." The proposed regulations also specify that a State would be permitted, but not required, to establish an exhaustive or non-exhaustive list of evidence-based interventions from which a school could choose. If a State were to develop an exhaustive list of evidence-based interventions, a school identified for targeted support and improvement would be required to include at least one of those interventions in its school improvement plan. On the other hand, if a State were to develop a non-exhaustive list of evidence-based interventions, a school identified for targeted support and improvement would be required to include one of the State-approved interventions *or* one or more other evidence-based interventions in its school improvement plan. In either case, the school could include *additional* interventions that do not appear on a State-approved list of evidence-based interventions, which would be reviewed and approved by the LEA.

   Section 1603 of the ESEA provides that a State has the authority to develop rules, regulations, or policies relating to the implementation of Title I of the ESEA. The proposed regulation simply highlights that a State could use that authority to develop a list of State-approved evidence-based interventions for identified schools.

Rep. Salmon (R-AZ)

1. The *Every Student Succeeds Act* (ESSA) provides very specific provisions for the Charter Schools Program (CSP), especially regarding the priorities and selection criteria for grant

competitions. However, the Act does not create an opportunity for the Department to create any additional priorities or requirements for the program. My understanding is that the Department is planning to run another CSP Grants to States competition this fall--is that accurate? If so, will the Department require any priorities or selection criteria that were not included in the statute? Under what authority will you add these priorities? Will the Department provide an opportunity for public comment before anything is made final?

Contingent on Congressional appropriations, the Department plans to run a competition for CSP grants to state entities in FY2017. Our current plans are to use the priorities and selection criteria specified in the ESSA. In FY2016, the Department will make its final awards under the ESEA, including SEA and Non-SEA grants. We also plan to issue our final NIA under the ESEA for the CMO grant program in early fall.

Rep. Messer (R-IN)

1. In 2013, the Department issued guidance that protects and ensures timely federal funding for new and expanding charter schools, and we codified that guidance in ESSA. We did that because there have been examples of states not providing fair funding to charter schools, including in Indiana. What is the Department doing to ensure that states understand how to apply the funding requirements to ensure all charter schools in their states receive their full share of funding?

   As you noted, the Department issued guidance in 2013 to clarify the requirements for States in administering federal funding to charter schools, with the explicit purpose of ensuring the timely and fair disbursement of Federal formula funds. The Department continues to encourage States to request technical assistance on these issues from their Regional Comprehensive Center. The Department also plans to provide information related to these issues to State directors who manage Federal formula funds, through standard outreach procedures which may include, for example, additional written communication, webinars, direct technical assistance, and the annual Combined Federal Programs meeting.

Rep. Stefanik (R-NY)

1. Secretary King, the last time you testified before the Committee we spoke about your time as the Commissioner of Education in our home state of New York. I asked you what lessons were learned from the failed and rushed roll out of Common Core and how you were going to take those lessons with you. I was extremely concerned by your response that there were no lessons to be learned, and I have grown increasingly so after seeing the proposals coming from your Department. When I speak to administrators, school board members, teachers, parents and even middle school students, I am still told about the failed roll out of Common Core and the diminishing trust that is ripping communities apart. Improvements are needed and trust must be rebuilt not just in the North Country but across the country. That is why it was so important to pass ESSA. By returning control back to our communities we can begin to rebuild this lost trust and get our schools and students back on track.

This goal becomes difficult to achieve when the Department does not follow congressional intent or the law. Your interpretation of supplement, not supplant has caused a flurry of attention, specifically from New York State school boards and school administrators. In fact, in a letter sent to you on June 8, 2016 by the New York State School Boards Association, they not only urged you to reconsider the proposal but said it was, "impractical in New York and inconsistent with the *Every Student Succeeds Act*." They go on to say that even if your proposal "did not exceed the authority of federal law it ignores the legal and practical realities of operating a school district in New York State." My question for you Secretary King is this, at what point will your Department cease to ignore clearly written federal law and begin to shift control back to the states where this bipartisan Congress so clearly put it?

