

**ESSA IMPLEMENTATION: PERSPECTIVES FROM
EDUCATION STAKEHOLDERS**

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,
FOCUSING ON PERSPECTIVES FROM EDUCATION STAKEHOLDERS

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MAY 18, 2016
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ESSA IMPLEMENTATION: PERSPECTIVES FROM EDUCATION STAKEHOLDERS

WEDNESDAY, MAY 18, 2016

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

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

Present: Senators Alexander, Murray, Enzi, Burr, Isakson, Murkowski, Scott, Hatch, 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. Then we'll introduce our witnesses, and Senators will have 5 minutes of questions each.

I'm delighted to have the witnesses here. This is an extraordinary group of individuals with a broad perspective about children in elementary and secondary education, and we welcome your comments on how we implement the new reauthorization of the Elementary and Secondary Education Act.

This is our third of six hearings to discuss the implementation of the Every Student Succeeds Act, which the President signed in December. It is the second opportunity for this committee to hear from the States, school districts, teachers, principals, and others that helped us pass this overwhelmingly bipartisan law and are today working together to implement it in a way that's consistent with congressional intent.

I want to focus my remarks on the administration's proposed supplement not supplant regulation. This is the very first opportunity the administration has to write regulations on our new law. In my view, they earned an F. The reason for that is that the regulation violates the law as implemented since 1970 and seeks to do it in a way that is specifically prohibited in the new law.

In writing the new law last year, Congress debated and ultimately chose to leave unchanged a provision in the law referred to as comparability. That's section 1605. This provision says school districts have to provide at least comparable services with State and local funding to title I schools and non-title I schools. But the law plainly states that school districts shall not include teacher pay

when they measure spending for purposes of comparability. That's been the law since 1970. We didn't change it last year.

There is an entirely separate provision, known as supplement not supplant that's intended to keep local school districts from using Federal title I dollars as a replacement for State and local dollars in low-income schools. What the Department's proposed supplement not supplant regulation attempts to do is to change comparability by writing a new regulation governing supplement not supplant.

In other words, their proposal would force school districts to include teacher salaries in how they measure their State and local spending, and would require that State and local spending in each title I school be at least equal to the average spent in non-title I schools. The effect of this would be to violate the law as implemented since 1970, section 1605. So the administration may get an A for cleverness, but an F for following the law, in my opinion.

The negotiated rulemaking committee couldn't agree on the proposal, and at least one member, Tony Evers, a witness here today, said that, "congressional intent isn't necessarily being followed here." Last week, the nonpartisan Congressional Research Service said the same thing.

CRS issued a report that said, "The Department's interpretation appears to go beyond what would be required under a plain language reading of the statute." CRS found that the proposed supplement not supplant regulations, "appear to directly conflict," with statutory language that, "seems to place clear limits on the Department's authority and thus raises significant doubts about the Department's legal basis for proposed regulations."

Today, I am looking forward to hearing from witnesses whether what I have been hearing from principals, teachers, and education leaders across the country is true. Here's what I've been hearing:

No. 1, that the Department's proposed regulation could turn upside down the funding formulas of almost all the State and local school systems across the country.

Most States and local districts allocate K through 12 funding to schools based on staffing ratios. This often results in different amounts going to different schools in the same district because teacher salaries vary from school to school for reasons having nothing to do with a school's participation in title I. Instead, salaries vary because of teacher experience, merit pay, or the subject or grade level they teach.

No. 2, I've been hearing that the proposed regulation could effectively require wholesale transfers of teachers and the breaking of collective bargaining agreements.

No. 3, I've been hearing that school districts won't receive enough funds to comply with the proposed regulation.

No. 4, that students could be forced to change schools.

No. 5, that the proposed regulation could increase the segregation of low-income and high-income students.

And, No. 6, that it could require States and local school districts to move back to the burdensome practice of detailing every individual cost on which they spend money to provide a basic educational program to all students, which is exactly what we were trying to free States and districts from when we passed the law.

According to the Council of Great City Schools, the proposed regulation would cost \$3.9 billion a year just for their 69 urban school systems to eliminate the differences in spending between schools. What the Department has done for the first time is try to put together the two major provisions of the law that have always been separate.

On comparability, which is the first one, members of this committee discussed and debated changing this provision. We discussed it at great length over the past 6 years. Senator Bennet of Colorado, who has lots of experience with this, had one proposal. I had another. We ultimately decided not to make changes in comparability.

Instead, we included more transparency in the form of public reporting, on the amount districts are spending on each student, including teacher salaries, so that parents and teachers know how much money is being spent and can make their own decisions about what to do, rather than the Federal Government mandating it be used in comparability calculations.

Then on the second provision in the law, on supplement not supplant, we addressed this provision and made changes with an effort to simplify the law, not make it more complicated. By no stretch of the imagination did we intend—does any of the language in the law say that supplement not supplant may be used to modify the comparability provision. In fact, we specifically prohibited that.

We prohibited, expressly, the Secretary from requiring local school districts to identify individual costs or services as supplemental. We prohibited the Secretary from prescribing any specific methodology that districts use to distribute State and local funds. And, most importantly, we prohibited the Secretary from requiring a State, local school district, or school to equalize spending.

The proposed regulation is nothing less than a brazen effort to deliberately ignore a law that passed the Senate 85 to 15, passed the House 359 to 64, and was signed by the President. No one has to guess what the law says. As the Congressional Research Service says, we can just read its plain language. And if the administration can't follow language on this, it raises grave questions about what we might expect from future regulations.

Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you, Chairman Alexander, for holding this hearing. I really appreciate all of our witnesses for taking the time to be here with us today.

Last year, Chairman Alexander and I worked together on legislation to fix No Child Left Behind. We both agreed—in fact, nearly everyone across the country agreed—that the law had been badly broken. I'm proud that we were able to break through that partisan gridlock in Congress, find common ground, and pass the Every Student Succeeds Act with strong bipartisan support.

At its heart, the Nation's primary elementary and secondary education law is a civil rights law. And it is in that spirit that I, along with my colleagues, worked to help make sure all students will have access to a quality education, regardless of where they live, how they learn, or how much money their parents make. Now that

our law is on the books, I am committed to making sure it helps our students and our parents and our teachers and our schools in my home State and across the country.

As a reminder, here's what our education law does. The Every Student Succeeds Act gives States more flexibility. But 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. It also 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.

Right now, the Department of Education and States are taking this law from legislative text to action steps. While the Department goes through this process and as States develop new systems and policies, I will continue to closely monitor several issues to make sure our law lives up to its intent to provide all students with a high-quality education.

I expect the Department to use its full authority under the Every Student Succeeds Act to hold schools and States accountable. While we were writing this law, we were deliberate in granting the Department the authority to regulate on the law and hold schools and States accountable for education. That includes things such as making sure States and districts take action every year to improve student achievement in any school that has groups of students who are struggling.

I will be taking a close look at any guidance or regulations from the Department for school intervention and supports. Those things will be critical to helping low-performing schools improve. One important part of holding schools and States accountable for educating every child is fiscal accountability.

I hear from teachers and principals in my home State of Washington about how important Federal funding is to supporting their work. We need to make sure Federal investments in education support State and local resources and do not simply replace them. The regulation, known as supplement not supplant, is an important fiscal accountability measure, and it is important to get this right.

Many stakeholders, including teachers, administrators, and civil rights groups have provided thoughts on how to regulate in this area. I hope that as the process moves forward, the Department will continue to work with these groups on this issue.

Collaboration will be critical, not just for one particular regulation or another, but throughout the process to implement the Every Student Succeeds Act. Getting input from teachers, civil rights groups, parents, and many more will be essential in making sure the law works in the coming months and years.

I've been frustrated to hear from many stakeholders that they don't feel like they have a seat at the table as their States work on implementation. That includes teachers who aren't receiving time off of work to be part of State planning sessions and parents who can't attend meetings held during the workday.

I, along with Ranking Member Bobby Scott in the House, have asked the Department to help States and districts eliminate the systemic barriers that stakeholders face in getting involved in the implementation process. I'll continue to encourage stakeholders like

all of those represented here today and many more to stay active and make their voices heard throughout the implementation process.

It is up to all of us to uphold the legacy and promise of our Nation's primary education law so it works for all students. I look forward to hearing from everyone today on how we can make sure that this law helps provide a good education for every child.

Thank you.

The CHAIRMAN. Thank you, Senator Murray, and thanks to you and the other members of the committee for your hard work on this legislation.

I am pleased to welcome seven witnesses to our hearing today. Thank you to each of you for coming and for all you've done to help improve the education of the Nation's children.

Senator Hatch, a former chairman of this committee, will now introduce our first witness, who is Ms. Lily Eskelsen García, President of the National Education Association.

Senator Hatch.

STATEMENT OF SENATOR HATCH

Senator HATCH. Thank you, Mr. Chairman. I appreciate this opportunity, and I'm pleased to be here today and grateful that we could be joined by a true leader in education policy, Lily Eskelsen García. I consider myself lucky to know Lily and even luckier to call her a friend. It's truly an honor to introduce her to the committee today.

Ms. Eskelsen García has had a remarkable path in education. She began her career as a cafeteria worker and later became an aide to a special education teacher. And as a young mother, she worked her way through the University of Utah where she graduated magna cum laude with a bachelor's degree in elementary education and later earned a master's degree in instructional technology.

Ms. Eskelsen García eventually taught fourth, fifth, and sixth grades at Orchard Elementary in the Granite School District in Utah. While in Utah, she also worked with homeless children in a single classroom, mentored student teachers, and acted as a peer assistant team leader. After demonstrating her effectiveness in the classroom, Ms. Eskelsen García was named Utah Teacher of the Year in 1989.

Ms. Eskelsen García's passion for education extended beyond the classroom and eventually led her to a career in policymaking. She served as president of the Utah Education Association before joining the National Education Association, where she has served as a leader since 1996.

In 2014, she was elected to serve as the president of the NEA. She was instrumental in helping Congress pass the Every Student Succeeds Act, and I am sure she will be equally helpful as we work to implement this groundbreaking legislation.

ESSA represents a momentous opportunity for students and teachers alike by removing many of the overbearing Federal policies that stifled classroom instruction in the past. This new law allows educators more room to innovate and tailor their teaching to the needs of individual students. We are grateful for the indispen-

sable role Ms. Eskelsen García played in helping this reform become a reality.

Ms. Eskelsen García, we really welcome you to today's hearing and look forward to your guidance on the questions at hand. And I just want to personally testify how much I appreciate what you've done with your life. Thank you so much.

The CHAIRMAN. Thank you, Senator Hatch.

I'll now introduce the other witnesses, and then beginning with Ms. Eskelsen García, we'll ask you each to summarize your views, if you can, in about 5 minutes, and that will leave time for Senators to engage in a conversation and ask questions.

Our second witness is Ms. Randi Weingarten. Ms. Weingarten is the current president of the American Federation of Teachers which represents 1.6 million members nationwide. Prior to that, she served for 12 years as president of the United Federation of Teachers, AFT Local 2.

Our third witness is Dr. Tony Evers. We're getting accustomed to seeing him here. Welcome, Dr. Evers. He is the Wisconsin State Superintendent of Public Instruction. He serves as president of the Board of the Council of Chief State School Officers and served on the Department of Education's recent negotiated rulemaking panel for regulations on the Every Student Succeeds Act.

Our fourth witness is Dr. Thomas Ahart. He is the superintendent of Des Moines Public Schools in Iowa. He also served on the Department of Education's recent negotiated rulemaking panel for regulations on the Every Student Succeeds Act.

Our fifth witness, Dr. Nora Gordon, is associate professor in the McCourt School of Public Policy at Georgetown University. Her research focuses on the economics of education and fiscal federalism.

Next we'll hear from Ms. Denise Marshall. Ms. Marshall serves as executive director for the Council of Parent Attorneys and Advocates. She has over 30 years of experience working and advocating in the field of disabilities.

Our final witness is Ms. Janet Murguía. She is president and chief executive officer of the National Council of La Raza. She advocates for the Latino community in areas including education, workforce, and civic engagement.

Thank you each for being here.

Ms. Eskelsen García.

**STATEMENT OF LILY ESKELSEN GARCÍA, PRESIDENT,
NATIONAL EDUCATION ASSOCIATION, WASHINGTON, DC**

Ms. ESKELSEN GARCÍA. Thank you so much.

And thank you, Senator Hatch. I appreciate that introduction.

I am president of the 3 million member National Education Association. But more important than that, I am a sixth grade teacher, and not only that. I'm a really, really good sixth grade teacher. I give myself goose bumps. I'm amazing.

I have spent the last 13 years fighting against what I saw as a cloud of test and punish that was hanging over every public school in the United States of America, and I cried for joy the entire day that the President signed the new law, Every Student Succeeds. That day would not have come without the leadership of Senator Alexander and Senator Murray, and I just want to start by thank-

ing you and thanking all of your colleagues for making that day possible.

I have about 14 hours worth of really good advice to give you. They told me I have 5 minutes, so I will talk really, really fast.

