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ESSA IMPLEMENTATION IN STATES AND SCHOOL DISTRICTS: PERSPECTIVES FROM THE U.S. SECRETARY OF EDUCATION

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING EVERY STUDENT SUCCEEDS ACT IMPLEMENTATION IN STATES AND SCHOOL DISTRICTS, FOCUSING ON PERSPECTIVES FROM THE SECRETARY OF EDUCATION

APRIL 12, 2016

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ESSA IMPLEMENTATION IN STATES AND SCHOOL DISTRICTS: PERSPECTIVES FROM THE U.S. SECRETARY OF EDUCATION

TUESDAY, APRIL 12, 2016

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:07 a.m., in room SD–430, Dirksen Senate Office Building, Hon. Lamar Alexander, chairman of the committee, presiding.

Present: Senators Alexander, Murray, Burr, Murkowski, Scott, Cassidy, Casey, Franken, Bennet, Whitehouse, Murphy, and Warren.

OPENING STATEMENT OF SENATOR ALEXANDER

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will please come to order. Senator Murray and I will each have an opening statement, and then we'll introduce our witness. After our witness testimony, Senators will have 5 minutes of questions.

Welcome, Mr. Secretary. Thank you for being here.

Mr. Secretary, I urged the President to appoint an Education Secretary because I thought it was important to have a confirmed Secretary accountable to the U.S. Senate when the Department was implementing the new law fixing No Child Left Behind. You've sworn to discharge your duties faithfully—that's your oath of office—and you've said in hearings here that you would, "abide by the letter of the law." This hearing is about whether your employees are doing that or not doing that.

I don't think I need to rehearse the fact that this bill passed by a huge margin, 359 to 64 in the House and 85 to 12 in the Senate. The President signed it and called it a Christmas miracle. The reason we were able to achieve such unusual unanimity and consensus is, to put it bluntly, that local school boards, classroom teachers, and States had gotten tired of the U.S. Department of Education telling them so much about what to do.

That wasn't just Republicans complaining or Governors complaining. You often hear that kind of thing when it comes to giving responsibility to those closest to the children. This came from the school superintendents, from the National Education Association, from the American Federation of Teachers, from the chief State school officers—almost everybody involved in education. There hasn't been a broader coalition in a long time.

They objected to the fact that the Department had become a national school board, telling Kansas what its academic standards had to be, telling Tennessee how to fix failing schools, telling Washington State how to evaluate teachers. The legislation we passed not only got rid of those things, but we went further in a remarkable way and have explicit prohibitions on what a future Secretary might do.

This was all a dramatic change. It's called the biggest devolution of responsibility for education from the Federal Government to States in 25 years. It's not worth the paper it's printed on if it's not implemented properly.

This is the second hearing in what will be at least six hearings on oversight of the implementation of the new law. Already, we're seeing disturbing evidence that the Department of Education is ignoring the law that the 22 members of this committee worked so hard to craft.

It wasn't easy to pass the law. There were crocodiles lurking in every corner of the pond. One of those—and I see Senator Bennet here, and we've had vigorous discussions over this—was called the issue of comparability. That's a provision that was put into the law first in 1970 that says that school districts have to provide at least comparable services with State and local funding to title I schools and non-title I schools.

The law also says that school districts, quote, "shall not include teacher pay when they measure spending for purposes of comparability." This committee has debated several times whether or not teacher pay should be excluded. Senator Bennet, for example, not only felt strongly about this, but he had a proposal to change it. It wasn't adopted. I felt strongly about it. I offered an amendment to change it. It was defeated.

Ultimately, we made two decisions about this issue as reflected in the law we passed last year. First, we chose not to change the comparability language in the law, so the law still says teacher pay may not be included in that computation. Second, we added a reporting requirement that school districts should report the amount they spend on each student, including teacher salaries, so that parents and teachers could know what is being spent and could make their own decisions about what is fair and what is equitable, rather than the Federal Government mandating it.

The one thing that the law that the President signed in December did not do was change the law that says teacher salaries may not be included when you're computing comparability. Here's what your department did on April 1. You tried to do what Congress did not do last year, and you tried to do it by regulating another separate provision in the law.

In a proposed rulemaking session, here's what you proposed: forcing districts to include teacher salaries in how they measure their State and local spending and require that State and local spending in title I schools be at least equal to the average spent in non-title I schools.

If that were adopted, your proposal would require a complete, costly overhaul of almost all the State and local finance systems in the country, something we did not pass in the law. It would force teachers to transfer to new schools, something we did not pass in

the law. It would require States and school districts to move back to the burdensome practice of detailing every individual cost when the purpose of the law as expressly written was to relieve some of that burden.

According to the Council of Great City Schools, your proposed rule would cost $3.9 billion just for their 69 urban school districts to eliminate the differences in spending between schools. I'm not interested today in debating whether it's a good idea or a bad idea to include teacher salaries when computing comparability. The plain fact is that the law specifically says the Department on its own cannot do it.

Mr. Secretary, not only is what you're doing against the law, but the way you're trying to do it is against another provision in the law. To accomplish your goals on comparability, you are using the so-called "supplement not supplant" provision that is supposed to keep local school districts from using Federal title I dollars as a replacement for State and local dollars in low-income schools.

According to a Politico story published on December 18, the former Secretary of Education said, "Candidly, our lawyers are much smarter than many of the folks who were working on this bill,". I don't know whether that means the 22 Senators on the committee or all the staff sitting behind us. I'm not sure how smart we are, but we're smart enough to write a law in plain English, and we're also smart enough to anticipate that your lawyers would attempt to ignore what we wrote and try to move around it.

We included specific prohibitions in the so-called supplement not supplant provision that would prohibit you from doing the very things you are proposing to do.

Section 1118(b)(4) says,

> "Nothing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local educational agency uses to allocate State and local funds,"

and section 1605 says, "Nothing in this title shall be construed to mandate equalized spending."

Mr. Secretary, I'll have more to say about this in my question time, and I'm going to ask you about this. I want you to know and, particularly, those lawyers who think none of us are very smart up here—I want them to know that I'm smart enough, and I believe there are others, too, to use every power we have to make sure the law is implemented the way we wrote it, including our ability to overturn such rules when they become final, and including using the appropriations process.

If you try to force States to follow these regulations that ignore the law, I'll encourage them to request a hearing, which they have a right to do, with the Department. If they lose, I'll encourage them to go to court.

I'm not the only one who can read the law. You're going to come up against a coalition that's as broad as anything we've ever had in education of Governors, teachers organizations, chief State school officers who are tired of your Department telling them so much about what to do about the 50 million children and 100,000 public schools. They've already sent you a letter about that.

Wisconsin Superintendent Tony Evers, a well-respected State chief school officer and a member of the rulemaking committee,

said last week that congressional intent isn't necessarily being followed here. The School Superintendents Association says that the prohibitions in the law, in tandem with Congress' deliberate act of leaving comparability unchanged, makes a seemingly tight case against expanding supplement not supplant.

You've testified here that you will abide by the letter of the law. It's not abiding by the letter of the law to require local school districts to use teacher salaries and equalize spending between title I and non-title I schools. It's not abiding by the letter of the law to use supplement not supplant provisions to achieve your goals for comparability when Congress debated this issue and chose to not make any changes in the law.

I'm making such a point of this today because we're at the beginning of the implementation of a law that affects, as I said, 3.4 million teachers and 50 million students in 100,000 public schools. The States are busy working on their plans for title I money. They have a clear law that changes the direction of what Federal policy is.

I'm determined to see that the law is implemented the way we wrote it. It's important at the beginning of this implementation to make sure that you as well as those who work for you in the Department understand that. They are not elected to anything, and you are confirmed by the U.S. Senate to faithfully execute the laws, and you said you will abide by the letter of the law in your confirmation proceeding, and I expect that to be the case.

Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you, Mr. Chairman.

Secretary King, thank you for being here today. This is an important time for the Department of Education, from expanding access to pre-K for our youngest learners to helping students and families with growing college costs, and, of course, as you are working hard to implement the new K–12 law.

I remember hearing from a parent named Duncan Taylor last year. His son is in school at Highline Public Schools in Washington State. He's an active member of the PTA and volunteers in his son's school that serves students from very diverse backgrounds. He said he saw up close and personal how No Child Left Behind wasn't working for teachers and students in the classroom, and it wasn't working for schools or our communities.

Here in Congress, on an issue as important as education and on a law as broken as No Child Left Behind, we were able to work together, break through the gridlock, and pass the Every Student Succeeds Act with strong bipartisan support.

As a reminder, here is what our law does: The Every Student Succeeds Act gives States more flexibility. It also includes strong Federal guardrails for States as they design their accountability systems. It preserves the Department's role to implement and enforce the law's Federal requirements and, importantly, reduces reliance on high-stakes testing, and it makes significant new investments to improve and expand access to preschool for our Nation's youngest learners, to name just a few provisions in the law.

Reauthorizing this law was not the finish line. It was a starting point for the Department and for our schools, districts, and States

to begin the hard work of transitioning away from No Child Left Behind and to turn the page. While the Department goes through this process and as States develop new systems and polices, I will be closely monitoring several issues to make sure our law lives up to its intent to provide all students with a high-quality education.

The Elementary and Secondary Education Act is, at its heart, a civil rights law. We know from experience that without strong accountability, kids from low-income neighborhoods, students of color, kids with disabilities, and students learning English too often fall through the cracks. I expect the Department to use its full authority under the Every Student Succeeds Act to make sure every student does have access to a quality education.

While we were writing this law, we were deliberate on granting the Department the authority to regulate on the law and hold schools and States accountable for education.

That includes things such as ensuring States and districts take action every year to improve student achievement in any school that has groups of students who are not achieving academically.

It includes enforcing the State-level cap on the use of simplified alternate assessments for students with the most significant cognitive disabilities and ensuring Individual Education Program, or IEP, teams have the tools they need to identify which students with a disability should take that assessment. I will be taking a close look at any guidance or regulations from the Department for school interventions and supports which will be critical to helping low-performing schools improve.

In March, the Leadership Conference on Civil and Human Rights and 54 civil rights organizations sent a letter to the Department on the importance of accountability and the authority of the Department to regulate on this and other critical issues. I want to underscore what they wrote, particularly about the Department's vital role to make sure this law,

> "includes serious protections for vulnerable students and creates important leverage for parents, communities, and advocates to continue their push for equity and accountability for all students."

The letter further states that the law is clear. The Department has the authority and responsibility to issue regulations and guidance and to provide guidance and technical assistance for the implementation of the Every Student Succeeds Act.