Education is, and should remain, primarily a State and local responsibility. What we do at the Federal level is support States and school districts to improve opportunity for all students, invest in local innovation, research and scale up what works, and protect our students' civil rights, providing guardrails to ensure educational opportunity for all children. We are pleased that the Every Student Succeeds Act provides greater flexibility for local communities and States to provide equity and excellence for all students, and establishes a new Federal-State partnership. In addition, since the U.S. Department of Education was established in 1980, it has played an essential role in protecting the civil rights of all students, especially our low-income students, students of color, students with disabilities, and English learners. It is the Department will continue to work with States and districts to implement their authority under the new law so we can all ensure that every child in this country, regardless of background or circumstance, has access to an excellent education that prepares her or him for college and career.

Matthew G. Bevin
Governor

Hal Heiner
Secretary
Education and
Workforce Development Cabinet

Stephen L. Pruitt, Ph.D.
Commissioner of Education

KENTUCKY DEPARTMENT OF EDUCATION
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August 8, 2016

Rep. John Kline, Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Chairman Kline:

Thank you once again for the opportunity to testify on June 23, 2016 before the Committee on Education and the Workforce regarding "*Next Steps in K-12 Education: Examining Recent Efforts to Implement the Every Student Succeeds Act.*"

Enclosed please find my answers to the additional questions submitted by members of the Committee after the hearing for inclusion in the final hearing record.

While I have attempted to provide a complete written response to each question, please do not hesitate to contact me with any follow-up questions you or the Committee members may have.

My thanks to you and the entire House Committee on Education and the Workforce for your time, attention and interest in our public schools and the implementation of this very important law.

Sincerely,

Stephen L Pruitt

Stephen L. Pruitt, Ph.D.
Commissioner of Education

SLP:rsb

Enclosure

cc: Sheariah Yousefi

Kentucky Commissioner of Education Stephen L. Pruitt's
Answers to
House Committee on Education and the Workforce Members
Following the
June 23, 2016 Hearing on
"Next Steps in K-12 Education: Examining Recent Efforts to Implement the Every Student Succeeds Act"

Rep. Salmon (R-AZ)

1. *Under the* Every Student Succeeds Act (ESSA*), a 95 percent participation rate in standardized tests is required as in* No Child Left Behind. *However, schools are given the ability under ESSA to choose how the failure to meet that standard factors into a school's overall rating in a state's accountability system. The Department of Education (the Department) issued a proposal with four options allowed to states on how to weight a school who fails to meet this requirement, despite the flexibility granted them in the law. How do such proposals from the Department interfere with states' autonomy? What sort of effect do such proposals have on States' confidence in the Department's ability to faithfully execute the law?*

   Answer: In my opinion, it appears lawmakers were very intentional in the way the *Every Student Succeeds Act* was crafted, making every effort to allow states the autonomy to make decisions to reflect unique state values and circumstances. This was not the case under *No Child Left Behind,* which was very prescriptive, set unrealistic goals, was riddled with unintended consequences and failed as a result.

   While ESSA empowers states with the decision making ability to factor requirements such the 95 percent participation rate into the state accountability system, the proposed regulations limit the states' options. This is a consistent theme throughout the proposed regulations. In the example cited, the last of the four actions presented does provide limited flexibility to states to choose "another equally rigorous State-determined action," on how to deal with schools that do not meet the 95 percent participation rate, however, the proposed regulations indicate "the outcome must be similar for the school in the system of annual meaningful differentiation." This provides the illusion of state decision making without the actual authority to do so.

   Essentially, what the United States Department of Education (USED) explains as "guardrails" for states along a superhighway to school improvement, end up being concrete barriers along a one-way, one-lane rural road that severely limit the state pathway to improvement, stand in the way of innovation and doom us to repeat past errors.

   This leaves me and other state chiefs to question whether the United States Department of Education is really interested in states making decisions based on what is in the best of children or whether USED staff are more concerned with compliance.

The Department seems to fail to realize that states' economies are intrinsically dependent on the success of their education systems and that it is in a state's best interest to ensure its schools succeed and effectively and adequately prepare **all** of its students for postsecondary education and to compete in the workforce. Not doing so is proven to be a drain on state social service and health resources and a loss of potential tax revenue for the state.

For states to faithfully execute the law, as intended, the regulations cannot dictate specific options for implementation or we will remain mired in the status quo with no real meaningful change for students. The Department needs to move past a climate of compliance, understand that "one size does not fit all" and trust states to make decisions that will spawn quality learning systems that are a truly a catalyst for improvement and better student outcomes for **all** students.