No. 1—and I cannot stress this enough—I am a really good teacher. You should really listen to me. I mention that because I remember I was in my classroom at the Salt Lake homeless shelter, in a one-room classroom, a K–6 classroom, in the shelter when Congress was debating the passage of this thing called No Child Left Behind. I just was beside myself thinking, “Wait a minute. One hundred percent of our kids are going to hit a cut score on a standardized test? That’s not even possible.”

I remember thinking, “Did anyone stop to ask a working classroom teacher how we made out a report card, how we measured success? Did anyone stop to ask a working classroom teacher what might be the unintended consequences of high-stakes testing on our most vulnerable students, like the students I was teaching?”

For me, a huge part—and the first thing I want to talk about—is the fact that in this new law, States and districts must engage the people who know the names of the students. It says over and over again that you have to include the educator’s voice in developing that dashboard of indicators and how we’re going to be measuring student success.

Some folks in States are going to respect that, and some folks aren’t. We’re already hearing back where someone—an educator is asked to sit on a committee, but they meet during the school day, and they don’t provide a substitute teacher. Or you put an educator on a committee, and she has to drive 3 hours to the meeting, and there’s no reimbursement for her gas to get to the meeting.

We know that it’s possible to do it right. We’re hearing good things from places like Oregon. The Oregon Education Association knocked at the door, and folks on the State level said come on in, and they’re at the table, and they’re making amazing things happen very collaboratively. Then you go to New Mexico, where our NEA New Mexico affiliate knocked on the door, and the door was slammed in their faces, and they said, “We don’t need you.”

So we’re going to have this implemented in very different ways across the country. We have so much hope that if our voices are in the room, we will get something really good out of this much better law, and we hope that you will continue to encourage those State leaders to abide by the law you passed and welcome the educators to the table.

No. 2, you cannot possibly imagine how excited we are about better data, better information, aside from that one-size-fits-all standardized test, to have that dashboard of indicators we believe is going to be the game changer for our students. The original 1965 ESEA did give school districts some important resources for title I schools and other programs to help fill that resource gap that was so obvious among schools that had so much and schools that had so little, depending on what zip code you were in. But it was never meant to take over the primary responsibility of State and local government for running our schools.

The Federal Government’s role in ESSA is still to assist. But what’s new and what’s completely appropriate for the Federal Gov-

ernment is to require that we have better data, more complete data, that transparency that the community deserves so everyone can see whether all students have that equal opportunity to learn, and where it is unequal, what the State and the local school district plan to do about it. That needs to be on the table.

We're thrilled that everyone seems to be using the word, equity. That was what we feel like we got away from, looking at the equitable resources that are given our most vulnerable students. But, finally, I do want to say that even though we're all using that word, Governors, the Department of Education, the unions, and certainly Congress in putting it in the law, we're defining it sometimes in very different ways.

We think you did a very good thing in spelling out in the law that school districts have flexibility in how they're going to report what services are being provided to our students. You rejected that continuation of a one-size-fits-all number; that there's only one way to judge this. We think it's very good, and so we're very worried at the proposals of the Department of Education that appear to take away that flexibility.

I need to say this very clearly. We support the new reporting element that requires all public schools to report their actual per-pupil expenditures, local, State, and Federal, disaggregated by personnel and non-personnel. That's an improvement. That gives better transparency.

But we also know that we're seeing popping up around the country some very creative programs in giving services to students. If all you're doing is counting those specific dollars spent by education departments, you're going to miss some services that are provided in a community school concept, maybe by social services. You might not count some of the services that are provided by a Boys and Girls Club.

The CHAIRMAN. Excuse me for interrupting, but I want to make sure everyone has their 5 minutes. Go ahead and wind up.

Ms. ESKELSEN GARCÍA. Winding up right now. If you're just counting dollars that a district makes in teacher placement decisions based on the specific salary or benefits costs so that things look—you're going to worry about things looking equal instead of saying, "Are we actually giving services to our students?" All we're saying is why in the world would you want to cutoff reasonable flexibility that a district might have in giving something creative and meaningful to our students and discourage districts from finding those creative solutions. We hope that you will make your intent crystal clear.

In closing, I would just say we are ready, willing, and able to find those creative solutions. We're excited about being at the table, and we appreciate you giving us the chance to show you what we can do.

[The prepared statement of Ms. Eskelsen García follows:]

PREPARED STATEMENT OF LILY ESKELSEN GARCÍA

Thank you Chairman Alexander, Senator Murray, and members of the committee for inviting me to join you today.

My name is Lily Eskelsen García and I am an elementary school teacher from the great State of Utah. I also have the honor and the privilege of representing 3 million educators as president of the National Education Association.

Classroom educators, across the country, welcome the Every Student Succeeds Act (ESSA) as a critical juncture in education—a chance to reduce and eliminate opportunity gaps and inject the expertise of educators into decisions that impact teaching and learning in the classroom. Much as we were committed to the passage of this law and ending the era of test and punish, our members stand united on ensuring that we make the best decisions for students as States and districts move forward with the important work of implementation.

ESSA has already reinvigorated the national conversation about equal opportunity for all our students, no matter what zip code they live in. But that is not enough. I will focus today on what we must do to fulfill ESSA's potential to be a game changer with regard to accountability, State and local flexibility, and doing right by the students most in need.

ESSA is a civil rights law, so the renewed focus on equity and closing opportunity gaps is important. ESSA is also a major course correction from the stifling Federal overreach of No Child Left Behind—a critical opportunity for all stakeholders in education to participate meaningfully in making the decisions at the State and district level.

While we welcome this approach—and believe it is necessary—the process of co-creating such plans through meaningful dialog will be demanding and complicated. Stakeholder engagement and planning will need to happen at the Federal, State, and district level simultaneously, and will require really listening to the concerns of different stakeholders. Everyone involved will need to stretch muscles that haven't been used in quite some time if we are to arrive at solutions that work for our students.

The undertaking will be hard but more than justified by the result: advancing equity for all our students. For the first time, students' access to opportunities and resources will be systematically tracked. New State-developed accountability systems, which will be fully implemented in the 2017–18 school year, must include at least one indicator of school success or student support. Determining which indicators to measure and capturing that data will push States to identify and begin closing opportunity and resource gaps to the benefit of all students—especially those that have been historically underserved. Parents, teachers, and other stakeholders can use the indicators as an additional tool to advocate for change at the State and local level.

ESSA also empowers educators and students to return their focus to teaching and learning in the classroom—it encourages States and districts to right-size the amount of testing and explore alternatives to standardized tests. As an educator, I believe that every student deserves access to a curriculum that is broad and rich in content—not just reading and math, but the arts, physical education, civics, hands-on career and technical education, and more.

Making that a reality is easier said than done, of course. That is where ESSA comes into play, and why implementing the new law as Congress intended is so important.

Resources are key and there are only so many of them. Federal dollars are intended to “supplement, not supplant” the use of State and local dollars for the students most in need—the reason the Federal Government got involved in public education in the first place. However, we continue to have concerns with the proposal the U.S. Department of Education offered during the negotiated rulemaking process. Districts should have the flexibility to develop a methodology that shows Federal dollars are supplemental to their efforts. At the same time, we want to ensure that students are getting access to the services and programs they need, regardless of their zip code. Therefore we strongly support the new reporting element that will require all public schools to report actual per pupil expenditures of Federal, State and local funds (disaggregated by personnel and non-personnel). This is a significant improvement that will provide the transparency that was lacking under NCLB.

At this critical juncture, the devil is in the details. Those details are complex, as is our mission: developing new State accountability systems built around multiple measures, not just standardized test scores. For ESSA to fulfill its potential to be a game changer for students, the new accountability systems must be developed collaboratively, with the input of all stakeholders. That approach is the only way to ensure stakeholders' commitment and buy-in.

Educators must have a seat at the table, along with parents and other stakeholders. Together, we will determine key elements of the new accountability systems—how much tests count, what tests could be eliminated, and which indicators of student or school support to use. Together, we will determine who conducts school needs assessments, what interventions look like, and more.

Other concerns include some of the U.S. Department of Education's regulatory proposals—those we have already seen and what they imply for those to come. At-

tempts to circumvent congressional intent could create ripples that extend far beyond the regulations to which they pertain—specifically, a chilling effect that discourages States and districts from thinking creatively or being proactive. That, in turn, could undermine the promising new paradigm that ESSA represents.

Settling these issues will take time and demand patience. That is to be expected, given the far-reaching nature of the changes we are making and the complexity of the issues we are addressing. In Oregon, for example, there has been a multi-year collaborative dialog on what testing should look like for students and how test results should be used. Several States are setting up task forces and listening sessions. The best conversations revolve around this central question: What type of schools do we want for our students?

These experiences have taught us a lot about what it means to involve stakeholders in meaningful ways, the benefits as well as the barriers. We know that including educators at the decisionmaking table is critical—it is the voice of classroom practitioners that has been missing for the last 14 years. It is also critical for the educators at the table to get the respect and buy-in from other educators in the State. In addition, we need to make sure that States and districts are doing everything in their power to reduce barriers to educators’ participation in the process—for example, ensuring that they are given release time and helping to cover their travel expenses. We want to express our appreciation for the letter that Senator Murray and Representative Scott sent last week to Secretary King raising these very issues.

We also want to keep the pressure on the way-too-many States that are telling their educators nothing needs to change as a result of ESSA. This is not what anyone had in mind when ESSA was signed into law.

Those who know our students best—their parents and their educators—must have a meaningful say in what schools, districts and States are held accountable. We need to learn from the past, not repeat mistakes such as No Child Left Behind’s one-size-fits-all approach to accountability, the inequities of Race to the Top, or tying teacher evaluations to poorly designed tests that are neither valid nor reliable.

ESSA has opened window to a new direction for students and schools. While that path is challenging, with challenge comes opportunity—and responsibility.

For ESSA to become the game changer Congress intended it to be, the Department of Education, States, and school districts must live up to their end of the bargain. Educators and other stakeholders must stand up, speak out, and advocate for their students. And all of us must insist on keeping the focus where it belongs: on equity and opportunity for all students, no matter what zip code they live in.

The CHAIRMAN. Thank you.
Ms. Weingarten.

**STATEMENT OF RANDI WEINGARTEN, PRESIDENT, AMERICAN
FEDERATION OF TEACHERS, AFL-CIO, WASHINGTON, DC**

Ms. WEINGARTEN. Thank you. My name is Randi Weingarten. I am President of the AFT, and it is my privilege to be here to talk about our views on the implementation of ESSA. But I do want to start where my colleague and friend, Lily Eskelsen García, started with as well, which is I cannot thank this committee and, particularly, Senator Alexander and Senator Murray enough for listening to parents and practitioners and helping to navigate this bill to law and to break the gridlock in DC to enact ESSA. We need to thank you over and over again on that issue.

What I wanted to discuss was the promise of ESSA, but I’ll focus my comments on the regulatory process, particularly on what the U.S. Department of Education has released so far on ESSA’s “supplement, not supplant” provisions and what we anticipate will be released on accountability systems.

We at the AFT view these policy details through the lens of whether they both work in America’s classrooms and reflect the voices of educators. I, particularly, today am speaking with two decades of experience in the largest school district in the United States where we actually had to deal and had to work through and

make sure equity mattered in terms of some of these provisions. I am particularly pleased that Senator Murray and Representative Scott, as Senator Murray has already referred, reiterated the priority that getting the voices of practitioners and parents in this implementation is absolutely critical.

Unfortunately, in its first regulatory action on the proposed supplement not supplant rules, the Education Department demonstrated that it was neither listening to stakeholders nor following the framework of the legislation. Instead, by conflating, as Senator Alexander has already said, the supplement not supplant and comparability policies, the Department seems to be pushing or pursuing an agenda that was rejected in the legislative process.

The pursuit of both equity and excellence for our children is part of the AFT's DNA, and there are several ways to do this. One is through full funding of title I, something we will keep fighting for through this appropriations process. I would suspect that almost anyone involved in education would be fighting to level up spending rather than level down spending so that schools currently spending the least could be made whole.

In addition, ESSA continues important equity safeguards so States cannot deny disadvantaged children the additional funding that the Federal Government has provided to level the playing field. That includes the maintenance of effort provisions as well as the SNS provisions as well as the way in which the title I formula is currently structured, all of which we fought very hard for, as all of you know.

This is why I disagree with the Department's supplement, not supplant proposal. The Department essentially, as Lily said, wants to make dollar for dollar comparisons rather than what happens right now. This is what that means in practical terms. Right now, principals have a number of teachers they can hire based on positions rather than an exact dollar amount they can spend. If that changes, then a teacher's salary and benefits is what will determine whether the teacher gets hired, whether the teacher gets retained, or whether the teacher gets transferred, not anything else, not what the school needs to run a program, not what the school's particular programmatic focus is, not the needs of school children.

What will happen is that some schools will face cuts that will compel them to make no-win choices about which teachers they keep or they hire. Dollar for dollar comparisons—I can talk about this for hours, because I've lived this. Dollar for dollar comparisons in a district can even be thrown off by something as simple as how many teachers in each school have individual health coverage as opposed to family coverage, the difference between \$5,000 for coverage versus \$20,000 for coverage.