And, finally, I will continue to be very focused on the competitive grant program to expand access to high-quality preschool. That means the Department of Health and Human Services should work closely with the Department of Education so more students get the chance to start kindergarten ready to learn. It's up to all of us to uphold the legacy and promise in the Every Student Succeeds Act.

Dr. King, I'm looking forward to hearing from you on the steps needed to implement the new bipartisan law in a way that will help provide a quality education to all of our children.

Thank you very much.

The CHAIRMAN. Thank you, Senator Murray.

I'm pleased to welcome the United States Secretary of Education to our hearing today. I'd like to thank him for being here. He has a busy schedule. I'm pleased to introduce Dr. John King, Jr., who

was confirmed March 14th. Prior to becoming Secretary, Dr. King served as Commissioner of Education for the State of New York, overseeing not only the State's elementary and secondary schools but institutions of higher education and numerous other educational institutions.

He has also served as a Managing Director for a nonprofit charter management organization, Uncommon Schools, and as a co-founder and co-director for curriculum and instruction of Roxbury, MA, Preparatory Charter School.

Dr. King, welcome.

STATEMENT OF HON. JOHN B. KING, Jr., Ph.D., SECRETARY, DEPARTMENT OF EDUCATION

Secretary KING. Thank you so much. Chairman Alexander, Ranking Member Murray, and members of the committee, thank you for inviting me to speak about how the Department of Education intends to implement the Every Student Succeeds Act. I commend Congress for passing this law with strong bipartisan support.

The passage of this law is a major accomplishment as we build on efforts to expand educational excellence and equity in partnership with States, districts, communities, and educators. ESSA presents us with a moment of both opportunity and moral responsibility. The new law reauthorizes the original Elementary and Secondary Education Act of 1965, which was a civil rights law that must be viewed in the context of the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

Responsibility to ensure that implementation of the new law lives up to its civil rights heritage rests with leaders in States and with all of us. ESSA advances equity by upholding critical protections and maintaining dedicated resources for America's most disadvantaged students. Importantly, the law maintains expectations, and action will be taken to improve opportunities for students in schools that chronically underperform, that do not improve low graduation rates, and that do not ensure progress for all student groups.

The new law also embodies much of what the Obama administration has supported over the last 7 years. For the first time, ESSA enshrines in law high, State-chosen learning standards that will prepare all students for college and careers. The law supports local innovation and builds on the Administration's historic investments in quality preschool.

ESSA also requires that information on student progress is shared through annual statewide assessments while supporting State efforts to reduce and improve State and local tests. Importantly, ESSA builds on work already underway to raise expectations for students and establish locally tailored systems for school improvement in States.

The law rightly shifts responsibility for developing strategies to support the highest-need students and schools to State and local decisionmakers and away from the one-size-fits-all mandate of No Child Left Behind. It creates opportunities for States to reclaim the goal of a rigorous, well-rounded education for every child.

At the same time, ESSA maintains a crucial Federal role in constructing guardrails to protect our children's civil rights. We take

that responsibility very seriously. ESSA is an important and complex law with new pieces related to data reporting, accountability, support systems and programs. At the Federal level, our role is supporting States and districts to improve opportunity for students, investing in research and scaling what works, ensuring transparency, and providing safeguards to ensure educational equity.

Ultimately, we all want quality implementation of the law that builds on the progress of the last decade and supports States, districts, and schools in helping every student to succeed.

ESSA implementation will require an incredible amount of work to know how to best support States, districts, and educators. We've sought input on areas in need of regulation, guidance, and technical assistance and received lots of feedback via our notice in the Federal Register, public meetings, and ongoing outreach to stakeholders. At the same time, the Department is engaging in this process with an understanding that we cannot and, indeed, should not attempt to provide guidance or regulations for every area of law where ambiguity exists.

We are prioritizing where our support for implementation is most needed. For example, we plan to issue guidance in late summer or early fall on the changes in the law that impacts some of our most vulnerable students, homeless students, students in foster care, and English learners, and to encourage best practices as States and districts make use of some of the new funding opportunities in the law.

Most recently, the Department engaged in negotiated rulemaking on assessments and the requirement that Federal title I funds be used to supplement not supplant State and local investments in education. The Department has proposed regulatory text that would support States and districts in measuring the progress of all students, including our students with disabilities and English learners, by ensuring that annual statewide assessments are valid, reliable, fair, and of high technical quality so that schools can provide good information on student performance for parents and educators.

The Department also proposed regulatory text that would support States and districts in measuring the progress of all students and that would help ensure that title I funds are truly supplemental while also maintaining district flexibility to choose their own methodology to allocate State and local funds. The sessions have been productive, and we hope the final outcome will be a set of regulations that support high-quality implementation of the new law and protect equity and transparency.

In addition, we recently announced that we will begin the regulatory process on accountability, which would include components relating to reporting and consolidated State plan submission and the new title I, part B innovative assessment demonstration authority. These regulations will respond to some of the key areas in which the Department received public comment and on which regulations would serve to support implementation.

For example, we seek to leverage the consolidated aspect of State plans to streamline requirements, reduce burden on States, and encourage them to think comprehensively about systems and sup-

ports across programs. That's the type of approach that I know I would have found helpful when I was a State chief.

As we continue to meet with stakeholders to identify other areas where guidance and technical assistance may be needed, we look forward to a robust discussion on the new law. Education is the path to quality and opportunity that is at the heart of the American dream, and together we can ensure the dream is within reach for every child.

Thank you. I'm glad to take your questions.

[The prepared statement of Secretary King follows:]

PREPARED STATEMENT OF HON. JOHN B. KING, JR., PH.D.

Thank you Chairman Alexander, Ranking Member Murray, and members of the committee. I appreciate the invitation to testify today regarding how we are implementing the Every Student Succeeds Act (ESSA), which the President signed into law on December 10, 2015.

I have seen and lived the hard work and challenges faced by State leaders, principals, teachers, and other educators at all levels of our education system. And I have no greater responsibility than supporting their efforts to ensure that all children, regardless of where they live or their background, receive the education they need to succeed in school and in life.

I want to take a moment to acknowledge the hard work of this committee in passing this law, and thank you for your work. In an era when bipartisan successes are too few and far between, you and your staff worked tirelessly to reauthorize an outdated piece of legislation, compromising where needed and always keeping the focus on what was best for kids. That is a great testament to each of you and particularly to the leadership of Chairman Alexander and Ranking Member Murray.

My colleagues will tell you that as a former social studies teacher, I rarely miss an opportunity to put our work in its historical context. As you all know, the Every Student Succeeds Act reauthorized the original Elementary and Secondary Education Act (ESEA), which was signed by President Lyndon Johnson in 1965. From its inception, ESEA was a civil rights law. It was signed into law following the Civil Rights Act of 1964, and in the same year as the Voting Rights Act of 1965, by a President who believed that "full educational opportunity" should be "our first national goal." ESSA honors the law's civil rights heritage, and the responsibility to ensure that its implementation also honors that heritage rests with each State, district, and school—but also with all of us here.

ESSA advances equity by upholding critical protections for America's disadvantaged students. The law maintains dedicated resources and supports for students from low-income families, students with disabilities, English learners, Native American students, foster and homeless youth, and migrant and seasonal farmworker children. What's more, the law maintains the expectation that, in schools where students chronically underperform, in high schools that have low graduation rates over extended periods of time, and in schools where groups of students are not making progress, action will be undertaken to improve opportunities for students. With ESSA, Congress has reinforced the Federal commitment to holding our Nation's schools accountable for the progress of all students, while striking a new, improved Federal-State partnership that moves away from the one-size fits all approach of No Child Left Behind (NCLB).

ESSA also reflects many of the priorities that this Administration has put forward over the last 7 years, moving forward a vision grounded in equity—to ensure that every young person in America receives an education that will prepare him or her with the knowledge and skills needed to succeed in college and future careers. It creates high expectations for students and for schools, and it invests in local innovation—including evidence-based and place-based interventions—consistent with many of our Administration's ideas and priorities. The law requires that all students in America be taught to high academic standards and shares vital information about their progress and performance with educators, families, students, and communities on an annual basis, through statewide assessments. ESSA also encourages a smarter approach to testing, moving away from a sole focus on standardized tests to drive decisions around the quality of schools and allowing for the use of multiple measures of student learning and progress—along with other indicators of student success—to make school accountability decisions. Our Administration is pleased that ESSA includes provisions consistent with President Obama's principles around re-

ducing the amount of classroom time spent on standardized testing, encouraging States to limit the amount of learning time devoted to these assessments and supporting efforts to audit, streamline and improve assessments at the State and local level.

In addition, this new law builds on the work already underway in States to raise expectations for students, develop their own strong State systems for school improvement, particularly in the lowest-performing schools and schools with chronically low graduation rates, and drive opportunity and better outcomes for every child. ESSA empowers State and local decisionmakers to develop their own strategies for supporting the students and schools most in need based on evidence, rather than imposing the top-down approach of NCLB. By providing States and districts with more flexibility to innovate and implement locally driven reforms, ESSA moves beyond NCLB in a way that will drive stronger outcomes for all kids.

The new law builds on and sustains our historic investments in increasing access to high-quality preschool—one of the most powerful things we can do to ensure opportunity for students, by giving our youngest learners a strong start. And it 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 how they consider what makes a school successful for the 21st century while maintaining focus on key academic outcomes. That may mean States measuring how students—all students—are doing in Advanced Placement and International Baccalaureate courses. It may mean States taking a closer look at chronic absenteeism, post-secondary enrollment, placement in remedial college coursework, or school climate as additional measures of how schools are serving all students.

The possibilities are exciting and expansive, but their real-world impact for children will depend on implementation. And that is what you have invited me here today to discuss. So let me speak briefly about the Federal role in education. Education is, and should remain, primarily a State and local responsibility. What we do at the Federal level is support States and districts to improve opportunity for all students, invest in local innovation, research and scale what works, ensure transparency, and protect our students' civil rights, providing guardrails to ensure educational opportunity for all children.

We at the Department take that responsibility very seriously. This is an important and complex law, with a lot of new pieces—new data-reporting requirements, new opportunities for state-designed accountability and support systems, new programs. Everyone—from the parent whose first child just enrolled in pre-school to the district superintendent—has questions about how this all comes together in practice. As someone who is a parent of public school children, and who has been a teacher, a principal, and a State commissioner of education, I can tell you that the prospect of a new law of this magnitude and scope is both exciting and daunting. There is an incredible amount of work to be done at all levels to implement the law.