2. *ESSA placed a number of prohibitions on the Secretary of Education (the Secretary) to limit his authority. These included provisions to block the Secretary from manipulating states into adopting any certain set of standards, as we saw with Common Core, and other efforts to infringe on state flexibility and autonomy. Has the Department's implementation of ESSA remained true to the intent of the law? In what way has the Department taken liberties beyond the constraints of the law?*

   Answer: The law is very clear on what the Secretary has the power to do, and perhaps more importantly, what the Secretary does NOT have the power to do. In my opinion, the Department's implementation of ESSA has NOT remained true to the intent of the law.

   As an example, Section 9302 (b)(3) states that "the Secretary shall require only descriptions, information, assurances…, and other information that are absolutely necessary for the consideration of the consolidated state plan or consolidated state application."

   However, the proposed regulations require states to undertake burdensome, time-consuming documentation not required in statute to provide detailed descriptions, reviews and evidences on multiple elements within the consolidated state plan – presumably to support the peer review process.

   The documentation that states must provide ***evidence*** under the proposed regulations on items such as challenging ***state academic standards, performance management systems, strategies, timelines and funding sources*** goes beyond the intent of the ***assurances*** required in statute and opens these issues up to judgements on whether a state has met the burden of proof on things like challenging academic standards. History has shown that the peer review process, as it currently operates, is subjective, secretive and often results in inconsistent interpretations of the law. As such, we have a concern that though prohibited in law, the peer review process could be manipulated to allow the department to promote its agenda outside of the regulatory process.

Furthermore, the requirement to provide massive amounts of documentation, again presumably to support the peer review process, adds many additional staff hours and expense. Recently, the Kentucky Department of Education was required to spend more than $500 and countless hours assembling boxes and boxes of hard copy documentation for the assessment peer review. The first states to submit the peer review process were not required to provide hard copy documentation. This was a new requirement added by the Department. This does not seem to support the collaborative nature of the peer review process as intended in the law and a trust in states to do the right things for their students.

Other examples include:
The identification of schools for comprehensive support and improvement: *Section 1111(c)(4)(C)(iii)* provides that each state must establish and describe in its state plan a methodology to identify schools for targeted support and improvement and leaves the determination of consistently underperforming up to the state. However, by defining consistently underperforming as failing to make progress for 2 years, the proposed regulations overstep the bounds of the statutory language. This also appears to violate the Secretary's prohibition to prescribe measurements of interim progress that States establish for all students and any subgroup of students.

Summative score: The statute does not require a summative score and leaves the determination of the lowest performing schools to states. By requiring a summative score, the proposed regulations limit states' ability to take a dashboard approach, which is broader, fairer and a more accurate representation of school performance.

Rep. Guthrie (R-KY)

1. *Recently the Department placed Kentucky on "conditional status" for its FY 16 Title I and IDEA grants for allegedly being out of compliance regarding Kentucky's science assessment. What actions by Kentucky led to this designation by the Department? What does this status mean for the students in Kentucky?*

   Answer: In an attempt to raise the rigor of its science standards, in 2013 Kentucky was one of the first states to adopt and implement new science standards – now known as the Kentucky Academic Standards in Science. These standards were unlike any others of the past and could not be adequately measured by current assessments which were not aligned and lacked the ability to test a student's knowledge of cross cutting concepts and the applied learning that the standards promoted.

   To promote understanding and implementation of the new science standards, Kentucky used a teachers' network for professional development. In 2015 and 2016, the state suspended its custom-made science assessment based on the previous standards. During the renewal of the state's waiver from No Child Left Behind, Kentucky shared the plan to suspend its custom science tests based on previous standards until an assessment aligned with the new standards could be developed. At the same time, Kentucky agreed to continue a norm-referenced test in science at grades 4 and 7 to meet the federal testing requirement. Kentucky's waiver was approved in March 2015.

In spring 2016, just weeks before schools were scheduled to give the state assessment in science, the United States Department of Education notified the Kentucky Department of Education in a telephone call that it had to assign student performance levels in science in order to comply with No Child Left Behind. This was a surprise call for Kentucky since our state waiver had been approved more than a year earlier. As Kentucky's current commissioner of education, I could not agree to do that based on a norm-referenced test, which compares performance to national norms, not mastery of the current science standards. This would not be fair to students or teachers and would, in fact, provide them and parents with misleading information on students' real knowledge of the standards being taught in Kentucky classrooms. In turn, this would erode confidence in the reliability of our testing system and not abide by a key pillar of the department's work: integrity.