These types of unintended consequences are major disruptions that have nothing to do with equity or opportunity. When you force districts to count exact spending in a school, their goals get lost in translation. We cannot equalize spending that way.

Finally, we are concerned that the Education Department will take the level of prescription it has proposed for supplement not supplant to the upcoming regulations on school and district accountability systems. This could strip the flexibility necessary to create accountability systems that envision new ways to define and

measure learning, as opposed to the current and far too restrictive and counterproductive focus on test scores.

The promise of ESSA lies in the opportunity for States, with broad stakeholder input, to create robust systems of accountability, that we define how we measure learning so that learning is really about learning, not simply math and English test scores.

Thank you very much. I'm sorry I went over by 34 seconds.
[The prepared statement of Ms. Weingarten follows:]

PREPARED STATEMENT OF RANDI WEINGARTEN

Good morning. My name is Randi Weingarten, and I am president of the American Federation of Teachers (AFT). On behalf of the AFT's 1.6 million members, it is my privilege to be here today to represent our views on the implementation of the Every Student Succeeds Act (ESSA). I will focus my comments today on the regulatory process, particularly on what the U.S. Department of Education has released so far on ESSA's supplement-not-supplant provisions and what we anticipate will be released on accountability systems.

As Washington policymakers wrangle with the details of this law, the AFT views these details—those sorted out in both last year's legislative process and this year's regulatory process—through the lens of whether they are workable in America's classrooms and reflect the voices of educators. Senator Patty Murray and Representative Bobby Scott recently reiterated this priority in a joint letter to the Administration. The regulatory process is the process through which ESSA enables States— informed by the collective wisdom of those who help kids every day—to shape their education systems to create great environments for teaching and learning, not testing, particularly for disadvantaged children.

Unfortunately, in its first regulatory actions—on the proposed supplement-not-supplant rules offered during negotiated rulemaking—the Education Department did not demonstrate that it was either listening to stakeholders or following the framework of the legislation. Instead, by conflating supplement-not-supplant and comparability, the Department is pursuing policy in rulemaking that was either rejected or barred in the legislative process.

The AFT believes in both equity and excellence, and there are several ways to accomplish this. One is through full funding of title I, something we will keep fighting for through the appropriations process. AFT members, and most people involved in the education of children, would love to have a discussion about “leveling up” spending (rather than “leveling down”), so that those schools currently spending the least could be made whole.

When it comes to equity, ESSA continues important safeguards—something we fought hard for as we fought against the portability proposals. These include the existing supplement-not-supplant and the maintenance-of-effort provisions. These protections are in place so States cannot do a bait and switch to deny disadvantaged children the additional funding that the Federal Government has provided to level the playing field.

The policy details of supplement-not-supplant seem complicated, but the basic ideas are simple: Federal education funding slated for needy students should be provided in addition to, not instead of, State and local dollars. We agree. In places like Detroit, for example, we would be in so much better shape than we are now if the Federal Government just stuck to ensuring that this basic provision was adhered to.

What makes supplement-not-supplant complicated is that the Education Department is pursuing changes that it wanted, but didn't get, in the law itself. When Congress passed ESSA, it made no changes to the existing rules and regulations around comparability—a fiscal requirement similar to supplement-not-supplant, though focused on funding between schools. What the Department wants is a dollar-for-dollar comparison between schools. It is trying to achieve in regulations the policy it failed to get in legislation.

What would the draft regulations mean in practical terms? A lot. Right now, principals have a number of teachers they can hire based on positions, rather than a dollar amount they can spend. We don't want a teacher's salary and benefits to keep him or her from getting hired, just like we don't want a teacher's salary and benefits to force him or her to be transferred.

Will schools have the latitude to make staffing decisions—like how many experienced teachers they retain or how many new teachers they hire—based on their own needs? Or will Federal policy force the leveling down of funding, so some schools

face budget cuts that compel them to make no-win choices about which teachers to keep or hire?

Here are a couple of examples of how this can play out at the district and school levels:

- Sometimes schools expand, for example from K–5 to K–8. In such cases, they generally hire new teachers to cover the expansion. Other schools in the district shouldn't have their staffing cut so as to average out with the school that has expanded.
- Sometimes districts create specialized programs in one school, such as a dual-immersion language program. By necessity, such programs hire staff with specialized backgrounds or credentials—for example, professionals who are new to teaching but whose backgrounds and skills are particularly appropriate for the new program. Again, schools with specialized programs should not have to “level down” the amount spent on their programs to ensure equal spending across a district.
- Dollar-for-dollar comparisons in a district can even be thrown off by something as simple as how many teachers in each school have individual health insurance coverage rather than family coverage.

These types of unintended consequences are major disruptions that have nothing to do with equity and opportunity. When you force districts to count exact spending in a school, the goals get lost in translation. We cannot equalize spending without creating winners and losers; it will result in some schools having to give up resources, services or staff in order for others to gain. That's neither equitable nor sensible.

Comparable spending in schools has been a critical way to ensure equity in school spending over the years. It makes sense that you'd want districts to spend the same amount on all its kids—regardless of whether they go to school in a rich neighborhood or a poor one.

But the goal is equitable, not equal, spending, and that's something unions have spent decades bargaining for. That's why, when the education law was being negotiated in Congress last year, the AFT fought to make sure this standard of comparability was preserved. And it's why we are so concerned about the attempt to legislate through the regulatory process.

The legality of the proposed regulations is also in question. A recent legal analysis by the Congressional Research Service found that “a legal argument could be raised that ED exceeded its statutory authority if it promulgates the proposed SNS rules in their current form.”

What is perhaps most concerning about the proposed regulations? It is that the Education Department will take the level of prescription it has proposed for supplement-not-supplant to the upcoming regulations on school accountability systems. This could strip the law of the flexibility necessary to create accountability systems that envision new ways to define and measure learning—ways that help the whole child, as opposed to the current and far too restrictive and counterproductive focus on test scores. The promise and opportunity of ESSA was in the opportunity for States, with broad stakeholder input, to create robust systems of accountability that measure school success beyond reading and math test scores.

We are worried that the Department's actions on supplement-not-supplant signal that it will try to restrict the weights that States can put on different measures in their accountability systems, that it will attempt to impose rules around the 95 percent participation requirement that go well beyond the letter of the law, or that it will very narrowly define terms such as “significant” or “evidence-based” that were carefully negotiated by Congress to provide States latitude to decide what is best.

It is apparent from ESSA's unprecedented prohibitions against the secretary of education overreaching on policy that parents, communities and educators are not interested in having highly prescribed rules and mandates for preK–12 education from the Federal Government. And, as evidenced by the persistence of the opt-out movement, this has not changed since ESSA was enacted.

Frankly, this is not an auspicious beginning, and ESSA's unprecedented prohibitions against overreaching by the Education Department were intended to curb this type of action. Equally concerning, the Department's actions run the risk of squandering all the goodwill that ESSA created. Now is the time for the Department to help and enable, not restrict and prescribe.

This is happening at the very time stakeholders are beginning the process of developing these new education systems. The Education Department's overreaching draft regulations, especially if they are a harbinger of what is to come in the way of accountability, will undermine the potential of ESSA before it ever has a chance to be implemented.

I would like to thank Senator Alexander for remaining so vigilant on this issue and working to make sure that ESSA is appropriately implemented.

The CHAIRMAN. But it was an enthusiastic 34 seconds. Thank you, Ms. Weingarten.

Dr. Evers.

STATEMENT OF TONY EVERS, Ph.D., STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, MADISON, WI

Mr. EVERS. Thank you, Chairman Alexander and Ranking Member Murray and the members of the committee, for allowing me to testify today. It's good to be back. I'm back again.

I highlighted in previous testimony before this committee, State and local leaders are committed to making sure that all kids achieve at the highest level. Under No Child Left Behind, overly prescriptive Federal mandates left States and local districts without the ability to tailor strategies to meet the needs of their kids.

As a lifelong educator, I believe that we must learn from our mistakes. We have the Every Student Succeeds Act which gives us a chance to move our State and local education systems forward in ways that are impactful. But in doing so, we have to admit and recognize that ESSA is a landmark piece of civil rights law and one that presents us with the opportunity to see our challenges with new eyes in the hopes of finding solutions that make a difference for kids.

Last week, I sent invitations to convene a primary advisory group, the Wisconsin Equity and ESSA Stakeholder Council. To identify members of this group, I reached out to national civil rights organizations and groups that have not traditionally focused exclusively on K through 12 issues. We have a joint education related organization, parents, legislators, teachers, and others, to advise on the State plan which will help districts increase the opportunities for all kids.

I told prospective members of this council in their invitation, we need a diversity of experience and expertise if we are going to be successful in closing one of the Nation's largest achievement gaps, and that is in the State of Wisconsin. In addition to this council, Wisconsin's broader outreach plan consists of three in-person facilitated listening sessions and two virtual sessions. We will also use web-based feedback for anyone in the State who wants to provide us with information, and this information will be received and used to inform the Equity Council as they convene.

I'm proud of the work we're doing in Wisconsin, and I believe the best solutions often come from places closest to the kids. To support States in doing that kind of local work, regulation and guidance, as has been said before, developed by ESSA should be limited to providing clarity on otherwise ambiguous or confusing areas, not implementing requirements that were not envisioned by Congress.

Flexibility has been a central element of ESSA, because I believe there is recognition that the States have very different systems and supports for K through 12 education. The flexibility currently provided in the law allows States to focus on the most important and difficult work ahead in supporting each and every student in the United States.

In contrast, the regulations the Department proposed during a negotiated rulemaking process on supplement not supplant—they were well intended. I will grant them that. But it would have significant impacts on our students, drawing focus away from student learning and service to unwieldy fiscal balancing acts.

It is the responsibility of school leaders to put the best teachers in front of the kids who need them the most. They weigh qualifications, diversity, and skill sets in service to kids. They contemplate optimal grade configurations, staffing patterns, and facility needs, all with an eye toward increased student achievement for all kids. I worry that the proposed supplement, not supplant rules reduce these complex decisions to an overly simplified financial calculation, which at the end of the day does not actually guarantee student access to high-quality educators.

As a member of the negotiated rulemaking committee, I understand the arguments on both sides of this issue. But I also believe—and it is clear—that the proposed regulations on supplement, not supplant exceed the Department’s authority under the law.

State and local schools absolutely have a responsibility to their kids to examine current Federal funding and how it’s used. They owe it to parents and families that they support—that they have discussions that are open and meaningful and transparent. And they need to be sure that they’re reaching all the people that make up their school community. But that type of authentic discussion and problem solving simply cannot be achieved through a Federal mandate.

I firmly believe that States should be held accountable for their students’ results. When it comes to both funding and educational practice, the States are committed to using additional flexibility found in ESSA to improve education outcomes for all kids.

Let us lead the way, and thank you so much, again, for allowing me to testify, and I look forward to your questions.

[The prepared statement of Mr. Evers follows:]

PREPARED STATEMENT OF TONY EVERS, PH.D.

Thank you Chairman Alexander, Ranking Member Murray, and members of the committee for the opportunity to testify today. I also want to thank you for your ongoing efforts to support the implementation of the Every Student Succeeds Act (ESSA). As States and local school districts across the country develop strategies to close achievement gaps and promote equity for our students under the new law, and the U.S. Department of Education (Department) moves forward with the regulatory and guidance process, it is important that States retain the renewed flexibility that is the central element of the ESSA. Flexibility is critical if we are to keep the focus on our students. This is the Every Student Succeeds Act and it is aptly named. To be successful in implementation, those of us closest to our students must be empowered to do the work that is needed to ensure that every one of them has the opportunity to graduate college- and career-ready.

As I highlighted in previous testimony before this committee, State and local leaders are committed to achieving optimal results for all of their students. Under No Child Left Behind (NCLB), overly prescriptive Federal mandates on the overall design of statewide systems left States and local districts without the ability to tailor school improvement strategies to the unique needs of their schools and students. We should not repeat these mistakes.

The ESSA is a landmark piece of civil rights legislation that provides States with the opportunity to engage their citizens about the importance of education. Part of that dialog needs to be how we measure success. I firmly believe that States should be held accountable for their student results. But as States begin to implement the law, we must take into consideration the very different systems and supports for

K–12 education States across the Nation have in place. The regulations the Department proposed during the negotiated rulemaking process on supplement, not supplant, while well-intended, fail to recognize the importance of those differences and would have significant impacts on our students.

I encourage you to think about what the proposed supplement, not supplant rule would mean for our kids. It is the job of school leaders to ensure that the best teachers are in front of the kids who need them the most. School leaders look at qualifications, diversity, and skill sets. They contemplate optimal grade configurations, staffing patterns and supports, and facility needs, all with an eye toward the best way to increase student achievement for all students. School leaders will not have the ability to make optimal decisions for kids with the supplement, not supplant rule in effect as proposed during negotiated rulemaking. Nor will kids be guaranteed access to a qualified educator who has the skills and life experience necessary to fulfill their needs. As it stands now, the proposed regulations would require States to fund individual schools on a per-pupil basis and require State education agencies to redirect existing staff in an attempt to build capacity to monitor and enforce per-pupil expenditures.