That is why, since the bill was signed into law, we have been listening to the many stakeholders who care about implementation—including civil rights leaders, teacher and principal representatives, State and school district leaders, parents and many others—to hear their questions and concerns and identify where regulations, guidance, or technical assistance might be most needed. We published in the Federal Register on December 22nd a request for information, broadly seeking input on areas in title I in need of regulation. And as part of that notice, we held two regional meetings to seek public input: one on January 11th in Washington, DC, and one on January 19th in Los Angeles. In response to our notice, we received hundreds of comments, submitted on behalf of approximately 1,000 groups and individuals. We heard from teachers, principals, and other school leaders. We heard from State chiefs and district superintendents, from parents and students. In addition, over the past several months, we have held well over 100 meetings with stakeholders from across the education system, including parents and teachers, school leaders, State officials, and civil rights groups, to listen to their thoughts and concerns about implementation of the ESSA.

In general, the comments reflected support for the new law. Many commenters expressed the need for regulations and guidance from the Department in order to better understand how to implement the provisions of the new law by July 2017. Among the most common areas of interest were: accountability, assessments, school improvement, data reporting, fiscal requirements, consolidated State plans, and family engagement. For example, the Leadership Conference on Civil and Human Rights, along with 36 other civil rights organizations, recommended that the Department promulgate regulations relating to, the 1 percent cap on the alternate as-

sessment for students with the most significant cognitive disabilities (including criteria for a waiver of that cap), and the inclusion of English learners in content assessments. The National Education Association requested that the Department regulate on data requirements relating to compliance with the requirement that funds under title I, part A be used to supplement, and not to supplant, State and local funds. The Business Roundtable called on the Department to ensure that there is regulatory guidance in place to prevent student achievement gaps from growing and students from exiting high school ill-equipped to succeed in college and the workplace. Department of Education staff at all levels are continuing to meet with groups, and engage in listening sessions across the country, from rural communities north of Seattle in Washington State to Columbia, SC.

We also are looking across our existing regulations and guidance to figure out what is still useful and what needs to be updated. We know that States, districts, and educators are eager to move forward with implementing the new law, and we want to be responsive to that sense of urgency. When it comes to building new systems, the 2017–18 school year is actually not that far away. To that end, on February 4th, we published a notice announcing our intent to engage in negotiated rulemaking on assessments under ESEA section 1111(b)(2) relating to statewide assessments, and the requirement under section 1118(b) of the ESEA that Title I, Part A funds be used to supplement, and not supplant, State and local funds. The negotiation sessions began in late March and will continue through April 19 at the Department of Education, and are open to the public. The negotiating committee represents a wide range of constituencies, including parents, State and district administrators, teachers, principals, other school leaders (including charter school leaders), paraprofessionals, tribal leadership, and members of the civil rights and business communities. The Department has proposed regulatory text that would support States and districts in measuring the progress of all students, including our students with disabilities and English Learners, by ensuring that annual statewide assessments are valid, reliable, fair, and of high technical quality, so that schools can provide good information on student performance for parents and educators. The Department's proposal with regard to "supplement, not supplant"—based on feedback from the committee—will help districts ensure that title I funds are truly supplemental, while also maintaining districts' authority to choose their own methodology to allocate State and local funds. The sessions have been productive and we hope that the final outcome will be a set of regulations—which will also be subject to public notice and comment before they are final—that support high-quality implementation of the new law and protect equity and transparency, particularly for our most vulnerable student populations.

In addition, we recently announced that we will begin the regulatory process on accountability, which would include components relating to reporting and consolidated State plan submission and the new title I, part B innovative assessment demonstration authority. As part of this process, the Department will put out proposed regulations for public comment this summer, with a goal of releasing final regulations by late fall to support full implementation of the law by 2017–18. These regulations will respond to some of the key areas in which the Department received public comment, and on which regulations may serve to support implementation. For example, the law allows for States to submit consolidated State plans, but historically this exercise has involved submitting various different plans stapled together. Through regulation, we will seek to leverage the consolidated aspect of these plans to streamline requirements, reduce burden on States, and encourage them to think comprehensively about systems and supports across programs. As a former State chief, I know I would have found this approach very helpful, and I am glad we will be able to do this.

We also recognize the need to provide guidance on how States and local districts may implement the many provisions throughout ESSA. We are early in this process, as we are still receiving feedback from across the country and plan to continue to meet with stakeholders in the coming months to help identify the appropriate areas in which guidance might be useful.

I want to underscore that the Department is engaging in this process with an understanding that we cannot, and indeed should not, attempt to provide guidance or regulations for every area of the law where ambiguity exists. We are focusing on the things that matter the most.

Through the rulemaking process, we have directed our attention to three areas where we believe it is critical to provide clarity to States, districts, and schools: assessments; accountability; and the equitable allocation of resources. And I assure you that we will take seriously and give every consideration to the feedback we receive through the notice-and-comment period.

Our goal is a renewed Federal-State partnership that will support local school districts and their schools in their charge of helping every student succeed. As we announced in December, our Nation's graduation rate is at a record-high 82 percent, but achievement gaps persist and too many students complete their schooling without the knowledge and skills needed for future success. We need to keep the progress going for all kids, and so we are going to keep the conversation going—with stakeholders at every level, and with all of you here. And as we hear from the field, we will continue to identify opportunities to support our States and districts through regulations, guidance, and technical assistance where it is most useful.

Ensuring a world-class education for every child is both a demanding challenge and an urgent imperative for our Nation, our communities, and our children. I know that members of the committee share those beliefs—and I look forward to continuing to work with this committee to ensure that in America, education is, as it must be, the great equalizer.

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

The CHAIRMAN. Thank you, Dr. King. We'll now have a round of 5-minute questions. I'll try to stick close to the 5-minutes and hope others will as well.

Preliminarily, Dr. King, we're talking about title I plans. Title I are Federal dollars States may apply for, submitting a plan, and that constitute about 4 percent of all the money that State and local governments spend on 100,000 public schools. There's more Federal money than that, but it's not covered by title I. We're talking about for that amount of money what instructions you can give.

And, second, I would ask you this. You mentioned guidances coming out later. You agree, do you not, that guidances are merely illustrative and are not intended to be legally binding upon local school districts?

Secretary KING. That's right. As we've discussed, guidance is intended to provide clarity and to provide examples of best practice. We do not believe guidance has the force of law. It does often include our interpretation of the law, again, to provide clarity.

The CHAIRMAN. Thank you, Dr. King. Let's talk about comparability. There is a provision in the Act, as I mentioned in my opening comments, first put there in 1970 that says school districts have to provide at least comparable services with State and local funding to title I schools and non-title I schools.

The law also says on comparability in Section 1118(c)(2)(b) for purposes of this subsection in determining that computation, "staff salary differentials for years of employment shall not be included in such determination." Do you agree, yes or no, that the law prohibits requiring local school districts to use teacher salaries when demonstrating that they are providing title I schools with at least comparable services as non-title I schools?

Secretary KING. You are referencing the comparability section as opposed to supplement not supplant section.

The CHAIRMAN. That's correct.

Secretary KING. Yes, I believe that's an accurate depiction of the comparability section of the law.

The CHAIRMAN. You've had a chance to study the law. In your opinion, did Congress make any changes in the comparability section when we reauthorized the law last year?

Secretary KING. I don't believe there were changes to the comparability section. There were changes to supplement not supplant.

The CHAIRMAN. I'm just asking you did we change Section 1118(c)(2)(b), the comparability section?

Secretary KING. To the best of my recollection, no.

The CHAIRMAN. No, we didn't change it. Your proposal in April to the negotiated rulemaking committee on a different subject, supplement not supplant, says a local school district may determine the methodology it will use to allocate State and local funds, provided that methodology results in spending of local funds in a way that's equal to or greater than the average amount spent per pupil in non-title I schools. You also say that methodology must provide a basic educational program as defined under State and local law is used in each title I school.

Would you agree that that language defines two methods that local school districts must use?

Secretary KING. No. I appreciate you're making a distinction between comparability and supplement not supplant and——

The CHAIRMAN. Wait a minute. In supplement not supplant, it says provided that that methodology that the local school district uses is, one, the average I talk about, and, two, the basic education program. How can that not be the defining of a methodology that a local school district uses?

Secretary KING. The proposed regulation is careful to maintain district flexibility with determining the——

The CHAIRMAN. Wait a minute, Mr. Secretary. The words are: provided that methodology is one or two. The question is are you not defining a methodology when you use the words, "provided that methodology is X or Y?"

Secretary KING. We are not. We are laying out what criteria are necessary——

The CHAIRMAN. You used the words, "provided that methodology." "Provided that methodology" are the words you use.

Secretary KING. Followed by a set of words that describe the criteria by which that methodology would meet the principle of supplement not supplant.

The CHAIRMAN. Oh, OK. You define the methodology.

Secretary KING. We do not.

The CHAIRMAN. You do. How can you sit there and say that? We may not be very smart up here, or at least I may not be. Let me speak for myself. I can read—provided that methodology does X, does Y.

You are defining a methodology when in the law—what we put in the law was that nothing in this section of supplement not supplant, which has nothing to do with the comparability section—nothing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local education agency uses or to mandate equalized spending. In other words, we anticipated that you were going to try to not follow the law, and we anticipated, and we wrote in the law that you couldn't use a specific prohibition to do that.

Secretary KING. As indicated, we do not prescribe the specific methodology—leave the methodology to districts—but are requiring——

The CHAIRMAN. Provided that methodology results in X, provided that methodology results in Y. How is that not prescribing a methodology?

Secretary KING. Those are criteria by which to evaluate a methodology that would be determined by a district that would ensure

that the title I dollars are, in fact, supplemental and not being used for——

The CHAIRMAN. Dr. King, do you know how ridiculous the statement is you just made? If I read you plain English, if I say A, B, C, and you say it's D, E, F, how can that be?

Secretary KING. Again, I would characterize it differently. The question here is a methodology that is district determined must achieve A and B, and A and B ultimately define supplement not supplant, which is to ensure that the title I dollars are used in a way that is supplemental.

The CHAIRMAN. The law intended that States would have more flexibility in local school districts and I'm over my time. I've already violated my own rule, it looks like. I'll conclude, and I'll stay for a second round of questions. Thank you.

Senator Murray.

Senator MURRAY. Congress deliberately required the supplement not supplant requirements to go through the negotiated rulemaking process. This policy really is a critical fiscal check to make sure that Federal funds are layered on top of and not in place of State and local funding. Teachers and principals in Washington State tell me how important Federal education dollars are to support the State and local resources in their schools, and we need to make sure that these Federal dollars continue to support and augment State and local dollars and don't replace them.