By not following the Department's new directive, I was told we would be out of compliance and subject to conditional status. I repeatedly asked Department personnel exactly what this meant and no one seemed to be able to tell me.

My Department contact told me to "just give an old test" on which student performance levels can be assigned, to comply and avoid any potential consequences. Not only was this unconscionable, but with mere days left before the testing window opened, it was not a practical solution. When I rebuked the Department's proposal, the representative told me that, if all states abandoned testing when they adopted new standards we would have a national problem." My response was, "No, we would have a national **solution**, because we would have time and money to develop quality tests aligned with the standards being taught – assessments that truly reflected what students know and would allow them to demonstrate their learning through more than a paper and pencil test.

Federal title money is being received to support Kentucky's schools and students. To remove the conditional status, Kentucky must administer in the current school year an operational science test that provides student achievement results for the state's alternate assessment students. Alternate students are the 1 percent of the student population with the most severe disability. Although not required to remove the conditional status, Kentucky will pilot a new science test for regular education students in spring 2017.

Township High School District 214
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Dr. David R. Schuler
Superintendent

August 8, 2016

Mr. John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515-6100

Dear Mr. Kline,

I would like to extend my deep appreciation to Chairman Kline, Ranking Member Scott, and the entire Committee on Education and the Workforce for inviting me to testify regarding the implementation of ESSA.

Representative Salmon requested a response to two questions. Those responses are below:

1. *Under the Every Student Succeeds Act (ESSA), a 95 percent participation rate in standardized tests is required as in No Child Left Behind. However, schools are given the ability under ESSA to choose how the failure to meet the standard factors into a school's overall rating in a state's accountability system. The Department of Education (the Department) issued a proposal with four options allowed to states on how to weigh a school who fails to meet this requirement, despite the flexibility granted them in the law. How do such proposals from the Department interfere with states' autonomy? What sort of effect do such proposals have on States' confidence in the Department's ability to faithfully execute the law?*

   I would defer to the Chief State School Officers regarding the States' confidence in the Department's ability to faithfully execute the law. I would say as noted in my testimony, that school district leaders have expressed frustration with several of the proposed regulations that would seem to directly conflict with both the language and the intent of ESSA. Congress didn't take multiple years and over 1,000 pages to re-authorize the Elementary and Secondary Education Act without being very purposeful in what was included, and what was not included, in the final conference bill.

   In response to the specific question regarding the 95 percent participation rate, the Department's proposed regulations leave it up to the states to determine how to respond to schools that do not reach the 95 percent threshold, which is consistent with

the intent of ESSA from my perspective. The proposed regulations do require states to take serious action, but they stop short of federal prescription about what that action should be, which again I would suggest is consistent with the letter and intent of the law. I would be very opposed to any further prescription on this topic. This would include any effort to establish a role for the Department beyond merely reviewing any state-determined "equally rigorous" state action. The final regulation must reserve true flexibility for states in determining state action, and establishing a role for the Department to approve or deny any state proposal would run in direct conflict with the underlying statute.

2. *ESSA placed a number of prohibitions on the Secretary of Education (the Secretary) to limit his authority. These included provisions to block the Secretary from manipulating states into adopting any certain set of standards, as we saw with Common Core, and other efforts to infringe on state flexibility and autonomy. Has the Department's implementation of ESSA remained true to the intent of the law? In what ways has the Department taken liberties beyond the constraints of the law?*

   I am concerned that several proposed regulations go beyond the scope of the letter and intent of the law. Examples of those were included in my written and oral testimony. In addition, I would note that the new law explicitly stipulates that States 'assure' that they have challenging academic standards, which is different than the language in No Child Left Behind, which required states to 'demonstrate' they have challenging academic standards. It is my belief that this was done in a very intentional manner to ensure that the Department of Education was not allowed to approve or disapprove of a State's standards. Congress was very intentional in what was and what was not included in the final Conference Bill. The proposed regulations reassert the Department of Education's role of 'approving' rather than reviewing and 'assuring' as prescribed in statute and that is disconcerting to many in the field.

Thank you again for the opportunity to share these thoughts with you and the entire Committee of Education and the Workforce.

Respectfully Submitted,

David R. Schuler, Ph.D.
Superintendent
AASA President, 2015 – 2016

[Whereupon, at 12:04 p.m., the committee was adjourned.]

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