School districts may be required to break contracts or force placement of teachers, without regard to educational outcomes. This is not good for kids and it will inhibit our ability to attract and retain teachers. Districts may be forced to eliminate specialized and more expensive programming in some schools such as career and technical education, engineering, music, and art. Students may be reassigned to different schools because of additional needs, special education status, or transportation requirements due to costs involved. School districts, in an effort to limit the disruption to students, may decrease the number of title I schools and concentrate low-income students in fewer schools, instead of economically integrating them, which research demonstrates results in better educational outcomes. None of these decisions will be based on educational factors that lead to the best outcomes for kids.

Put simply, the proposed rule is not focused on educational results, but rather dollar for dollar spending. Hold us accountable for results, but do not make the same mistakes of NCLB by tying our hands so we are prohibited from considering or implementing certain school improvement strategies, assigning teachers, and providing requisite supports and other programming to improve outcomes for kids. We all know that there are better ways to determine whether someone is a high-quality educator than looking only at how much they are compensated for their services.

I believe everyone wants to get to the same result here: better educational opportunities and outcomes for all students and the closing of opportunity and achievement gaps. As I stated in the negotiated rulemaking sessions, I also believe the proposed regulations on supplement, not supplant, exceed the Department's authority under the law. In the pursuit of more equitable outcomes, we should ensure we are not eliminating options and undercutting systems States and school districts have put in place to address inequities. Those systems may have merit and should not be tossed aside without careful consideration.

We need to work harder and smarter to address inequities in a way that will not cause harm to the educational experience of all students. To best facilitate that, regulation and guidance throughout ESSA should be limited to providing clarity on otherwise ambiguous or confusing issues; not implementing additional requirements that were not envisioned by Congress. Guidance is not regulation, but it does give States and school districts information as to how the Department both interprets and plans to address provisions in the law as it moves forward in its administration.

An example of an area my colleagues are watching closely is the innovative assessment pilot. Innovation is not often associated with standardized and detailed rulemaking processes. In order to respect congressional intent and ensure a carefully designed study and valid assessment, it will be important for the Department to stick to the guardrail philosophy that is evidenced in ESSA. State and local decisionmakers have a critical role to play in identifying or developing strategies that will be effective for their schools and students and implementing these strategies with fidelity.

This is especially true in areas where unique State-and district-level strategies are critical to improving educational outcomes for all students. Accountability is a prime example of this. Wisconsin is committed to leveraging the new flexibility to examine the statewide accountability system to ensure it is responsive to stakeholder feedback about best practices and effective strategies. The end goal being that all students, including low-income students, minority students, English learners, and students with disabilities, have access to a high-quality education. We are asking our stakeholders to take a look at our State report cards, how they interface with Federal report cards, what value they discern from report cards, what improve-

ments they would suggest, how accountability measures should relate to school improvement strategies, what those strategies look like, and when do we intervene as a State in a school or district. These important conversations will inform our school improvement efforts and help us ensure that all students have an equitable access to a high-quality education that results in graduation and career and college readiness.

If we are going to take on these conversations in an authentic fashion, we have to bring everyone to the table. To that end, in Wisconsin, we have developed a comprehensive stakeholder engagement process to facilitate discussions around strategies that result in equitable access to educational opportunities and closing achievement gaps. This process starts with statewide listening sessions, which will be ongoing through the summer.

Wisconsin's statewide listening sessions are focused on getting educators, representatives from parent groups, civil rights groups, community organizations, businesses, and others together to provide critical feedback on school accountability and school improvement. Furthermore, this week we will be deploying a web-based feedback form for anyone in the State to provide us with information. And in August, we will be having virtual sessions on school improvement and accountability for anyone in the State who wants to participate. These efforts represent the first round of feedback that we will use to inform the Equity Council I have established as my primary advisory group as we develop our State plan. I reached out to national civil rights organizations to help me build this council, and they will join education-related organizations, legislators, and others so we can work together on a comprehensive State plan.

When it comes to both funding and educational practice, States are committed to using additional flexibility to improve educational outcomes for all students, addressing inequities, and closing achievement gaps. Over the course of the regulatory and guidance process, I hope the Department remains committed to the civil rights purpose of ESSA while allowing States to retain the flexibility to meet student needs and work with all stakeholders in a meaningful way. Thank you again for the opportunity to testify, and I look forward to your questions.

The CHAIRMAN. Thank you, Dr. Evers.
Dr. Ahart.

**STATEMENT OF THOMAS AHART, Ed.D, SUPERINTENDENT,
DES MOINES PUBLIC SCHOOLS, DES MOINES, IA**

Mr. AHART. Good morning, Chairman Alexander, Senator Murray, and the rest of the HELP Committee. Thank you for your leadership on finally achieving the reauthorization of ESEA, long overdue.

I am Tom Ahart, superintendent of the Des Moines public schools. With my seven-member board of education, I am responsible for the education of the largest school district in the State of Iowa. We are committed to meeting the educational needs of each one of our students by recruiting and supporting a team of talented professionals in each of our 63 schools. Our 33,000 students were born in 106 different countries, speak over 100 languages, qualify for free and reduced price meals at a rate of 75 percent, and are 58 percent minority.

That commitment is reflected in a steady increase in our graduation rate and in reading, math, and science proficiency rates and considerable progress in closing achievement gaps. Des Moines continues to operate under the antiquated No Child Left Behind Act since Iowa is one of the few States without a NCLB waiver. We have more reasons than most to welcome the enactment of the Every Student Succeeds Act, and we are working closely with our State department of education on a statewide implementation process.

Virtually all of the school-based representatives of the ESSA regulations negotiations committee expressed practical concerns re-

garding the impact and feasibility of a number of the proposed regulations. These operational concerns relate to regulatory barriers to effective instructional services for students; interference in school autonomy in staff recruitment, selection, and placement; unworkable criteria; unnecessary requirements; additional costs; and unrealistic administratively created obligations.

While regulations are intended to clarify provisions of the statute and facilitate effective implementation, many of the regulatory provisions appear to restrict, condition, redefine, and even expand ESSA. I am hard pressed to identify any regulatory additions offered by the Education Department that are necessary for effective implementation at the local level.

The most troubling regulatory proposal, as many others have mentioned, was the Department's draft regulation to impose per-pupil expenditure comparability requirements under the supplement not supplant provision of the Act. Despite no changes in the current ESEA comparability provisions, the Department drafted supplement not supplant regulations that would require per-pupil expenditure comparability between title I schools and the average of non-title I schools.

Operationally, this proposed regulation would effectively require salary equivalency between such schools. As Senator Alexander already mentioned, since the Nation's teacher salary system is primarily based on years of experience and advanced education, schools with older, higher paid staff compared to younger, less higher paid staff would necessarily trigger noncompliance on an unprecedented scale. Moreover, current Federal requirements already ensure that at least the same number of full-time equivalent teachers are deployed in title I as in non-title I schools.

To comply, districts would have to spend additional State and local funds to cover salary differential between higher paid and lower paid teachers, or, in an alternative compliance scenario, districts potentially could shift their higher paid teachers to title I schools and their lower paid teachers to non-title I schools. Unfortunately, neither of these options correlate with improving student performance, because to state it simply, there is no relationship between salary level and teacher effectiveness.

School districts clearly do not have the State and local funds to cover the salary differential costs of compliance, nor should districts disrupt instructional continuity and communities of practice in our schools by summarily transferring teachers. Moreover, the teacher transfer option would violate most collective bargaining agreements.

Many districts literally would be faced with an impossibility of performance under these regulations which have no reasonable basis in the Act and appear to violate at least three separate statutory prohibitions in ESSA. I hasten to add that neither of these solutions, even if possible to implement, reflect best education practice.

What often seems to be lost on the Department is that many high-poverty schools are not served with title I because, frankly, there is not enough to go around. While a 40 percent free and reduced price meal rate can qualify a school for title I services, just in Des Moines public schools, we have multiple schools with an

over 70 percent free and reduced price lunch rate that we are not able to provide with title I services. Additionally, our ability to serve schools with concentrated poverty for which we do not have title I funds would be jeopardized under the proposed regulations.

The ESSA was enacted with a broad base of support and good will at the national, State, and local levels. The tendency toward over-regulation, evident during the negotiated rulemaking process, could undermine that broad support. No Child Left Behind has demonstrated that the best intentions for improving achievement of at-risk students cannot be micromanaged from the Federal level. I would suggest that State and local officials be given the opportunity to get it right under ESSA.

On the other hand, the Education Department could be helpful in issuing non-regulatory guidance that provides a non-exclusive range of examples of implementation options for various provisions of ESSA. There is no such thing as one-size-fits-all. Even in Iowa, the broad range of individual district characteristics vary widely. The only hope for successful results from ESSA rests in the State agencies' ability to craft a guidance that is meaningful to individual State and district contexts.

Finally, I am proud of the progress that my district has made over the last 4 years, despite insufficient State funding and ever-increasing student needs. The current supplement, not supplant regulations focused on positions not funding have helped to make that possible. DMPS is becoming the model for urban education in the United States.

The proposed ESSA regulations will force us to disrupt some of the most effective school reform efforts in the country and threaten the progress of some of our Nation's most disadvantaged students. We can do better if ESSA regulations align with the letter and the spirit of the statute itself.

Thank you for the opportunity to discuss the new regulations with you.

[The prepared statement of Mr. Ahart follows:]

PREPARED STATEMENT OF THOMAS AHART, ED.D.

Good morning Chairman Alexander, Senator Murray and members of the HELP Committee. I am Tom Ahart, superintendent of the Des Moines Public Schools (DMPS). With my seven member board of education, I am responsible for education in the largest school district in the State of Iowa, serving 33,000 students across our 63 schools.

Like many school districts across the country, DMPS has undergone major demographic changes from barely qualifying for title I concentration grants at 15 percent census poverty two decades ago to now having 75 percent free and reduced priced lunch eligibility. Des Moines now enrolls 21 percent English learners, 25 percent Hispanic students, 18 percent African American students, 7 percent Asian and Pacific Islander students, 0.5 percent Native American students, and 15 percent students with disabilities. The country of birth of our student body spans 106 nations and enter our schools speaking more than 100 languages.

We are committed to meeting the educational needs of each one of our 33,000 students by recruiting and supporting a team of talented professionals at the district level and in each one of our schools. DMPS has been the recipient of the ASBO Certificate of Excellence in Financial Reporting, the GFOA Certificate of Achievement. We are implementing one of six national Principal Supervision and Support Programs from the Wallace Foundation and a U.S. Department of Education School Climate Transformation grant. There is an expectation of providing a positive learning environment in every school and classroom across Des Moines. That commitment is reflected in a steady increase in our 4-year graduation rate and in reading, math and science proficiency rates on our State test. Additionally, we have dramatically

decreased our days lost to out of school suspension, made considerable progress in closing achievement gaps, and have increased student enrollment and completion of advanced placement courses by more than 400 percent in the last 3 years. We were also one of the first districts in the country to sign onto and commit to The Males of Color Pledge, part of President Obama's My Brother's Keeper initiative.

Des Moines continues to operate under the antiquated No Child Left Behind Act (NCLB), since Iowa is one of the few States without an NCLB waiver. We have more reasons than most school districts to welcome the enactment of the Every Student Succeeds Act (ESSA). I look forward to the development of a more thoughtful State accountability system under ESSA, and we are working closely with our State department of education on a statewide implementation process.

As with most Iowa school officials, I have benefited in many ways from the tutelage of Chairman Tom Harkin over the years. In fact, my board of education president Rob Barron was a long-serving Harkin staff member. That background and ongoing interaction on Federal education policy with our Iowa delegation, however, did not prepare me for the ESSA negotiated rulemaking process.

As a member of the Education Department's Negotiated Rulemaking Committee, representing local school district officials, I expressed serious concerns with proposals to expand Federal ESSA requirements beyond those specified in the Act, as well as the proposed regulations that directly ignored ESSA-legislated prohibitions.

Virtually all the school-based representatives on the committee expressed practical concerns regarding the impact and feasibility of a number of the proposed regulations. These operational concerns relate to regulatory barriers to effective instructional services for students, interference in school autonomy in staff recruitment and selection, intrusion in the deployment of effective school leaders, unworkable criteria and unnecessary requirements, additional costs, and unrealistic administratively created obligations.

While regulations are designed to clarify provisions of the statute and facilitate effective implementation, many of the regulatory provisions appear to restrict, condition, redefine, and even expand ESSA.

A number of the regulatory proposals during negotiated rulemaking were rationalized as helping school districts understand their responsibilities and helping auditors better monitor program implementation. I am hard pressed, however, to identify any regulatory additions offered by the Education Department or members of the Rulemaking Committee that I would consider, from my perspective as superintendent of schools, to be necessary for the effective implementation of ESSA at the local level.