Can you tell us about the feedback that you received from stakeholders and how this feedback was then incorporated into the draft regulation?

Secretary KING. Yes. Your description is exactly right. As we gathered feedback through our request for information, what we heard was a request from civil rights groups, from parents, from educators for greater clarity on how supplement not supplant would ensure that the title I dollars are truly supplemental and not used to backfill.

Also, we heard concern that the prior methodology under No Child Left Behind was often burdensome and left key decision-making to auditors rather than to educators. This new methodology reflects the input. This new way of defining what districts need to do in their methodology reflects the input that we received from States and districts.

Senator MURRAY. ESEA is at its heart a civil rights law with the goal of ensuring that all students receive a quality education. When the Department began issuing waivers under the No Child Left Behind requirements, they only required important interventions in the bottom 5 percent of schools and small groups of schools with achievement gaps called focus schools, and because of that, I heard many concerns with that approach.

Under the Every Student Succeeds Act, States must annually distinguish and ensure there are interventions in any school in which one or more subgroups of students is consistently underperforming and require additional interventions for the worst performing of those schools. Last week, the Department announced it will release a draft accountability regulation in the coming months.

Can you tell me how the administration will make sure the faithful implementation of that provision, and that there are robust supports for all schools in which subgroups are struggling?

Secretary KING. Yes. We have developed draft regulations that are now with OMB for final review on accountability with the goal that reflects the principles in the law, that standards will be high, that we will ensure the progress of all subgroups, and that in schools that are struggling there is a requirement for meaningful action by States and districts. The regulations would ensure guardrails, again, ensuring flexibility for States for them to define the precise interventions that they believe will address the local conditions that are behind the underperformance.

Senator MURRAY. This new law does turn over more decision-making power to States and districts, making collaboration even more important than ever. In my home State of Washington, many are already taking steps to make sure that their voices are heard in this implementation process. I've said before, I believe all States must invite all stakeholders in to engage in this process, including civil rights leaders and parents.

What steps is the Department taking to make sure that ESSA prompts frequent, deliberate collaboration among all the stakeholders at both the State and local level?

Secretary KING. That's really the approach that we've taken from the outset. We put out a request for information that resulted in comments from nearly 1,000 individuals and organizations. We held two public hearings in which we received over 100 comments. We've held over 100 stakeholder listening sessions with diverse groups, civil rights groups, parents, educators around the country, and we'll continue to do so.

In the negotiated rulemaking process, we had over 200 nominations for the negotiated rulemaking process and have a negotiated rulemaking committee that is diverse and reflects diversity of stakeholders. We have urged States as they begin their process of developing State approaches to implementing the Every Student Succeeds Act—we've encouraged States to make sure that they have robust stakeholder engagement, and that's what we're seeing, States beginning the process now of engaging with a diversity of interests within their State.

Senator MURRAY. What kind of comments are you hearing back as you move forward on this process?

Secretary KING. Many of the comments are around what areas require further clarity or guidance. As we've developed—identified areas for negotiated rulemaking or for regulation or for guidance, it's been responsive to the feedback that we've received. We've heard a lot of enthusiasm about the potential for the new law to advance equity and excellence, but also a concern that we have to make sure that there are strong Federal guardrails to protect civil rights.

Senator MURRAY. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

Senator Burr.

STATEMENT OF SENATOR BURR

Senator BURR. Thank you, Mr. Chairman.

Secretary, welcome. Under the No Child Left Behind Act, schools have had to itemize the cost of services and programs to show title I aid was providing supplemental services, but the ESSA schools don't have to identify those individual costs. They only have to show fiscal terms that the title I dollars supplement State and local dollars, and they don't need a waiver to do so. Districts no longer have to worry about showing whether each expenditure is a core service or supplemental for title I purposes.

In the negotiated rule proposal from the Department, however, you're telling States that actual per-pupil spending is equal to or greater than in a non-title I receiving State. In a concept similar to what you're doing, this was an issue on the Federal level that I tried to fix with the title I-A formula. I believe before States are told to do something regarding how they are funding schools equitably, the Federal Government must exhibit leadership in how we allocate title I-A funds to eliminate those inequities. This is the whole point of title I-A.

When Secretary Duncan was first confirmed about 7 years ago, I asked for the administration's proposal for fixing title I-A formula inequities, but I've never received one. In the remaining months of this administration, will you share with me your proposal on how we might address inequities in title I-A allocations from the Federal level?

Secretary KING. We certainly are prepared to work with you or your staff to look at this set of questions. I would say in your question, one important distinction is that the proposal on supplement not supplant is not going to affect State level decisions. It's about the district methodology for allocation of resources within the district.

Senator BURR. Do you agree that Federal funds that were designed for poor kids are not following the poor kids?

Secretary KING. What we see—and one of the reasons why the supplement not supplant regulation is so important—what we see is that, in fact, in many districts around the country, more Federal dollars are being spent in non-title I schools than in title I schools, and we have to make sure that the resources are allocated to address the needs of the students most at risk.

Senator BURR. Isn't the role of Federal Government with taxpayer designated money for poor kids—isn't our role to make sure that money follows where those poor kids live?

Secretary KING. The focus of the Federal dollars is on addressing the needs of the students who are most at risk.

Senator BURR. Wasn't title I designed to supplement the needs of those kids? Today, it doesn't follow the kids. It stays in districts whether the population grows or decreases. Why wouldn't the Federal Government set the example of changing it?

Secretary KING. Again, the key is to get the dollars to the students who are most at risk, and we have to acknowledge that students who are in schools of concentrated poverty—students in poverty who are in schools of concentrated poverty are more at risk as a result. One of the things that the President has done is propose an initiative called Stronger Together that would have the goal of——

Senator BURR. We layer and layer and layer programs on, but we have one right here where the money doesn't follow the intended pupil, and we're not fixing it. Mr. Secretary, in a dear colleague's letter from the Department dated January 28, 2016, your staff instructed States that they'd receive formula funds in accordance with the 2015–16 school year allocations.

Although this guidance appears to only apply to title I funds and for school improvement activities, for example, I want to know whether you agree that the fiscal year 2017, which is almost upon us in October—whether you agree the 14.29 percent annual reduction in title II hold harmless provisions will begin to take place as required by the Every Student Succeeds Act for the upcoming fiscal year.

Secretary KING. We'll have to followup with your staff on the title II question. I just want to make sure that we're talking about an apples to apples comparison on the title II dollars.

Senator BURR. Let me just refresh your memory. Title II funding formula changed over a 7-year period. There's a reduction for some of 14.29 percent, and it takes effect with fiscal year 2017, which is October 1 of this year.

Secretary KING. Again, we'll need to followup with your team. My experience as a State chief was oftentimes the title II dollars—there were times when the title II dollars would carry over from year to year. I just want to make sure we're having an apples to apples comparison in our conversation. We'll followup with your team.

Senator BURR. I look forward to that conversation, because I don't think there's any gray area in how we wrote this and when the title II formula change starts, and that's October 1.

I thank the chair.

The CHAIRMAN. Thank you, Senator Burr.

Senator Casey.

STATEMENT OF SENATOR CASEY

Senator CASEY. Mr. Chairman, thank you.

Mr. Secretary, good to be with you, and thank you for your service. I guess you're on the job about a month, and we appreciate you being here reporting back on the implementation.

I wanted to focus your attention on students with disabilities and, in particular, the 1 percent cap on alternative assessment, which is a technical issue, but I think it's easy for most folks to understand what we're trying to do. We're trying to make sure as many students with disabilities stay on track and graduate with a regular diploma. It's as simple as that. We've made a lot of progress in terms of over a number of years scores going up for students with disabilities, graduation rates getting better, and being able to codify, to put into the law the 1 percent policy is good progress.

I was noting in some of the data that if you look at both math scores and reading scores for students with disabilities, they're up, and I thought, maybe even more significantly, students with disabilities are increasingly completing high school and moving on to post-secondary programs. In about a decade, we went from 68 percent of students with learning disabilities receiving a regular high

school diploma, compared to just 57—I'm sorry—57 percent a decade ago, 68 percent now, which is good progress on that metric.

Also, the dropout rate, fortunately, over about a decade is going in the right direction, meaning instead of a dropout rate of 35 percent in 2002, in 2011, the latest year we have some data, it's down to 19. So good progress.

I guess my—I have basically two questions for you. As you go through this implementation process, what can both the Department as well as States and districts do to ensure that we continue to make progress?

Secretary KING. One of the keys to the continued progress for students with disabilities is ensuring that to the greatest extent possible with appropriate accommodations, students with disabilities have access to the general education curriculum. The assessment requirement, the 1 percent cap on alternative assessment, is an important element in ensuring that students have access to the general education curriculum.

As we work with the negotiated rulemaking committee, one of the key elements in the discussion is ensuring that the 1 percent cap is meaningfully enforced and that to the extent that States are able to get a waiver from the 1 percent cap, it is not having the effect of taking students who could succeed in a general education curriculum with appropriate accommodations and denying them those opportunities. Much of the feedback we received around the 1 percent cap was from the disability rights community, expressing appreciation that there would be a requirement for States to be very careful when excluding students from access to the general education curriculum and the general education assessments.

Senator CASEY. I guess the value here or the goal is to make sure that every student that has the capability has the opportunity to both access the general curriculum and then finally to graduate with a diploma. Just maybe one more question on this. Generally, and even if you have specific examples—generally, what has the disability community been saying to you in this process?

Secretary KING. Like many other constituency groups, there is a sense of enthusiasm about the new law and the potential for the new flexibility and a concern that there need to be good guardrails in place to ensure that resources reach the students who are most in need; to ensure that students with disabilities have access to the general education curriculum; that students with disabilities have access to the full range of experiences that constitute a well-rounded education; that students with disabilities have access to science and social studies; that students with disabilities have access, where appropriate, to advanced course work, again, with appropriate accommodations. We're very mindful of ensuring that our implementation helps States protect the rights and interests of students with disabilities.

Senator CASEY. I appreciate that. We've learned over a number of years—both families and advocates have taught us that students with disabilities have a lot of ability. We've just got to give them the tools and resources to succeed. Thank you for your work on this.

Secretary KING. Thank you.

The CHAIRMAN. Thank you, Senator Casey.

Senator Bennet.

STATEMENT OF SENATOR BENNET

Senator BENNET. Thank you, Mr. Chairman. Thank you very much for holding this hearing and for your efforts on the bill. I did not succeed in changing the comparability provision.

The CHAIRMAN. Nor did I.

Senator BENNET. Secretary King, I wanted to ask you some questions about this supplement versus supplant, understanding that, as you said, this is a civil rights law. It's the only reason the Federal Government should have any involvement, it seems to me, in education.

I remember when I was superintendent of the Denver Public Schools, the most miserable—actually, that's overstating it—one of the most miserable experiences that I had and the people that worked for me had was the experience of Federal bureaucrats and Federal auditors, who were not experts, deciding whether or not this service was provided in this title I school and paid for, or this service provided in this non-title I school, and making a judgment that had nothing to do with the academic experience of children, but was just about following not even the law, but the rules of the Department of Education to determine whether or not we were supplementing or supplanting our Federal money, in other words, whether we were using it incrementally or whether we were filling gaps.

The reality is, unfortunately—Senator Burr is right. We are one of three countries, as I understand it, among all industrialized countries, that spend more money on wealthy kids than we do on poor kids. That's not mostly a function of what we do. It's a function of the inequities that exist in the property tax system that we use to fund schools in America.

Even with respect to title I, a recent study from the Center for American Progress said that 4.5 million students attending schools, title I schools, in the same districts with non-title I schools are actually having less money spent on their education than more affluent kids, which makes no sense. It's exactly the opposite.

I wonder if you could talk first about the existing framework, the existing experience, and then talk from a pragmatic point of view what you're trying to achieve with the proposed rule.

Secretary KING. I agree completely about the challenges with the old system under No Child Left Behind where you had auditors trying to make the decision on whether something was a new program or not, whether something, because of the law, might have been changed by the State, whether or not that then changed the analysis for determining whether the services were a matter of supplement or of supplant. All of that was quite burdensome to districts and didn't achieve the intended goal, which was to ensure that the title I dollars would be supplemental.

What we've tried to do in this proposed rule—and, again, it's——

Senator BENNET. I'm sorry to interrupt, but incredibly hard to do whole school reform because you'd have this auditor coming in and saying, "That reading program—no, no, you paid for that over here. You can't use that over here."

Secretary KING. That's right. That's right. With the discussion that the negotiated rulemaking committee is having—and I don't want to get ahead of that discussion, but what we've proposed in those discussions is a simple approach saying districts should choose their methodology, but that that methodology should ensure that at least as much in State and local spending is taking place in the title I schools as in the average non-title I schools. The idea there is simply to say we should try to do what we can to assure the principle of supplement not supplant, that the title I dollars are additional.

It doesn't require teacher transfers. What it requires, if schools are not spending as much State and local funds in their title I schools as in their non-title I schools, is that districts ameliorate that allocation, and they can do that in a variety of ways.

Senator BENNET. I also want to agree with the Chairman that—or maybe add to what he said about this being a retrenchment on education. This is probably the biggest retrenchment on a domestic policy issue that we've had in modern American history, not just education, but anything else. I wonder, in that context, what you plan for the Department to do to help districts implement this new law with fidelity.

I have come to believe over the years that bad implementation is even worse than bad policy, and I wonder if you have some thoughts on that, and then I'll stop. I have 10 seconds left.

Secretary KING. Our goal is to provide clear guardrails through the regulations based on the input that we have received from stakeholders; to provide guidance, particularly on areas where clarity and examples of best practice will be helpful, like serving homeless students and students in foster care and working with English language learners; and to create communities of practice among States where they can share best practices with each other. That approach will honor the commitment to flexibility for States and districts while at the same time honoring the civil rights legacy of the law.

Senator BENNET. Thank you.

The CHAIRMAN. Thank you, Senator Bennet.

Senator Cassidy has suggested that we go on to Senator Warren.

STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you, Mr. Chairman.

Secretary King, last month, you received a letter from over 50 civil rights and disability rights organizations representing children of color, low-income children, English learners, students with disabilities, LGBT young people, and other vulnerable student populations, regarding your responsibilities in enforcing the new education law.

Here are the organizations that represent exactly the kids who this law is intended to help, and they wrote,

> "Given the long history of State and local decisions short-changing vulnerable students, the Department cannot shirk from its responsibility, regulatory and enforcement responsibility, to ensure that the implementation of ESSA eliminates,

not perpetuates, persistent inequities in our Nation's public education system."

If I can, just briefly, Mr. Secretary, what is the Department of Education's role in ensuring the accountability safeguards in the new education law are actually enforced? That is, once a district announces it has satisfied the law, are you required just to back out of the room and do nothing more?

Secretary KING. No. We take very seriously our responsibility to set good, clear guardrails in the regulations and then to review and approve State plans, and to ensure that those plans are implemented in a way that advances equity and excellence.

Senator WARREN. Excellent. Thank you. The Republicans have talked about the congressional intent in passing this new law, and that question is not difficult to answer. The first version of this legislation back in 1965 was to affirm the Federal role in protecting civil rights and educational opportunities for all students, especially our most vulnerable students. That's been the basis of Federal aid to education from the very beginning, and it's carried directly forward into this statute.

I voted for this law on the explicit agreement that the Department of Education would enforce its accountability provisions through meaningful regulations. That's clear in the language of the law, and it's also good policy. When the Federal Government gives the States billions of taxpayer dollars to improve education for our most vulnerable kids, then it's critical that the Department of Education ensure that those States actually use the money to accomplish those ends.

This is one of the conditions on which a lot of Senators voted for this law, the condition on which many House Democrats voted for this law, and the condition on which the President of the United States signed this bill into law. There is a very public record about this. The ink is barely dry on that record, and I trust you'll keep it in mind as you go forward.

The new Elementary and Secondary Education law directs billions of Federal taxpayer dollars to States to, "provide all children significant opportunity to receive a fair, equitable, and high-quality education." To make sure that happens, Congress wrote into the law critical requirements. This requirement says that ESEA funds must be used to supplement not supplant current State and local funds. In other words, Federal dollars must provide additional resources to low-income schools and not simply replace existing investments. We've been talking about that as we've gone along.

Secretary King, can you talk for just a minute about how the Department is enforcing this critical accountability provision to ensure that Federal education dollars are truly providing additional resources in high-poverty schools?

Secretary KING. Yes. The challenges, as I've described—the implementation of supplement not supplant under No Child Left Behind was not effective in achieving this goal of ensuring that the Federal dollars are truly supplemental. If we look at individual districts, you can see a 25 percent, 30 percent, 40 percent, in some cases, additional spending in non-title I schools than in title I schools, and, in fact, the Federal dollars were being used essentially to backfill.

Going forward, the new law gives us the opportunity to create a regulation that requires districts to develop their own methodology that will ensure that at least as much is spent in State and local funds in title I schools as is spent in the average non-title I school. That's what we've proposed to the negotiated rulemaking committee, and they are working through that process.

Senator WARREN. Let me just be clear on this. Is it possible for the Department of Education to require States and districts to work toward specific outcomes, that is, to have guardrails without mandating specific accounting methods to achieve those ends?

Secretary KING. Exactly right.

Senator WARREN. All right. Good. When the Federal Government gives States billions of taxpayer dollars to improve education for our most vulnerable kids, then it's critical that the Department of Education ensure that those States actually use the money to help those kids. This was one of the conditions on which a lot of Senators voted for this law, and it is something that we are going to stick with.

The Democrats have spent years fighting to make sure that this reauthorization is about additional dollars, to make sure that they support all of our teachers and all of our kids to get a decent education. We just want you to keep that in mind as you go forward.

Thank you.

The CHAIRMAN. Thank you, Senator Warren.

Senator Cassidy.

STATEMENT OF SENATOR CASSIDY

Senator CASSIDY. Hello, Dr. King. I was listening to your testimony and the questions as I was in another hearing. You mentioned in your testimony that you're concerned about subgroups that would struggle, and that you're looking for meaningful action required. You used the term, precise intervention.

You've been here before. One of my interests is dyslexia. Twenty percent of the population is dyslexic. Perhaps 80 percent of those who are functionally illiterate are dyslexic. I forget the exact percentage, but something like 60 percent to 80 percent of the inmate population in the Texas penal system have dyslexia. We know that illiteracy is a major risk factor for incarceration.

Of course, given that you're interested in the subgroups that are struggling and what meaningful action is required, I'm interested in what we're doing, specifically, regarding dyslexia. As I say that, I've learned when I ask these questions, I'm given these kind of bromide answers, not speaking to you, in particular. It's this gauzy, kind of "we're looking after every child, and we're concerned about dyslexia as part of this larger group."

I want to know exactly what we are doing for children with dyslexia, not as part of a bigger group, but know what has dyslexia written in the rule. For this 20 percent of the population and 80 percent of those reading below grade level, what are we doing for that subgroup that is struggling, what is the precise intervention, again, to quote your testimony?

Secretary KING. As we've discussed, it's an important question. Currently, States are using IDEA dollars through our results-driv-

en accountability approach to address reading programs that are specifically——

Senator CASSIDY. Can I interrupt for a second?

Secretary KING. Yes.

Senator CASSIDY. We had a panel before and I submitted QFRs and asked, specifically what different people—Governors on down to superintendents—what each was doing to screen for dyslexia at grade one and to followup. I didn't get a positive answer from any of them. Not a single entity that we know of is screening for a condition which affects 20 percent of the children at grade one.

Knowing that that is what they're supposed to do and going back to yours, what meaningful action is being required? What precise intervention is happening? I'm not seeing that precise intervention.

Secretary KING. This is an area where technical assistance and professional development are critical. One of the important things——

Senator CASSIDY. Just to continue, if we're going to have technical assistance, again, I don't mean to be assaultive, but what is specifically being written for technical assistance that is meaningful and precise regarding dyslexia to that local and State entity?

Secretary KING. Thanks in part to your leadership, in the 2016 budget, there is funding for a technical assistance center focused on dyslexia. We are currently developing the request for proposals for that technical assistance center.

Senator CASSIDY. Technically, that is a center of excellence and that's kind of just putting out information that would be good if you used it. Unless it's required to be used, it may end up being the equivalent of shelf ware.

Secretary KING. That's fair worry, and that's why, to the points that Senator Warren made, the accountability provisions—and Senator Casey—the accountability provisions of ESSA are so important. We have to make sure that districts and States take seriously their responsibility——

Senator CASSIDY. I've learned that those folks, the stakeholders, respond to what you say. When I speak to folks back home, if you say it, that settles it. Boom. I would go back to where I started. What precisely and meaningfully is being said by your Department to instruct them to address the needs of that first grader who may be at risk for lifelong reading below grade level because they have undiagnosed dyslexia? What, precisely, are you all asking for?

Secretary KING. We issued guidance and provided a toolkit last year that addressed dyslexia, specifically, and talked about strategies that districts and States might employ. The technical assistance center will add to our capacity there to support States and districts.