The most troubling regulatory proposal during negotiated rulemaking was the Education Department's draft regulation to impose per-pupil expenditure comparability requirements under the supplement, not supplant provision of the Act.

Proposals to revise the comparability of services provisions of the Elementary and Secondary Education Act (ESEA) had been circulating for more than a decade, but have never been enacted. Despite no changes in the current ESEA comparability provisions of the statute, the Education Department drafted proposed supplement, not supplant regulations that would require new per-pupil expenditure comparability, including teacher salary differentials between title I schools and the average of non-title I schools. Operationally, this proposed regulation would effectively require salary equivalency between such schools or require school districts to make up the difference with State and local funds. Since the Nation's teacher salary system is primarily based on increasing salary increments for years of experience (as well as for advanced educational attainment), schools with older, higher paid staff compared to younger, less highly paid staff would necessarily trigger noncompliance on an unprecedented scale. The school representatives on the Rulemaking Committee did not agree with the Department's draft regulations, and more flexible regulatory options were rejected by the Department as well.

To comply with the Education Department's draft regulations school districts would have to spend additional State and local funds to cover the salary differentials between higher paid and lower paid teachers. The Center of American Progress (CAP) reported in 2012 that the cost of compliance with this type of per-pupil comparability requirement would be \$6.8 billion based on national data at the time, and in 2015 CAP estimated the compliance cost at \$8.5 billion nationally using the most recent OCR expenditure data. The Council of the Great City Schools estimated the compliance cost for their 69 member school districts could reach \$3.9 billion, ranging from millions to hundreds of millions of dollars in individual districts.

In an alternative compliance scenario, school districts potentially could shift their older, higher-paid teachers to title I schools and their younger, lower-salaried teachers to non-title I schools in order to comply.

Unfortunately, neither of these options correlate with improving the academic performance of our students, since there is no relationship between salary level and teacher effectiveness. Moreover, the teacher transfer option would violate most collective bargaining agreements and result in unwarranted disruptions in instructional continuity and communities of practice in our schools.

Higher paid teachers teach for the same 6 hours daily and 180 school days annually as teachers with lower salaries and less time in the profession; students receive an equivalent level of service from their teachers regardless of salary or years of service. Moreover, current Federal requirements already ensure that at least the same number of full-time equivalent teachers are deployed in title I as in non-title I schools.

School districts clearly do not have the State and local funds to cover the salary differential costs of compliance with these draft regulations, nor would districts want to summarily transfer higher paid staff in order to comply. Many districts literally would be faced with an impossibility of performance under these draft regulations—which have no reasonable basis in the Act and appear to violate at least three separate statutory prohibitions in ESSA.

Title I is an important element of my district's efforts to effectively serve all of our students. What seems often to be lost on the Department is that many high poverty schools are not served with title I because, frankly, there is not enough to go around. While a 40 percent free/reduced price meal rate can qualify a school for title I services, we have multiple schools with over 70 percent of students qualifying for free/reduced priced meals that do not qualify for title I in Des Moines. In addition to those challenges already mentioned, our ability to best serve schools with concentrated poverty without title I funds will also be jeopardized under the proposed regulations.

Other regulatory additions from negotiated rulemaking also are of concern, including provisions that apparently would require: middle schools to offer advanced math coursework to any requesting student statewide, once the State opts to exercise the ESSA eighth grade advanced math assessment double-testing relief; a series of unauthorized regulatory conditions to be met before States could qualify for an alternate assessment waiver; and restrictions on the authorized use of nationally recognized high school assessments.

Based on the negotiated rulemaking experience, I am also concerned about other Federal regulations that may be proposed and ultimately finalized on ESSA implementation. While there are clearly new flexibilities allowed under ESSA, there are numerous new State and local responsibilities, including additional performance indicators, more schools likely to be identified for improvement and intervention, additional reporting and data disaggregation, and new State and local plan requirements. We already have a lot of implementation challenges during the upcoming transition year.

There is now an unprecedented level of collaboration in Iowa between our State education department and local school districts on implementation of our new responsibilities. We are jointly looking at defining our new performance indicators, differentiating schools for improvement measures, defining under-performance criteria, and establishing goals and benchmarks. I meet regularly with our State chief school officer, and several ESSA implementation planning teams are currently being organized by our State department of education with membership from school district staff, community members, and other organizations from around the State. In Des Moines Public Schools, our School Improvement Advisory Committee and our Equity Committee, both made up of a broad range of community members, will collaborate with my district staff to ensure sound implementation of ESSA at the local level.

Federal regulatory expansions or restrictions, such as we experienced in negotiated rulemaking will complicate, if not impede the implementation process in Iowa. There are sufficient statutory parameters on the performance indicators and weighting priorities that States should be allowed to design their own benchmarks including "acceleration or catch-up" objectives. The definitions and criteria for school differentiation need no further regulatory enhancements. Since the English learner subgroup composition has been delegated to the States, additional Federal requirements or further disaggregation is unwarranted.

Even in areas of some ambiguity, such as Additional Targeted Support and Improvement criteria beyond school year 2017–18, I would encourage letting State and local officials work out the intricacies of the various components of the State accountability and school improvement system. After the draft comparability-based supplement, not supplant regulations, I have serious concerns regarding any additional Federal regulations on local resource allocations under the school improvement provisions of the Act. Further Federal regulatory action regarding the evidence-based activities referenced in numerous sections of the Act could result in the

Federal Government restricting curriculum and intervention options, or even prohibiting instructional activities that have shown positive results but don't have experimental or quasi-experimental designs.

The Every Student Succeeds Act was enacted with a broad base of support and good will at the national, State and local level. The tendency toward over-regulation that was evident during the negotiated rulemaking process could undermine that broad support. No Child Left Behind has demonstrated that the best intentions for improving achievement of at-risk students cannot be micromanaged effectively from the Federal level. Since the Federal Government did not get it right under NCLB, I would suggest that State and local officials should be given the opportunity to get it right under ESSA. On the other hand, the Education Department could be helpful in issuing non-regulatory guidance that provides a non-exclusive range of examples of implementation options for various provisions of ESSA that can be considered by State and local educators. One-size-fits-all is a misnomer. Clearly, even in Iowa, the broad range of individual district characteristics vary widely and the only hope for successful results from ESSA rests in the State agencies' ability to craft guidance that is meaningful to individual State and district contexts.

Clearly, the committee and the Department have oversight responsibilities, and hopefully will identify those instances where State or local school officials may fall short in initial implementation. I am encouraged, however, by the cooperation and collaboration on ESSA between State and local education officials and other stakeholders that has begun in the field. I hope the Education Department ultimately takes a more collaborative approach to ESSA regulations and implementation than has occurred to date.

Finally, I am proud of the progress my district has made over the last 4 years, despite insufficient State funding. We are becoming the model for urban education in the United States. The proposed ESSA regulations will force us to disrupt some of the most effective school reform efforts in the country and threaten the progress of some of the most disadvantaged students in the country. We can do better if ESSA regulations align with the letter and the spirit of the statute itself.

Thank you for the opportunity to discuss ESSA implementation with you this morning.

The CHAIRMAN. Thank you, Dr. Ahart.
Dr. Gordon.

STATEMENT OF NORA GORDON, Ph.D., ASSOCIATE PROFESSOR, MCCOURT SCHOOL OF PUBLIC POLICY, GEORGETOWN UNIVERSITY, WASHINGTON, DC

Ms. GORDON. Thank you. Chairman Alexander, Ranking Member Murray, and members of the committee, thank you for the opportunity to testify today. I am Associate Professor at Georgetown University's McCourt School of Public Policy and a research associate at the National Bureau of Economic Research.

I conduct research on U.S. education policy, school finance, and desegregation. In the course of my research on title I, I have analyzed finance data and have also interviewed many State and district title I directors. Today, I'll discuss how ESSA changes the definition of supplement, not supplant and how the Department of Education proposes to regulate it and discuss some of the unintended consequences that could come from this proposed regulation.

The Department's proposed rule, as other witnesses have testified, is meant to support equity. This is a laudable goal, but when you look at the compliance incentives it generates and consider what districts might do in order to comply with the rule, you could see how it could actually wind up hurting disadvantaged students both in title I schools and in non-title I schools.

Supplement not supplant is meant to ensure districts do not reduce the amount of State and local money they give to a title I school compared to what they would give that school if it did not

participate in title I. This is an important mission, given the history of the law and past abuses.

Under No Child Left Behind and earlier versions of ESEA, districts could comply with supplement, not supplant based on what they bought with title I dollars, even if they gave title I schools less State and local money and had title I funds make up the difference. ESSA fixes that, requiring districts to show how they distribute State and local funds to each of their schools and that their methodology does not reduce a school's State and local funding because of the school's participation in title I.

Federal law still requires districts to spend funds in accordance with program goals and track their spending regardless of how supplement, not supplant is regulated. The Department of Education's proposed rule would require districts to use a methodology to allocate State and local funds that results in each title I school spending an equal or greater amount per pupil than the average amount it spends per pupil in its non-title I schools.

Current data don't permit us to generate reliable evidence on how many districts would be in compliance with the proposed rule based on current resource allocations or how much they would need to spend in order to comply. Aside from these unknown costs, the rule could trigger consequences that are bad for equity as districts are forced to consider compliance first and what's best for kids second.

For example, the rule could penalize districts working to increase economic or racial integration and could incentivize districts to concentrate disadvantaged students in title I schools. The rule could penalize district efforts to increase teacher diversity in title I schools, because increasing teacher diversity typically requires the recruitment of new and, therefore, typically less expensive teachers.

The rule could penalize districts that allocate State and local funds through weighted per-pupil formulas that generate more money for low-income, special education, or English language learner students. Such districts could, nonetheless, fail under the proposed rule if higher weighted students attend non-title I schools.

Importantly, the proposed rule only compares funding levels in title I schools to non-title I schools. This narrow focus penalizes other local approaches to equity and ignores the many low-income schools that do not receive title I funds, as we've just heard. This could punish districts that attempt to mitigate poverty effects in those poor but non-title I schools.

Stakeholders are absolutely right to want to ensure that Federal funds aren't used as a substitute for State and local ones in title I schools. ESSA's new statutory language does this by requiring districts to have allocation methodologies that do not reduce a school's access to State and local funds because of its participation in title I.

An alternative regulatory approach than the one that's been proposed would be to require districts to make their methodologies, like their spending data, publicly available. Then parents and voters would not only see how much is spent at each school, but they would also see district priorities as revealed through their funding mechanisms.

Thank you for the opportunity to comment on this topic.
[The prepared statement of Ms. Gordon follows:]

PREPARED STATEMENT OF NORA E. GORDON, PH.D.¹

Chairman Alexander, Ranking Member Murray, and members of the committee, thank you for the opportunity to testify today. I am Associate Professor at Georgetown University's McCourt School of Public Policy where I conduct research on U.S. education policy with a focus on school finance redistribution and school desegregation. In the course of my research on title I over the past 15 years, I have analyzed finance data and interviewed State and district leaders and title I directors. My research on title I has been supported by the National Science Foundation and the Spencer Foundation, and published in peer-reviewed economics and policy journals.

Today I will explain how ESSA changes the definition of supplement, not supplant, how the Department of Education proposes to regulate it, and the potential for that regulation to cause serious adverse consequences.

WHAT IS SUPPLEMENT NOT SUPPLANT?

Supplement, not supplant is meant to ensure districts do not reduce the amount of State and local money a title I school would receive if it did not participate in title I—an important mission, given the history of the law and past abuses.

Prior to ESSA, compliance was typically determined on a cost-by-cost basis, evaluating whether each cost charged to title I was “extra.” This compliance approach promoted inefficient title I spending on low-impact, unaligned “add-ons.”²

The cost-by-cost approach was also bad for equity. Districts could comply based on *what* they bought with title I dollars, even if they were giving title I schools less State and local money because they knew those schools would be getting title I funds to make up the difference—exactly what the rule was always meant to prevent, and what ESSA's new requirements do prevent.

HOW DOES ESSA CHANGE SUPPLEMENT NOT SUPPLANT?

Under ESSA, to demonstrate compliance with supplement, not supplant, districts must show *how* they distribute State and local funds to each of their schools, and that their methodology does not reduce a school's State and local funding *because of the school's participation in title I*. Specifically, the law provides a test for compliance with supplement, not supplant in sec. 1118(b)(2):

“... a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive were it not receiving assistance under this part.”

Last week teachers sent Secretary King a letter about their concern that “some States could misunderstand the law's intent and use title I for other purposes, including using it to replace State and local funding.” Though other provisions of ESSA are often described as “loosening things up,” ESSA's supplement, not supplant change raises the bar on equity and explicitly prevents exactly this concern. The Department already has excellent guidance on this point, because ESSA takes what was already an option for how title I schoolwide programs could demonstrate how title I funds were supplemental, and turns it into law for how *all* title I schools *must* demonstrate title I funds are supplemental.³

To make this requirement even more powerful, the Department of Education should require districts to make these methodologies publicly available. Then parents and voters would not only see how much is spent at each school—as newly required elsewhere in ESSA—but they would also see district priorities, as revealed through their funding mechanisms.