Senator CASSIDY. Is there any required meaningful precise intervention? Or is this among a group of things that you can do, we think you should do, and atta boy?

Secretary KING. It is options that districts might choose. For example, some districts might choose the Orton-Gillingham approach, some districts might choose the Wilson approach, but there's a variety of options that they might——

Senator CASSIDY. Their response, with that variety of options, is it somewhat required that one of the options be used, or is it "Listen, if you decide to address, you may go down one of these paths?"

Secretary KING. The challenge is ultimately what's chosen for any individual student is bound up with the IEP process. Again, this is a place where support and professional development for the folks who are involved in those IEP conversations is so critical.

Senator CASSIDY. One more time, is there any requirement on your part that the district or the State screen a first grader, because you can detect it at grade one, even kindergarten, and screen that first grader for being at risk for dyslexia?

Secretary KING. There's not a universal screening requirement. The IEP team would be expected to address the screening for dyslexia as a part of the assessment of the needs of a student who is struggling. Again, One of the challenges here is providing good support and professional development for folks. This technical assistance center will help, and our results-driven accountability approach will help, because States understand that their accountability is not merely for paper compliance with IDEA, but ensuring meaningful opportunity and progress for students with disabilities.

Senator CASSIDY. Thank you for this back and forth. You've allowed me to interrupt, and it has furthered the conversation. I'll end by saying that unless you require this to be addressed specifically since dyslexia is one of the things we're looking at. Are you screening, are you intervening at grade one, not at grade three when it's too late, it's not going to happen. That is the power of your Department. I thank you.

I yield back.

The CHAIRMAN. Thank you, Senator Cassidy.

Senator Murphy.

STATEMENT OF SENATOR MURPHY

Senator MURPHY. Thank you very much, Mr. Chairman.

Welcome, Mr. Secretary. Let me ask, if I can, about my understanding of this proposed requirement regarding supplement and supplant that Senator Alexander was discussing. I understand that when you think about the context of the new law being a devolution of power back to the States and then you read language that points a school district or a State in a specific direction on methodology, those two can look inconsistent.

Let me tell you how I read them as consistent and just make sure that it's the same. This is a section that is talking about the way in which a school district will develop a methodology. There's a difference between saying the methodology will be, or the methodology must be, versus what the language says, which is the methodology must result in. Essentially, what it must result in is a re-articulation of the underlying goal of the statute, which is that the Federal dollars ultimately supplement not supplant.

Am I reading that right, that sort of the key here is that the language doesn't say the methodology must be X and Y? It says the methodology must result in, essentially, the goals of the underlying statute that we all wrote together. Is that right?

Secretary KING. That's exactly right. For example, a district might take a weighted student funding formula approach as their

methodology, or another district might choose a more traditional assignment of staffing and services approach. Both of those approaches would be fine as long as they achieve the goal of as much State and local spending in the title I school as in the average non-title I school.

Senator MURPHY. You'll expect to see different methodologies being used.

Secretary KING. That's exactly right.

Senator MURPHY. Second, just some questions about the accountability regulations that are right now pending before OMB. Obviously, a large number of us were very involved in the construction of that part of the statute, and, of course, these guardrails are fairly wide in terms of what States can do to build accountability systems.

States have to set a goal for performance of schools and subgroups. They have to track whether schools and subgroups are meeting those goals, and then if they aren't, then they have to provide interventions. It's up to the schools as to what their goals are and then what those interventions are.

There clearly would be a point at which a school district is in violation of those requirements. I would suggest—this is just me talking—that if a school was failing, and they just changed the name of the school, that would not likely be an intervention that would comply with the statute. To me, regulations are also a means by which we help school districts understand how to comply with a law that is relatively broad in its requirements as to how school districts go about building accountability systems.

I just wanted you to speak for a moment on the—when regulations are done right, it's actually helpful to school districts so that they won't get surprised by an enforcement action on the back end, because you still retain not only authority but responsibility to enforce this law. So as to not be capricious in the enforcement, you want to give some school districts, certainly on accountability sections where the guardrails are wide, some idea ahead of time as to how they stay in compliance with the underlying law.

Secretary KING. That's exactly right. Those are the principles that are behind our development of the accountability regulations, if you imagine a high school that's struggling because they have a significant number of English learners who are performing poorly. A good thing about ESSA is there's flexibility for them to develop a tailored, targeted strategy that responds to their need to acquire English language proficiency that leverages their native language in a thoughtful way.

At the end of the day, the district and State have to ensure that there's actual progress. If years go by, and graduation rates don't improve, academic outcomes don't improve, there's got to be evidence that the State and district are changing the strategy to get better outcomes, and the regulations are a way to ensure that there are clear guardrails for States as they do that work.

Senator MURPHY. I just think it's important for all of us to remember that you still retain the enforcement responsibility. If the Department believes that a State or a school district isn't in compliance with the statute we wrote, it's up to you to come in and provide a remedy. Thus, the regulations are not just a way that the

Federal Government tells a State what to do. It's a way to give some predictive ability for States to know when they might run afoul of the law.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murphy.

Senator Whitehouse.

STATEMENT OF SENATOR WHITEHOUSE

Senator WHITEHOUSE. Thank you, Chairman.

Secretary King, welcome. You're not really there yet, but this is kind of a preview of coming attractions. I don't know that the supplement versus supplant conversation really takes us to it. In the education bill, I worked very hard on an innovation schools initiative.

I worked very hard in Rhode Island for many months bringing together all the different players who were usually in touch with their national organizations as well to make sure they weren't getting out of line with teachers, with principals, with school departments, with reform groups, with everybody. I worked very closely with the Chairman as well, and we were able to get a pretty robust innovation schools piece into the Senate bill.

The Senate bill then went into conference. I was not in the conference negotiations. There was a conference vote at the end, but the work was done with a much smaller group. I can't speak firsthand to what happened. What I'm told is it was your organization that wanted that innovation schools piece watered down dramatically, and it was watered down in the ultimate bill that was presented to conference for a vote, and I spoke to that at the time.

In Rhode Island, our new education commissioner, Ken Wagner, has just announced his effort at what he calls empowerment schools to try to free up the gaps between the State bureaucracy that oversees education and the municipal bureaucracies that oversee education so that there's more room for student-oriented and locally driven flexibility.

That's kind of on the small scale of what I was trying to do on the larger scale with the innovation schools, because if you actually are a school, and you actually want to do something that is innovative, if you're looking at having to line up your local school department to get behind it, and then at the same time line up your State education authority to get behind it, and then at the same time try to get the Federal Department of Education signed up, that kills an enormous amount of innovation in the crib, because you look forward to a triple decker bureaucratic wrangle that most schools could never bet they could get through.

This would basically create a tranche through it all, where if you met certain standards, you could go forward. I can see why folks within your Department might be suspicious of that, but I really would urge you to try to look at the fact that we need this innovation, particularly in the wake of the No Child Left Behind mess, which by driving everybody into these testing regimes basically drove non-testable curriculum out of a lot of the schools where those kids were, frankly, entitled to a better curriculum, but the program drove it off the agenda because they were all about making sure their students got through the tests.

I guess I'm just here—and you're going to hear it from me over and over again. Please don't continue to back pedal on the innovation schools agenda. I put a lot of work into it. It was bipartisan in the Senate. Not one person ever came to me and said, "I don't like that. We don't need to do that." This was something that was done in the dark of conference negotiations, and that's not a great way to build relationships. I have to tell you that.

I'm just putting the marker down. I really want to see the innovation schools piece be robust in the way that you develop it and in the way that your organization develops it, and I'm going to be very, very concerned if I find that, in fact, another cut gets taken at it as the regulations get developed in order to reassert more Federal authority over these schools. Because you're just not going to get innovation if people are anxious about what they're going to have to deal with as they try to sell that innovation program up through the triple decker of bureaucracy that has been sitting on top of these schools for so long.

I'll ask you to comment on that.

Secretary KING. I just want you to know I very much share your commitment to innovation. The new law creates a number of important opportunities as States rethink their accountability systems. There's an opportunity to broaden the definition of educational excellence just as you've described to make sure it includes science and social studies and world languages and access to advanced course work and socio-emotional learning.

There's an opportunity for States to pursue an innovation agenda in how they think about interventions in struggling schools, to think about arts as a strategy to improve performance in a struggling school, to think about career and technical education as a strategy to improve performance in struggling schools.

Senator WHITEHOUSE. I get all that. My point is that when you say for States to pursue an innovation agenda, that's not necessarily getting me there. I need to have a system in which a school can pursue an innovation agenda, because if the teachers are just sitting there on the receiving end of the State saying, "Here's my new innovation agenda"—by the way, they've been receiving innovation agendas from school departments for decades now. It's a churn. There's always a new agenda, and they always have to respond, and they do new reports, and the local school-based innovation gets stifled by that, and that's my concern.

Thank you. My time has expired.

The CHAIRMAN. Thank you, Senator Whitehouse.

Senator Murkowski.

STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you, Senator Alexander.

Welcome. Secretary, the State of Alaska was compelled to stop the statewide assessments that were underway this year. Their assessment through the Alaska Measures of Progress began on March 29, and through a series of failures—first of all, there were a lot of different anomalies for students throughout the State. You'd be going down through—question one is there, question two is there, question three is nowhere. Where is question three?

These were anomalies that were not just in one district but in multiple districts. In some, there were, again, the skipped questions. In some, there was no sound on the text-to-speech accommodation tool, assorted error messages.

Then we find out that a backhoe severs the provider's or the vendor's broadband Internet cable that sent the—basically, the system fails out of Kansas. The cable that delivered the test to Alaskan students and captured their answers kept crashing. Every time the system crashes, the students have to restart the test from the very beginning, meaning that they've got to answer the same questions over and over again. The system didn't save their answers.

When you think about the frustration of a student, they don't like being in the test in the first place. Then when you try, and things stop and start and stop and start, or are inconsistent, it is extraordinarily frustrating. What we saw was uniform testing conditions just were compromised and failed us.

There was a period on Tuesday when it went down. Thursday, they were told it was back up. Then we reported that further widespread anomalies were there. The assessment portal wasn't functioning. The cable hadn't been fully repaired. Basically, it was a situation that was just deemed a failure, and our acting secretary of education made the determination to cancel, to stop the statewide assessment.

We were also told that if Alaska were to resume the testing, despite all of these previous problems and the impact that they've had on the reliability of the test results, the validity of them, that the vender, the provider, AAI, is unable to make a cached assessment platform work in the State, given some of the complications and difficulties that we have with broadband.

This is not a good situation, of course. This is a very difficult decision that the State of Alaska made because of just broad system failure. Given all of the problems that we have seen related to this statewide assessment, can you give me the assurance, as well as the State of Alaska and our department of education, that the Department will not force Alaska's students to resume testing this year?

Secretary KING. We're very concerned about how the test administration has gone in Alaska. Our team has been in touch with Dr. McCauley, as have I. We've also been in touch with the folks at the University of Kansas, the vendor that Alaska selected, to try and get at the issues.

We have, unfortunately, in other States in past years had issues around technical glitches. The key thing has been that the States and the vendors have worked together to try to resolve those as best they can and to ensure that we have an assessment system that provides good information to parents and teachers each year about student performance. We're going to continue to work with Dr. McCauley and the University of Kansas and try to see the best path forward.

Senator MURKOWSKI. I would not disagree that you need to try to work through technical glitches, and if I thought these were just some technical glitches, I might not be so insistent that we have some degree of discretion from you at the Department that says

this didn't work this year. It has materially impacted the validity of this year's assessments.

I know that you have had prior situations, most specifically with the State of Nevada just last year with their statewide assessment. The Department allowed the State to cancel that test without penalty. I'm told that Nevada just received confirmation that there would be no penalty on them for canceling the test due to the technical difficulties with it.

I would ask that you look at the situation with Alaska and, again, give me the assurance that the Department and your Assistant Secretary Designate Whalen and the Department really as a whole conduct the same thorough and fair and responsible review of the Alaska situation, just as you did with Nevada, and give Alaska the opportunity to provide all data and to answer all questions in writing before you make any final decision as to whether you require them to conduct assessment or if, heaven forbid, you should think that any form of penalty might be appropriate.

This is a situation, again, where you had a very unfortunate issue in Kansas with a backhoe taking out the cable there. We have in Alaska difficulties with broadband access in the first place. We are not sitting in the same place as Nebraska or Iowa or wherever. We have some very real challenges, and we saw that as it started to play out. I would, again, urge you to look critically at the situation in Alaska, because it certainly does not appear to me that these are technical glitches that need to be worked through.

Secretary KING. I can assure you we're taking the same approach here as we took in our work with Nevada, and there have been some other incidents over the years with States. I will say one distinction is that Nevada made a variety of efforts to ensure that where it was possible to administer the assessment they did so. Again, we're talking with Dr. McCauley and trying to make sure that we have a thoughtful approach going forward.

The CHAIRMAN. We need to move on.

Senator MURKOWSKI. If you could make sure that my office is looped into that, I would appreciate it as well.

Secretary King. Absolutely.

Thank you, Mr. Chairman. I appreciate it.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Franken.

STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. Thank you, Mr. Chairman.

I just came from the Energy Committee, which Senator Murkowski is chair of, and we were talking about workforce development, and that brings us to STEM, and I want to discuss that in a minute. First, I want to thank both the Chairman and the Ranking Member for the leadership they showed in putting what I call ESSA together. I thought they led a great process, and I thank them both.

Welcome, Dr. King. I want to talk about implementing a couple of things that I have in this, so I'll try to do it fast.

The foster kids. I wrote a provision in this with Senator Grassley to allow foster kids—and have a mechanism to do it—to stay in the school that they're in, if they want to, when they change foster

homes. I've gotten to know foster kids, and foster kids very often will have 10, 11, 12 foster sets of parents during their youth, during their life.

When they would change foster parents who might live in a different school district, the result often would be that they were forced to change schools. This is actually so counterproductive because, very often, the school they're in is the only constant in their life. It may be a teacher who is a mentor, it may be a sport that they're in or an activity they're in, and, of course, their friends.

What Senator Grassley and I did was put in language saying if the student chooses to stay in the school, then the school district and the social welfare agencies in the area have to find a way to allow that student to do it. They have to do it, and that may mean paying for the transportation, and they have to—the school district and the social welfare agencies in the area have to figure it out.

What I want to make sure is that States are supported as they implement this new provision. Will you provide strong guidance in this area by this summer?

Secretary KING. Absolutely. This is an important issue to me, personally. Having lost both of my parents when I was a kid and moved around between family members, I'm very sensitive to the challenges that foster kids face and the consequences of moving between homes and schools frequently.

One of the first guidance documents we've committed to develop is on issues around foster youth, and we expect this summer or fall that we'll be able to put that out. We are working very closely with Health and Human Services on this to make sure that we stay coordinated on the issues of continuity in school, on the kinds of supports that schools can provide, issues around transportation and so forth.

Senator FRANKEN. Thank you. As I said, I just came from the Energy Committee. We were talking about advanced manufacturing. We were talking about how desperate we are for workers that are skilled, especially in science, technology, engineering, and math. It was so apparent in this exciting hearing we had on advanced manufacturing that this is something we need.

Nearly all the top 30 fastest growing jobs nationwide require STEM skills, but we're lagging behind the rest of the world. That's why I wrote the STEM Master Teacher Corps Act to recruit top-notch STEM educators and keep them in the classroom. The program will provide State grants to recruit, recognize, and reward expert STEM educators. This network of STEM educators would mentor their peers and participate in professional development programs while receiving extra pay for their work. This works. We've seen it work in certain States that have already done it.

I'm pleased that there's an optional pot of money in ESSA to create a STEM Master Teacher Corps. The new law says it's up to the Department of Education to award grants for this program. I was pleased that the President's fiscal year 2017 budget request includes $10 million for this program.

Secretary King, I just want to make sure that the STEM Master Teacher Corps is developed as soon as possible. Do you plan on awarding grants for this program, and, if so, what is your time table?

Secretary KING. We're very hopeful about the President's budget request and want to work with you to advance that. We've already begun work with States to think about how they might implement a STEM Master Teacher Corps with funding or even with existing dollars, and we're very hopeful that the budget process will lead to the resources we need to make this program a reality.

Senator FRANKEN. OK. Thank you.

Mr. Chairman, I see that Senator Scott isn't here. Is he returning to ask questions?

The CHAIRMAN. No.

Senator FRANKEN. I'm the only thing between you and gaveling this thing?

The CHAIRMAN. No. We have some questions. We're going to have a second round of questions, but if you have another question——

Senator FRANKEN. Can I ask one more question?

The CHAIRMAN. Of course.

Senator FRANKEN. Dr. King, this is about college. The fraud in predatory lending practices at for-profit schools like Corinthian College have victimized thousands of students nationwide. These students now have a lot of debt, a worthless degree, and on top of that, bad credit. To make matters worse, the pervasive use of forced arbitration, which is a privatized justice system that corporations, including many for-profit schools, rely on when their customers or employees seeks justice for being mistreated, have prevented students from holding for-profit schools accountable in court.

An investigation of 27 for-profit schools by this committee found that 21 of these schools have students sign arbitration agreements as part of their enrollment process for any dispute that may arise between the student and the school. These clauses require that any student who has fallen victim to fraudulent activity by a for-profit college, including misrepresenting costs, the transferability of credits, the odds of obtaining a job or salary prospects, is prevented from obtaining meaningful redress. The only recourse these students have is to seek relief from the Department of Education.

Dr. King, knowing what we now know about the widespread fraud in the for-profit college industry, how are you going to hold bad actors accountable?

Secretary KING. I appreciate that question. In the negotiated rulemaking process on borrower's defense, we put forward to the negotiators proposals that would ban the practice of mandatory arbitration in a variety of contexts. That negotiated rulemaking process was not successful in reaching consensus. We are now working on the regulations that would implement borrower's defense that we'll put out for public comment.

We also have created a new enforcement unit at the Department led by a veteran enforcement attorney from the FTC, and he's building up the capacity of that enforcement unit because we want to ensure that when students seek higher education, they get a meaningful education and a meaningful degree. We know that there are institutions that aren't doing the right thing. We've taken action against some, and we expect with this enforcement unit that we'll be able to aggressively act with respect to others.

Senator FRANKEN. OK.

Thank you for your indulgence, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Franken.

Senator Murray, I have a few questions, but you're welcome to ask any that you would like.

Senator MURRAY. I just have a few left.

Dr. King, during the ESEA reauthorization process, my colleagues and I worked hard to make sure that the Department retained its congressionally mandated authority to interpret and clarify the new law through regulations. Why is the authority ED maintains under the new law to clarify statutory requirements through rulemaking so critical?

Secretary KING. It's important to ensuring that the law actually lives up to its civil rights legacy and advances the quality of opportunity in the country. We know that in the past there has been a history of States and districts under-attending to the needs of English learners, students with disabilities, students of color, low-income students, homeless students, foster kids. This new law gives us the opportunity to have lots of State and local flexibility, but there has to be guardrails in place to ensure that States and districts protect students' civil rights.

Senator MURRAY. So that we know wherever a student lives, they will have some kind of protection for that.

Secretary KING. That's right. The Department is a civil rights agency with a civil rights responsibility to protect the students who are most vulnerable.

Senator MURRAY. I wanted to ask you one more question about English learners. In Tukwila School District, which is in my home State, students speak more than 60 languages, and they face numerous, very unique challenges learning English and succeeding academically. ESSA makes numerous improvements to ensure that English learners are supported and that States, districts, and schools actually now are held accountable for their performance.

How is the Department planning to support States to make sure that they are prepared to implement these new requirements with fidelity?

Secretary KING. We think ESSA has many elements that are an important step forward for English learners, including incorporating English language proficiency into the accountability systems, requiring targets for the progress students will make to English language proficiency, disaggregating the performance of English learners who have disabilities and long-term English learners.

We are working with our negotiated rulemaking committee on the assessment regulations that will address the participation of English learners and certainly guided in that by the feedback we have received from parents and civil rights organizations and educators. We also will put out guidance on serving the needs of English learners, ensuring that States have clarity and examples of best practice on how to follow the new law.

Senator MURRAY. That's really important, because this is a new step for them. I appreciate that. Thank you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

I just have a few more questions, Dr. King. Senator Murphy said in his exchange with you that you weren't prescribing a methodology in the supplement not supplant section we were discussing. You were merely saying that States and local school districts could use their own methodology as long as they got the result that was desired. Is that right?

Secretary KING. They can use their own methodology in order to ensure that they fulfill the principle of supplement not supplant.

The CHAIRMAN. In defining what we mean in your proposed rule—and I was listening to what you said, too, as you described what that role was—would it be accurate to say that the local education agency, the school district, has to demonstrate that the combined State and local per-pupil expenditure, including personnel expenditures at each title I school, is not less than the average combined State and local per-pupil expenditures in the non-title I schools? Is that about right?