¹Note: the views expressed here are my own and do not necessarily reflect those of Georgetown University or the National Bureau of Economic Research.

²Gordon, Nora and Sarah Reber. 2015. “The Quest for a Targeted and Effective Title I: Challenges in Designing and Implementing Fiscal Compliance Rules.” *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 1(3), 129–147.

³U.S. Department of Education. July 2015. “Supporting School Reform by Leveraging Federal Funds in a Schoolwide Program.” Accessed 5/13/16 at: <http://www2.ed.gov/policy/elsec/guid/eseatitleiswguidance.pdf>.

HOW IS THE DEPARTMENT OF EDUCATION PROPOSING TO REGULATE SUPPLEMENT NOT SUPPLANT?

The Department has proposed regulatory language on supplement, not supplant that is quite different from the statute. It relates to a different part of the law, comparability, which aims to promote equitable spending across schools and which Congress did not change. ESSA's language on comparability, like earlier versions of ESEA, prohibits including "staff salary differentials for years of employment" in the determination of comparability. Sec. 1118(c)(2)(B).

The Department wants to require districts to use a methodology that results in *each title I school spending at least as much from State and local sources, in per-pupil dollars, as it does on average level in its non-title I schools.*

The remainder of my testimony focuses on the proposed rule, rather than the statutory language on supplement, not supplant.

HOW MUCH WOULD THE PROPOSED RULE COST DISTRICTS TO IMPLEMENT?

We do not have reliable evidence on how much this is going to cost districts.

Costs will be different for every district, largely based on what distributions of teacher experience across schools look like at the district level. To answer this question convincingly at a national level requires data that simply do not exist.

To know if each title I school in a district spends at least as many State and local dollars per pupil as the average non-title I school in the district, you would need to know how much State and local money per pupil each school gets, and which schools participate in title I.

This is less straightforward than it sounds, because most school districts allocate full-time equivalent staff positions, or FTEs, to their schools, rather than dollars. To know how many State and local *dollars* are spent, you need to use the actual salaries of those teachers in the school building, rather than district averages. But many districts have one data system linking teacher names to school buildings, and a separate data system with teacher names linked to teacher salaries. This is why the reporting requirement in ESSA will be so useful, and so challenging.

Some districts have systems in place already that could produce these numbers. The Department has not provided any cost runs from such districts.

Though most districts do not actually keep their records in a format amenable to producing these data, they have reported out such data to the Federal Government as required under the American Recovery and Reinvestment Act of 2009. The Department of Education conducted its first School-Level Expenditure Survey in 2009; in 2011, the relevant questions were asked again as part of the Civil Rights Data Collection. In each of the two available years of data, districts were asked to report expenditures, by whether or not they were related to personnel, at the school level. They were explicitly instructed to: "report *actual* school finance data for this school. *Do not report data based upon average teacher expenditures.*" They were also instructed to exclude Federal funds from the school-level expenditures.

The Department's own analyses that come closest to assessing the costs of the proposed rule use the 2009 data. The study noted:

"Because school districts typically do not have accounting systems that track expenditures at the school level and this was the first time such data have ever been collected on a large-scale basis, this effort faced challenges that may affect the accuracy and consistency of the data reported. "... the data collected through this study are not consistently defined across all States and districts, and are best used to examine resource patterns within districts rather than across districts."⁴

Therefore, the Department is proposing a rule at a point in time where the information needed to understand how it would actually affect districts and students is not reliable.

HOW COULD THE PROPOSED RULE WORSEN SCHOOL QUALITY FOR POOR STUDENTS?

We can understand how the proposed rule changes incentives for district-level policy in a more general sense, even if we cannot reliably estimate how much it would cost districts nationally to comply. Districts seeking to comply with the new rule would take money out of their non-title I schools in order to bring average spending down there, and use it to raise State and local spending in some or all of their title

⁴Stullich, Stephanie. 2011. "The Potential Impact of Revising the Title I Comparability Requirement to Focus on School-Level Expenditures." Policy Brief from the U.S. Department of Education, Policy and Program Studies Service. Accessed 5/13/16 at: <https://www2.ed.gov/rschstat/eval/title-i/comparability-requirement/comparability-policy-brief.pdf>.

I schools. How districts would do this would depend on local circumstances, particularly how teachers are spread across schools by experience. But many strategies districts are likely to turn to conflict with equity.

- All parties involved at negotiated rulemaking did not want to make districts do “forced transfers” of teachers. But if you need to move a lot of money around across schools, and you spend most of your money on teachers, it’s unclear how else to do it.

- Forced transfers isn’t just a union issue, it’s a quality issue. title I schools could wind up with the teachers the non-title I schools choose not to retain. If principals choose which teachers they retain, non-title I principals will release their least preferred teachers into the pool for title I schools to hire. While teacher spending at title I schools would go up, average teacher quality at title I schools could go down.

How else could districts get funds out of non-title I schools and into title I schools?

- **They could reduce existing efforts for economic or racial desegregation, or not take up new ones.** For example, recent events in Loudoun County are an example of how proponents of integration sometimes must argue against proposals that segregating high-needs students is beneficial because it gives them access to more resources.⁵ This effort to segregate students failed, but the proposed rule would give ammunition to similar efforts to segregate children because under the proposed rule, establishing or maintaining a more integrated school system could result in non-compliance if it results in a higher per pupil average in non-title I schools.

Furthermore, because the proposed rule only judges equity and compliance based on title I vs. non-title I school status, districts might give pause to anything that could raise average per-pupil spending in non-title I schools. This could include, but is not limited to:

- drawing more economically integrated school boundaries and giving additional resources to support economically diverse schools,
- voluntary school desegregation efforts like magnet schools which typically cost more money,
- transfer options or school choice options that allow low-income students to move from low-performing schools to higher performing schools, when the money follows the student,
- efforts by municipalities to integrate affordable housing into neighborhood development through zoning requirements and provide additional resources to receiving schools.
- Districts could cut back on efforts to increase teacher diversity in title I schools because increasing teacher diversity typically requires the recruitment of new, and therefore typically less expensive, teachers.
- Districts could change which eligible schools receive title I funds, either no longer serving schools that currently receive title I, or distributing funds to additional eligible schools—not based on educational need, but based on compliance concerns.
- Districts could remove or reduce specialized schools or programming if they raise the non-title I average, such as schools that focus on career technical education, performing arts, or science and technology, as well as within-school programs that address specific needs such as autism programs, dyslexia programs, or gifted and talented programs. These types of programs are often used to increase racial or economic diversity within a district.
- Districts could choose to eliminate existing, or not implement, pay for performance initiatives if they result in increased spending in non-title I schools.

The rule creates a compliance assumption that title I students are better off remaining in title I schools that receive more State and local money. District practices to intentionally dilute high concentrations of poverty at the school-level, such as those described above, may run afoul of the proposed rule.

To understand the types of mechanisms listed above, one needs to consider how districts allocate resources.

HOW THE INCENTIVES WORK: HYPOTHETICAL LINCOLN PUBLIC SCHOOLS EXAMPLE

It seems counterintuitive that a rule requiring districts to spend the same or more dollars per pupil in each of their title I schools than the average in their non-title

⁵Balingit, Moriah. March 20, 2016. “Separate but equal? Wealthy county’s plan would concentrate low-income, Hispanic students.” *Washington Post*. Accessed 5/13/16 at: https://www.washingtonpost.com/local/education/separate-but-equal-loudoun-plan-would-concentrate-poor-Hispanic-students/2016/03/20/db6f2cca-e7a8-11e5-b0fd-073d5930a7b_story.html.

I schools could result in making poor students worse off. However, to show the mechanics of these incentives, I have constructed a simplified example with a hypothetical school district, Lincoln Public Schools (LPS). Its three elementary schools are described in Table 1. In practice, the exact incentives will vary by district, mainly depending on how its teachers are distributed across schools by experience.

Table 1: Baseline Enrollment

School	Title I school	Percent poor	Poor students	Non-poor students
Adams ES	Yes	80	800	200
Main St. ES	Yes	75	750	250
Union ES	No	40	400	600

It shows each school has 1,000 students. Adams ES is 80 percent poor, Main St. ES is 75 percent poor, and Union ES is 40 percent poor. Though all three schools are eligible for title I funds under Federal law, the district has chosen to serve Adams and Main St. but not Union, with title I funds.

STAFFING METHODOLOGY

LPS weights poor students when determining how many teachers are assigned to each school—with the policy goal of having more FTEs in poor schools. The practice of using enrollment to assign teachers to schools is far more common than using enrollment to assign dollars to schools. In LPS's methodology, each non-poor student receives a weight of 1.0, and each poor student receives a weight of 1.2. Each school's weighted enrollment therefore is equal to its number of poor students multiplied by 1.2, plus its number of non-poor students (multiplied by 1).

LPS then assigns *one full-time equivalent teacher (FTE) per 20 weighted students*. 20 poor students = $20 * 1.2 = 24$ weighted students, so would generate $24/20 = 1.2$ FTEs for their school. 20 non-poor students simply generate $20 * 1 = 20$ weighted students and 1 FTE.

Table 2 shows each school's weighted enrollment and the number of FTEs per school generated under this methodology.

Table 2: Baseline Weighted Enrollment and FTEs

School	Title I school	Percent poor	Poor students	Non-poor students	Weighted enrollment	Formula FTEs
Adams ES	yes	80	800	200	1,160	58
Main St. ES	yes	75	750	250	1,150	57.5
Union ES	no	40	400	600	1,080	54

It is well-established that high-poverty schools are disproportionately staffed by less experienced teachers. Because teacher salaries rise with experience, this means that a school with fewer experienced teachers will spend less per student than another school with the same teacher:student ratio.

In this simplified example, consider only two types of teachers, experienced (paid \$75,000 per year) and inexperienced (paid \$35,000 per year). Table 3 shows the distribution of teachers by experience over the schools in LPS: 45 percent of teachers in Adams ES are inexperienced and 50 percent of teachers in Main St. ES, while 30 percent of teachers in Union ES are inexperienced.

Applying the salaries for experienced and inexperienced teachers, we can see how much each school is spending in dollars. To calculate school spending per pupil, divide this amount by the school's enrollment (not the weighted enrollment).

Table 3: FTEs, Teacher Experience and Spending Per Pupil

School	Title I school	Percent poor	Formula FTEs	Percent FTEs inexperienced	School spending pp
Adams ES	yes	80	58	45	\$3,306.00
Main St. ES	yes	75	57.5	50	\$3,162.50
Union ES	no	40	54	30	\$3,402.00

Table 3 shows how even though LPS is choosing to allocate more teachers to higher poverty schools by weighting poverty in its staffing methodology, the distribution of teacher experience in LPS means it is spending less in dollars per pupil in its title I schools than its non-title I schools.

Because there is only one non-title I school in this example, Union ES, the average spending per pupil in LPS's non-title I schools is simply spending per pupil in Union ES, \$3,402. Neither of the title I schools, Adams and Main St., spends as much per pupil. LPS would therefore not comply with the proposed rule.

During negotiations, LEA and SEA representatives spoke about how they would have to move people around in order to comply. What does this look like in this example? There are several approaches.

GETTING TO COMPLIANCE BY CONCENTRATING POOR STUDENTS

The proposed rule requires LPS to get money into its title I schools and out of its non-title I school. Because its staffing methodology means poor students bring additional FTEs to a school than non-poor students, taking poor students out of Union and putting them into title I schools will help LPS comply with the proposed rule. Table 4 shows how this would work in LPS.

Imagine LPS moves 250 poor students who previously attended (non-title I) Union ES to (title I) Main St. ES, and 250 non-poor student who previously attended Main St. to Union. It could do so in any number of ways: redrawing attendance boundaries, eliminating an intradistrict choice plan, or stopping an existing busing plan.

Table 4: Increasing Economic Segregation Yields Compliance

School	Title I school	Percent poor	Poor students	Non-poor students	Weighted enrollment	Formula FTEs	Percent FTEs inexp	School spending pp
Adams ES	yes	80	800	200	1,160	58	45	\$3,306.00
Main St. ES	yes	100	1,000	0	1,200	60	50	\$3,300.00
Union ES	No	15	150	850	1,030	51.5	30	\$3,244.50

Now, the average spending per pupil in non-title I schools (Union ES) is \$3,244.50 and both Adams and Main St. exceed that, so LPS has achieved compliance with the rule. While increasing economic segregation across schools allows LPS to comply, there is strong research consensus that this is actively bad for economically disadvantaged students. This research base underlies the Department of Education's new Stronger Together initiative, offering grants to school districts for voluntary economic desegregation plans.

In this simple example, I have not included any additional weights for students with disabilities or English learners, but such weights are common in practice and the same logic applies. The exact incentives facing a particular district will depend on its weights.

What if LPS does not want to move its students around? What other options exist?