Secretary KING. State and local funds to title I schools has to be at least equal to the average non-title I school. An approach might include looking at staffing and program provision, but another approach might be a weighted student funding formula approach.

The CHAIRMAN. In any event, it would have to include teachers and personnel. Right?

Secretary KING. It would include the total impact of the allocation of State and local dollars.

The CHAIRMAN. Did you realize that that's precisely the definition in Senator Bennet's amendment on comparability when he sought to amend Section 1120, which didn't succeed and which he acknowledged this morning didn't succeed? The effect of your proposed rule is to change the comparability law which Congress did not change.

Secretary KING. Again, we're not addressing comparability here. We're addressing the supplement not supplant.

The CHAIRMAN. No, but the effect of it would be. You would have the same effect as if you were to change the comparability law, which has not been changed since 1970.

Secretary KING. That would depend on the circumstances in a given district. The key in the district is that the title I dollars would be genuinely supplemental and not used to backfill.

The CHAIRMAN. But you're saying that in order to do that, the spending in the title I schools, including teacher salaries, has got to be not less than the average combined State and local expenditures in the non-title I schools. That's comparability. That's what we didn't change.

Secretary KING. No. Again, here, because the focus is on supplement not supplant, the question is whether or not the total local and State effort is at least equal to the non-title I school, and a school could address a gap in effort through a variety of mechanisms. They could add advanced course work. They could add a preschool program. They could take a number of strategies. It's not saying that the services need to be the same. It's saying that the allocation of title I dollars has to be supplemental.

The CHAIRMAN. You're saying the total State and local effort for the non-title I schools has to be the same as for the title I schools. Right?

Secretary KING. Has to be at least equal to the average non-title I school, which, again, could result in variety within a district.

The CHAIRMAN. Which, again, is comparability. That's what comparability is. I sought to change it by introducing an amendment to do what Senator Burr suggested, allowing Federal dollars to follow children from low-income families to the school they attend. That was rejected. Senator Bennet had his amendment.

The changes in the supplement not supplant law are to some extent, maybe a large extent, due to recommendations directly from the Center for American Progress, the Federal Education Law Group, and the American Enterprise Institute. I'm going to read you a paragraph, which they said, and ask you to comment on it.

They said, quote, "It's important that the proposed change"—the one that was made, that we made in supplement and supplant—"would not look at whether the amount of State and local money a title I school receives is equitable. Given the significance of the problems caused by the supplement not supplant test, this issue should be addressed on its own, separate from other title I fiscal issues. Concerns over equity can be addressed through title I's comparability requirement."

What would you say to that?

Secretary KING. Part of what they're referencing is the number of problems that we saw with the supplement not supplant approach under No Child Left Behind, that, indeed, it was a burdensome process that did not achieve the desired goal of ensuring that title I dollars are supplemental. We're not making a change to comparability. We're making a change to supplement not supplant to reflect a change in law.

Supplement not supplant is different under ESSA than under NCLB, and we were asked by a variety of stakeholders to provide clarity on implementation of supplement not supplant under ESSA, and that's what we've proposed to the negotiated rulemakers.

The CHAIRMAN. What you've proposed must have the effect of equal spending of State and local dollars in title I schools as well as non-title I schools before you get the title I money. Isn't that correct?

Secretary KING. It does not require equal spending. It requires that the State and local funds in title I schools are at least what is being spent in State and local funds in the average non-title I schools. In a given district, you would see still variety within that district.

The CHAIRMAN. That equalizes spending. If you say you've got to spend at least as much here as the average of here, that's what we call comparability, isn't it?

Secretary KING. No. The decision to use the average non-title I school means that there would be a variety of spending levels in the non-title I school.

The CHAIRMAN. Section 1605 of the law says nothing in this title shall be construed to mandate equalized spending per pupil for State, local educational agency or school. What would you say to that?

Secretary KING. Again, this wouldn't equalize spending. What it would say is that in the title I school, you've got to be spending at least as much in State and local resources as is spent in the aver-

age non-title I school. There would be a range of spending levels within non-title I schools, so you would not be requiring districts to spend the same in all schools. You would be ensuring, importantly, that the title I dollars are, in fact, supplemental and not being used to backfill.

The CHAIRMAN. There are plenty of ways to figure that out without equalizing spending. This sounds to me exactly like the kind of thing the Department got into with academic standards with Common Core. You basically said States didn't have to adopt Common Core, but then you came up with a requirement that, in effect, required them all to do it, and it produced an enormous backlash, which was a big part of the passage of this law.

I would urge you to look carefully at this supplement not supplant negotiated rulemaking proposal, which is in an early stage, because, in my view, it violates the unambiguous prohibitions that were in the law that the President signed in December related to prescribing State and local funding methodologies, mandating equalizing spending—you're not supposed to do that—interfering with State and local programs of instruction—prohibited from doing that—or controlling the allocation of State and local resources.

It ignores Congress' intent, which was to not change the requirements on comparability. It regulates outside the scope of the supplement not supplant requirement. It would impose unprecedented burdens on State and local school districts, requiring an overhaul of almost all the State and local finance systems, giving districts few options other than forcing the transfer of teachers to new schools, perhaps in direct conflict with collective bargaining contracts with teachers' organizations, and it would require States to move back to the burdensome practice that we had before. As I mentioned earlier, according to the Great City Schools Council, it would cost $3.9 billion just for the 69 urban school districts to address State and local funding disparities, $9 million in the department alone.

I have only one other question—flexibility for eighth grade students taking advanced math. One thing we heard about more than anything else in this reauthorization was over testing and more flexibility in testing, and we thought we provided that. The new law permits a State to allow eighth grade students to take the end of the year test for passing the advanced math test in place of the eighth grade test.

In other words, if you're an eighth grader, and you can take algebra 2, you can take that instead of the basic eighth grade test. That just makes common sense, and, in fact, the Department's waivers allowed that. You are proposing to add a new requirement, one that you apparently just made up, which says a State can be granted this flexibility only if it demonstrates that it offers all students in the State the opportunity to be prepared for and to take advanced mathematics course work in middle school.

Where did that come from? That's not in the law.

Secretary KING. This is being discussed by the negotiators. The key question here is to the extent that opportunities are to be equitably provided to access advanced course work. We know, for example, that there are high schools around the country serving large

numbers of low-income students of color that don't even offer algebra 2 or chemistry. We know that there are middle schools serving high numbers of low-income students of color that don't even offer access to the algebra course.

If you're going to have an assessment system that provides comparable information about equitable access to opportunity in schools, you need to ensure that students have that opportunity. For a school to not offer students access to that advanced course means that you are then using the assessment system to, in a sense, reify inequitable access——

The CHAIRMAN. Dr. King, if you'll excuse me, if you were a U.S. Senator on the floor of the Senate, that would be a very good and persuasive argument, but you're not. We could have written that into the law, but we didn't. We basically said that a State may allow an eighth grade student who is taking an advanced math course to take it and not have to take the test in the basic course at the same time.

You've come along and said,

> "That's an interesting idea, and we think it would also be good to make all the States and 100,000 public schools change the way they offer advanced math courses to include a lot more students."

That may be a noble aspiration, but it's not in the law. For adding this requirement to money that constitutes about 4 percent of what State and local governments spend on 100,000 public schools—those decisions ought to be left to the elected officials, not to people in your Department.

Secretary KING. You can't get comparable, valid, reliable information about student performance if the assessment is only available to some students and not others. The goal here is to ensure that the assessment system provides comparable——

The CHAIRMAN. You're not in charge of the accountability system. In fact, the law requires that the result of those tests be a part of the State's accountability system. What we're trying to get rid of is you here telling States what to do with the results of tests. It must have made common sense to say that if you're an eighth grade student taking an advanced math course that you can take it and you don't have to also take the basic eighth grade test, period. The Department allowed States to do that in the waiver. Why are you making this up now?

Secretary KING. The design of the accountability system—yes, there is State flexibility around the accountability system, but the States are to generate comparable information about the performance of students within any given grade. If you've got an assessment that's available only to some students——

The CHAIRMAN. Who's going to decide that? Are you going to decide that?

Secretary KING. States would decide how that would work in their districts.

The CHAIRMAN. Why not let them decide it?

Secretary KING. We are.

The CHAIRMAN. No, you've said in your proposed rule—and I won't belabor it any further. I hope you'll go back and take a look at this. You've basically put in a new requirement that you can

only take this flexibility Congress gave if you do what the Department now wants to legislate, describe that you offer all students in the State the opportunity to be prepared for and take advanced mathematics course work in the middle schools. It's kind of hard to know what that would mean, anyway.

You were asked by one of the Senators—do you have anything else to tell us about—you sent proposed regulations to the Office of Management and Budget last week on accountability systems, State plans, innovative assessment pilot. When are you going to make details of those proposals public? What's your intended timeline for final regulations, and what can you tell us about other areas of the law that you intend to issue guidance on and provide technical assistance?

Secretary KING. The accountability regulations are now with OMB for review. We expect later this spring or early summer that those regulations will be posted for comment. We will later develop regulations based on the input that we have received from stakeholders on State plans and on the innovative assessment pilot. We expect those regulations to be out for public comment in the fall.

The goal is to have all the regulations in place by the end of the year so that States are in a position to develop plans in spring and summer of next year, submit those plans in spring or summer of next year so that they are ready for full implementation in September 2017. We've also committed to develop guidance on services for homeless students, foster care students, and English learners.

We're continuing to gather feedback and input from stakeholders, and we'll potentially develop additional guidance documents based on what States, districts, educators, parents, civil rights organizations are telling us they need in order to ensure clarity and have examples of best practice.

The CHAIRMAN. Thank you, Dr. King. I hope you'll reflect on this hearing today. We have many different opinions on this committee, and we were able to come to a law. Each of us can speak for ourselves, but for me, it's very clear that we did not intend that you come up with some clever way to use one provision, the supplement not supplant provision, to change another provision, the comparability provision, that we deliberately did not change because we couldn't agree on how to change it. We left the law exactly like it is.

I hope you'll take another look at that. Your responsibility is to faithfully execute the law and abide by the letter of the law, and I don't think the beginning of those rule proposals suggest that that's what some of the employees are doing. We'll look forward to following the implementation of the law carefully during the rest of the year.

If there are no other questions—let me get my concluding comments here. The hearing record will remain open for 10 business days. Members may submit additional information and questions to our witness for the record within the time if they would like.

Thank you for being here, Dr. King.

The committee will stand adjourned.

[Whereupon, at 11:53 a.m., the hearing was adjourned.]

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