GETTING TO COMPLIANCE BY CHANGING WHICH TITLE I-ELIGIBLE SCHOOLS ARE SERVED

In the baseline scenario described in Tables 1–3 (that is, before LPS moved students as described in Table 4) LPS had the option to serve one, two, or three of its three elementary schools, because at least 40 percent of students were poor in each school. LPS initially had been serving Adams and Main St., which were 80 percent and 75 percent poor, and choosing not to serve Union, that was only 40 percent poor. In practice, districts vary widely in how they choose which title I eligible schools, within the ranking and serving rules, and a policy like this one is not uncommon.

If LPS chooses to serve all its title I eligible schools, the new rule would not apply so the district would not be in violation. It would, however, be reallocating Federal funds from its highest poverty schools to its lowest poverty school in order to gain this exception.

LPS could also choose to no longer serve Main St. ES with title I, instead serving only Adams. In this case, the average spending per pupil in non-title I schools now would come from the average of Adams and Union rather than just high-spending Union alone (see Table 3). Low-spending Main St. now pulls down this average to \$3,282.25 (the \$3,402 PP at Union + 3,162.50 PP at Main St., divided by two), making Adams—which still would be spending the same amount as before, \$3,306 per pupil—now spending more than the average in the district's non-title I schools.

Adams therefore meets the rule. By not serving Main St., LPS is no longer required to meet any particular threshold spending per pupil at the school, though it remains a high-poverty school. Overall, this change makes LPS compliant.

INCREASING WEIGHTS ON POOR STUDENTS IN STAFFING METHODOLOGY

LPS may well want to keep title I funds in Adams and Main St. because these are its highest poverty schools, without spreading them to Union, or increasing economic segregation in its schools. If it is committed to having a consistent and transparent staffing methodology (that is, it doesn't want to use its formula and then take some fractional position out of Union in a post hoc manner to spread over Adams and Main St.) it might think increasing the weights on student poverty would help.

In this example, even if LPS increase the weight on poor students from 1.2 to 1.4, it would fall short of meeting the proposed rule. Table 5 shows how this change in weighting would affect FTEs and spending per pupil across the schools, assuming that the fraction of inexperienced teachers remains constant at each school.

Table 5: Weighting Poor Students 1.4 instead of 1.2

School	Title I school	Percent poor	Poor students	Non-poor students	Weighted enrollment	Formula FTEs	Percent FTEs inex	School spending pp
Adams ES	Yes	80	800	200	1,320	66	45	\$3,762.00
Main St. ES	Yes	75	750	250	1,300	65	50	\$3,575.00
Union ES	No	40	400	600	1,160	58	30	\$3,654.00

The average spending per pupil in the non-title I schools is still determined by Union ES, now \$3,654. The additional weight brought Adams above that level but not Main St., so LPS would not be in compliance, even after adding 19.5 FTEs as dictated by the new staffing methodology.

FORCED TRANSFERS

All parties involved in negotiations did not support the use of forced transfers of teachers and collectively bargained agreements prohibit them in many cases. However, LPS could solve its compliance problem by forcing teacher swaps: Adams and Main St. could each trade five inexperienced teachers to Union for five experienced teachers. Table 6 shows the allocation of teachers and dollars before and after that forced transfer.

Table 6: Forced Transfers Achieve Compliance

Before Forced Transfer					
School	Weighted enrollment	Formula FTEs	Inexp. FTEs	Exp. FTEs	School spending PP
Adams ES	1,160	58	26.1	31.9	\$3,306.00
Main St. ES	1,150	57.5	28.75	28.75	\$3,162.50
Union ES	1,080	54	16.2	37.8	\$3,402.00
After Forced Transfer					
Adams ES	1,160	58	21.1	36.9	\$3,506.00
Main St. ES	1,150	57.5	23.75	33.75	\$3,362.50
Union ES	1,080	54	26.2	27.8	\$3,002.00

Table 6 shows what happens when 10 experienced teachers are moved out of Union. Five of these teachers are placed in Adams and five in Main St. They are replaced at Union with five inexperienced teachers from Adams and five inexperienced teachers from Union. Because of the salary differentials, the new spending per pupil in non-title I Union is now lowered to \$3,002.00, and Adams and Main St. each spend more, complying with the proposed rule.

RECOMMENDATIONS

Given the history of title I, stakeholders are absolutely right to want to know how equity will be ensured. ESSA's statutory language does so by forcing districts to de-

scribe their resource allocation method and to show it does not penalize title I schools *because of their participation in title I*.

The statutory language prevents districts from using Federal funds to replace State and local revenue in title I schools. At the same time, it allows local school districts to design programs specific to district needs. The Department's proposed rule either requires one specific methodology (a weighted student funding formula)—and the law prohibits a federally defined methodology—or a lot of post-hoc moving around of funds, actually forcing districts to move *away* from consistent and transparent funding allocations.

The Department should work with States to make sure districts understand this rule now applies to *all* title I schools. And they should require districts to make these methodologies publicly available to improve transparency and make accountability local and meaningful.

Thank you for the opportunity to comment on this important topic.

The CHAIRMAN. Thank you, Dr. Gordon.
Ms. Marshall.

**STATEMENT OF DENISE MARSHALL, EXECUTIVE DIRECTOR,
COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, TOWSON, MD**

Ms. MARSHALL. Chairman Alexander, Ranking Member Murray, and members of the committee, I'm honored to be here today to represent COPAA, a national peer-to-peer network that works to protect the civil rights of students with disabilities and their families.

We stand strong to say our kids count, they can achieve, and what they need and deserve is an equal opportunity to succeed. COPAA thanks you for your bipartisan leadership in passing our Nation's general education law, the Every Student Succeeds Act.

We worked very closely throughout the reauthorization with our disability, civil rights, and business communities to ensure that ESSA included critical provisions that would, in fact, buoy up the students it is intended to support. This includes 7.7 million black students, 13.1 million Hispanic students, 25 million students from low-income families, 4.5 million English language learners, and 6.4 million students with disabilities.

ESSA gained COPAA's support precisely because, although it has that great focus on State flexibility, which is important, we were also able to ensure that it had accountability, key provisions that would protect all. It's harsh to recall and it's unbelievable to realize that students with disabilities only had access to education in my lifetime, but it took them 40 years. Prior to the passage of No Child Left Behind, they were not counted. They were not included in the assessments in the State, local, or district accessibility systems, and as a result, they were all but invisible.

Not including them in the count and not holding schools accountable for their learning limited access to the general education curriculum and created separate and often segregated instruction. Parents had no idea how their children were doing in school as compared to the State standards. Now, the requirements of ESSA give us clear information that can assist parents in assuring their child can access the regular classroom, access the regular curriculum, and have a real shot at a regular diploma.

This is a civil rights law, and we have fought hard for equal access. Our kids want in, and our families deserve to have the same data about their child's achievement as every other child in the

building. Through the eyes and ears of the COPAA network, we know the importance of this law and its regulations to keep expectations high.

Coupled with the requirements of the IDEA and other Federal laws protecting the rights of students and their families, the provisions in ESSA can change the trajectory of a student's life. I want to share two stories. One is about Bruce, a 19-year-old from South Carolina who struggled and suffered, bullied relentlessly, unable to keep up because of his dyslexia. But with the relentless efforts of his parents and his educators and the right services for his dyslexia, he is graduating high school, has a full-time job, and heading to college in the fall.

And Blair, a young woman from Pennsylvania who with accommodations and the support of her service dog graduated high school and is currently a public relations major in college. We have a long way to go before we can support the success of all students. But we know the possibilities for each to succeed are substantial and real.

Today, I focus on some important provisions for us: Creating that public transparency in the data, which I know we all share, and requiring school leaders to do something about it when the data shows there is reason to act. Accountability equals responsibility. ESSA no longer contains the mandates and consequences of its predecessor, and I think we were all dancing for that.

But the responsibility lies squarely with the schools. ESSA includes core principles and important guardrails that we know can both guide educational decisionmaking and protect resources and students. Critical provisions are intended to assure, and strong regulations must support the requirement for action when outcomes or the lack thereof demand it.

We have to have State-designed systems that have rigorous goals and interim measures of progress; that have statistically valid summative ratings on both academic and the additional quality indicators; clear requirements for identification and intervention in each of the three categories of the law; timely, evidence-based intervention focused on raising achievement. We simply cannot leave any child to languish with no intervention. They need to have the intervention and services in a timeframe that can have an impact in their educational lifetime.

We also want title I regulations to provide for a range of statistically reliable and accepted N sizes, and we want to assure State support is provided to districts to reduce bullying, harassment, and discipline, and the use of restraint and seclusion, all of which are disproportionately used on students with disabilities and students of color and result not only in harm and trauma, but make it impossible for them to learn. We need safe school climates.

You passed ESSA to advance the educational equity and serve the interests of all students. That is the test and the measurement that counts. State and district efforts to implement ESSA must target policies and resources on the urgent needs of students in what is arguably the most important journey of their formative lives, their K to 12 education.

I want to just finally add that I urge us to get past the tug of war of control and figure out a way to invest equitably in students

and find innovative ways to assure that greater numbers of students, including those of color, ELL, and with disabilities, are able to succeed.

I thank you for this opportunity, and I look forward to your questions.

[The prepared statement of Ms. Marshall follows:]

PREPARED STATEMENT OF DENISE MARSHALL

Chairman Alexander, Ranking Member Murray and members of the committee thank you for inviting me to testify today on the implementation of the Every Student Succeeds Act (ESSA). I am Denise Marshall, executive director of the Council of Parent Attorneys and Advocates (COPAA). COPAA is a national non-profit peer-to-peer network of parents, attorneys, advocates, and related professionals who work to protect the civil rights and secure excellence in education on behalf of the 6.4 million children with disabilities¹ attending public school across the United States. We are an important voice in our children's education and we stand strong and loud to say our kids count, they can achieve and they want an equal opportunity to succeed.

It is through your bipartisan partnership that the Nation's general education law has successfully been updated. COPAA appreciates your leadership to accomplish this. Throughout the reauthorization process, COPAA worked closely in coalitions with the disability, civil rights and business communities—across lines that often divide us on public policy issues—to assure that ESSA included provisions we all believed were critical to assuring students for which the law is intended to support—would in fact do so. And yes, in the process, *none of the parties invested in ESSA's outcome secured everything they wanted*, however, COPAA believes ESSA does include the essential components that protect and support our most disadvantaged students.

These students are the: 7.7 million Black students; 13.1 million Hispanic students; 25 million students from low-income families; 6.4 million students with disabilities; and 4.5 million English Language Learners² who attend our Nation's public schools.

ESSA gained COPAA's support because, while it provides new flexibility for decisions to be made by States and districts, it does include several provisions that we believe are key to providing continued accountability for all students, including students with disabilities who, as you know, prior to the passage of No Child Left Behind (NCLB) had *never been included* in State assessments and in school, district or State accountability systems. While hard to imagine, it's true and while the performance of all student groups, including students with disabilities, has risen dramatically between 2000 and 2013,³ the achievement gap is still far too large between White students and students of color. And, students with disabilities continue to lag far behind on substantive outcomes that we know predict future success, especially on key outcomes such as: grade level proficiency in reading and math; graduation from high school; matriculation into college and, becoming employed.⁴ We do see improvement when districts and States take seriously the need to set high expectations for all students; to increase and sustain full access to the regular classroom staffed with trained and certified teachers; and, to provide the instructional support, interventions and accommodations that allow students with disabilities to succeed alongside their peers.

Through the eyes and ears of our network of members, we know the importance of the law and its accompanying regulations to keep expectations high and change the trajectory of student lives. I'd like to share a few COPAA stories to remind us all of what the real possibilities are for real students.

¹IDEA eligible students ages 3–21, (2012). NCES, U.S. Department of Education.

²National Center on Education Statistics at: <http://nces.ed.gov/fastfacts/#>.

³National Center on Education Statistics, National Assessment of Educational Progress (NAEP), 2015, at <http://nces.ed.gov/nationsreportcard/pubs/main2013/2014451.aspx>.

⁴37 percent of 8th grade students with disabilities scored at or above basic in reading on the National Assessment of Education Progress (NAEP), compared with 81 percent of students without disabilities; 63 percent of students with disabilities graduate from high school as compared to 82 percent of students without disabilities; and, 19.1 percent of people with disabilities are participating in the U.S. Labor force as compared to 68.2 percent of people without disabilities. See: National Center on Education Statistics, National Assessment of Educational Progress (NAEP), 2015, at <http://nces.ed.gov/nationsreportcard/pubs/main2013/2014451.aspx>. National Center on Education Statistics, 2013–2014, at http://nces.ed.gov/ipeds/data/ACGR_RE_and_characteristics_2013-14.asp; U.S. Department of Labor, 2015 at www.dol.gov.

Bruce, a 19 year-old from South Carolina struggled and suffered; bullied relentlessly, unable to keep up, suffered trauma and self-esteem issues from low expectations due to his inability to read. The fact is that Bruce is incredibly bright, and with persistence, relentless efforts of his parents and educators, and the right services and supports for his dyslexia—he graduated high school and is off to college in the Fall.

Mariano from California has an Individualized Education Program and is working hard in high school to fulfill his goal to play and conduct for the New York Philharmonic Orchestra—and to be a Music and History Professor.

Blair, a young woman from Pennsylvania, who with accommodations and the support of her service dog, graduated high school and is currently a sophomore at York College. She is a Public Relations major with a minor in Nonprofit Management.

ACCOUNTABILITY: WHY IT MATTERS & WHAT IT INCLUDES

Today, I'd like to focus on the important components of ESSA that are inherently linked to both creating public transparency in the data—which is a goal I know we all share—and giving school leaders and the public the information and requirements necessary to actually do something when the data show there is reason to do so. I'd also like to reiterate what we've said throughout the reauthorization and as I've shared through several stories: *real accountability for student subgroups matters and it matters to children right now*. Real accountability is not an esoteric exercise in reporting test scores and it is not about gaming the numbers so it appears as if schools are doing better than they really are, nor, as history has shown, is it setting standards so low that the diploma students receive is virtually worthless when they try to enter the military, matriculate into college or access career training only to find they are ill-prepared for the next phase of their life. Accountability is responsibility—and now that important responsibility lies squarely with the school, the district and the State.

ESSA assures that this shift in responsibility is still backed by core principles and important guardrails that we know can both guide educational decisionmaking and protect resources and students. While ESSA no longer contains the mandates and consequences of its predecessor, it does include critical provisions intended to assure the adults responsible for the children do something when outcomes demand it.

A key function of a school accountability system is to communicate what is expected of schools both to the schools themselves and to the public. In order for school accountability systems to support improvement and gap closing, these expectations have to be both rigorous and focused on student outcomes. Schools and districts must be compelled by the important combination of data and accountability requirements to provide the instructional support, intervention and supports students need and in a timeframe that will actually impact struggling students. States must design systems that will strike this critical balance.

Unfortunately, past history shows that when left to their own devices, States often set expectations for their schools far too low. They typically do this because pressure from special interest groups makes setting rigorous goals too daunting. In fact, States have set graduation goals as low as 60 percent and allowed as little as .1 percent of annual growth to count as progress against State goals. Recently, we've also seen how easily States can allow the focus of accountability to shift away from student learning. This is unacceptable.

Sarah, a parent currently living in Maryland, whose husband is active military, knows firsthand from advocating across multiple States due to family moves, that academic expectations and allowed level of parent involvement vary greatly from State to State and from school to school. The fact is that one mile, whether it's a country mile or a city mile, can make a huge difference in educational opportunity and therefore in the life of a family and a child. While we respect State rights and autonomy, Sarah and so many other parents like her across our great country urge regulators to use all authority to put up guardrails in ESSA that ensure meaningful progress is realized toward closing the achievement gap for at risk children. We must have clear regulations for such areas as the definition of "consistently underperforming" and specifying timeframes for necessary intervention and action when subgroups of students are not achieving to ensure Sarah's children and all at-risk children do not slip through the cracks or experience multi-year delays in their educational progress.

We must stay focused on the **purpose of ESSA** which as stated in the statute is: *"To provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."* COPAA and the entire civil rights community has long recognized equal educational opportunity as

central to our struggle to achieve equality for all Americans. Full ESSA implementation must not delay nor promote retreat.

Our children deserve better and require prompt action. So, we want an accountability system, designed by each State that will ensure:

- (1) the expectations for all student groups are rigorous;
- (2) the State-designed school ratings reflect the learning outcomes of all groups of students, and
- (3) meaningful action is taken whenever the school is underperforming for all students or for any student group.

In order to achieve these three important components of State accountability systems, we have encouraged ED, through forthcoming ESSA regulations on accountability to assure that:

- States explain their methodology for setting ambitious goals and interim performance targets that require significant progress toward closing achievement gaps.
- States fully understand and provide the [types of] clear evidence needed to demonstrate that their goals meet their system’s criteria including alignment with State standards and levels of achievement as applicable.
- States provide a statistically valid *summative* rating based on their academic indicators and the additional school quality indicator(s) to annually provide meaningful differentiation between schools and determine how the school is doing in meeting the interim performance targets and ambitious goals.
- All school quality indicators are disaggregated by student group within each school as required in ESSA in a statistically valid manner.
- State systems maintain a strong focus on student achievement and attainment including that States have to demonstrate that the other indicator of school quality cannot be weighted such that it prevents a school from being identified for comprehensive support and improvement, targeted support and improvement, or additional targeted support and improvement if the school would have been identified as such based on the academic indicators.
- States base the definition of “consistently underperforming” on their statewide goals and interim performance targets for each group of students. The definition for consistently underperforming must not be based on the size of the achievement gaps within schools. States must publicly report their definition of “consistently underperforming,” including both the level and duration of underperformance required. Because ESSA requires States to ensure that their accountability systems clearly identify and require action in any school that is *consistently underperforming* for any group of students. The fact that both school identification and action are triggered by “consistent underperformance” the way this term is defined will be critical to ensuring that schools are held accountable for the performance of *all* groups of students. A lax definition could allow some students to languish for years in schools that are not serving them well.
- In alignment with the statute, States are prohibited from measuring the performance of a super-group of students in place of individual student groups. In recent years, as more and more States have been designing their own accountability systems, many have chosen to base their school ratings either solely on schoolwide average performance, or on schools’ performance for students overall and for a super-group of students. As a result, in most States, school ratings tell parents and community members little about how schools are performing for individual groups of students. Schools that are doing fairly well on average, but are performing poorly for, for example, their poor students, or their students with disabilities, are allowed to ignore this underperformance.
- School accountability [summative] ratings, or combination of ratings (be they letter grades, other labels, index values or rankings etc.) must reflect how each school is performing for each group of students that it serves, as well as whether the school is consistently underperforming for any student group. Ratings must be based on disaggregated results for each group of students, and differentiate schools that consistently underperform for *any* group.
- States demonstrate how their exit criteria for schools identified for comprehensive support and improvement, as well as for those requiring additional targeted support and improvement (a) require meaningful, sustained improvement on the indicators in the system, and (b) are related to the State’s long-term goals and interim progress targets. Exit criteria are public and States must describe how the school meet the criteria.
- States specify what constitutes “unsuccessful implementation” of improvement plans in targeted support and improvement schools; timelines for escalated action in comprehensive support and improvement and additional targeted support and improvement schools; and, describe how they will ensure that their districts take ac-

tion in targeted support and improvement schools within a reasonable timeframe. The law is not clear on what constitutes “unsuccessful implementation”—a term that is important both for setting clear improvement expectations and for preventing students from languishing for an extended period of time in schools that are not serving them well. Also, States must intervene in schools receiving comprehensive support and improvement that do not meet exit criteria within a State-determined number of years (not to exceed 4 years per ESSA).

- States describe how they will determine the appropriate supports and interventions for comprehensive support and improvement schools and additional targeted support and intervention schools that do not meet State-determined exit criteria. In addition, States should be required to describe how they will ensure that their districts will take similarly meaningful action in targeted support and improvement schools that do not make necessary improvements.

In addition to the specific accountability provisions articulated above, COPAA has also advocated for title I regulations that, in summary, support a strong accountability system and provide:

- clear requirements for identification, intervention and exit criteria for schools in each of the three categories identified in the law—the bottom 5 percent, schools with graduation rates below 67 percent and schools with consistently low performing groups of students; and assure evidence-based intervention systems focused on raising achievement are initiated whenever any school is underperforming for *all* students or for *any* student group so that students don’t languish year after year without help;
 - definitions and/or parameters set for new statutory terms—specifically for new terms: “*meaningful differentiation*,” “*substantial weight*” and “*much greater weight*”;
 - specifications that the 95 percent participation requirement is included in the accountability system so the performance of students matters, provide Federal guidance on options for doing so and define consequences for failure to meet the requirement;
 - assurances for support to districts to reduce bullying, harassment, use of disciplinary practices (e.g. suspension and expulsion) and use of aversives (e.g. seclusion and restraint), all of which disproportionately impact students with disabilities and students of color;
 - universal access in all data reporting; cross-tabulated data and expansion on the availability of data disaggregated by Asian American and Pacific Islander categories;
 - clarity that supplement, not supplant provisions presume and ensure an equal base of actual per-pupil funding before any Federal funds are considered supplemental.

ACCOUNTABILITY: CALCULATION AND REPORTING

The basis of a good accountability system is a reliable cell size, or *N* size. The minimum subgroup size, or “*N*” size, established by many States under NCLB resulted in seriously limiting accountability for students with disabilities. A 2013 report of subgroup sizes used in States found that across 40 States with relevant data for the 2008–9 school year, *slightly more than a third (35 percent)* of public schools were accountable for the performance of the students with disabilities subgroup, representing just over half (58) percent of tested students with disabilities in those States.⁵

States must assure the subgroup data used as the basis of their accountability determinations and reporting truly reflect the students attending school while still protecting privacy. COPAA has also advocated that in addition to ED providing regulations that provide a range for statistically reliable and acceptable *N* sizes to States so that as many students are included in school, district and State accountability metrics as possible and that ED must also clarify that while subgroup size must be the same for all subgroups, subgroup size *may vary depending on the metric*, i.e., proficiency, participation and graduation rate.) While subgroup size for proficiency involves statistical reliability (the degree of confidence associated with the decision of whether or not enough students in a subgroup performed above the cut point for proficiency to meet the annual objective), test participation and graduation rate calculations are only tempered by the requirement to not reveal personally identifiable information (the inability to determine from the subgroup values reported how an individual student performed on an indicator).

⁵ 2013 *The Inclusion of Students with Disabilities in School Accountability Systems*, Institute for Education Sciences, U.S. Department of Education at: <http://ies.ed.gov/ncee/pubs/20134017/>.

Accountability for the outcome of each child's journey remains critically important and matters more than ever. We must not give into the belief and argument by some that all our struggling schools need is just more resources and more time. COPAA insists that accountability at the school and district level is often the only tool to assure action occurs when low income, minority, English learners and students with disabilities are in miserable need for more.

RULEMAKING AND MOVING TOWARD IMPLEMENTATION

As we anticipate new regulations to be promulgated on ESSA's accountability provisions, COPAA supports ED's goal to assure such regulation provides clarity to States and districts as they strive to implement the new law. In previous testimony, COPAA said:

COPAA and its civil rights and business coalition partners are confident that the provisions [in ESSA] are specific and limited enough as to not erode the regulatory authority of ED. The statutory language acknowledges that regulations will be promulgated. In so doing, the Secretary of Education will issue regulations that clarify and interpret statutory provisions to help schools and districts in implementing the law and to protect the rights of all children—without exceeding the scope of the statute and without being inconsistent with the statute. This regulatory action is necessary and appropriate to fulfill the requirements of the law. It is clear that ED has the correct regulatory authority to develop regulations for implementation, as noted in the beginning of section 1111(e)(1)(A). Prior to enactment of the ESSA, at no time has the Secretary of Education had the authority to promulgate regulations that are inconsistent with or outside the scope of Federal law.

We know from past history regarding civil rights laws that we need regulations in order to ensure the law is implemented. The effect of no regulations means that courts must adjudicate the intent of the statute. An example is the turmoil that happened when the section 504 statute of the Rehabilitation Act was passed in 1973 and there were no regulations issued. In order for this law to become effective, regulations had to be issued defining who was a "person with a disability" what did "otherwise qualified" mean, what constituted "discrimination" and "nondiscrimination" in the context of disability etc. Enforcement timelines had to be developed as well as an administrative enforcement mechanism. The regulations would provide a consistent, coherent interpretation of 504s legal intent rather than leaving it up to any judge who heard a 504 case to interpret what the law meant. There was much delay; the disability community filed a lawsuit in Federal court; the judge ruled that regulations must be issued but not when. After much back and forth with the Carter administration, regulations were finally issued in 1977. History has taught us that the courts are not set up to be experts.

We also know that States' provisions that restrict entitlements established by Federal statutes are void under the Supremacy Clause of the Constitution. The Supreme Court has applied this principle in cases regarding benefit programs in which the Federal Government provides funding to States on the condition that they comply with the terms of the Federal program, the same arrangement that exists for special education under IDEA. The Court held that the State was not free to adopt a definition that restricted benefits in a way the Federal statute did not specifically authorize.

In its simplest form, regulation allocates responsibility to implement statutory law. Our Founding Fathers were insightful in their separation of powers. The members of the Judicial Branch are experts in judging the law, Congress maintains the knowledge in making laws and the executive branch holds the expertise in implementing the laws. Where we get in trouble is where one branch tries to do the job of another.

The test of regulations, guidance, technical assistance and other implementation activities for ESSA must be *whether or not they advance educational equity and serve the interests of all students*. Low-income students, students of color, students with disabilities, English learners, and Native students deserve no less than robust and thorough regulation to close opportunity and achievement gaps.

COPAA is satisfied with the recent outcome of negotiated rulemaking on draft regulations focused on ESSA's assessment provisions. In our view, a delicate balance was struck to ensure that all students are fully included in State assessment systems and that students with disabilities in particular will have access to testing accommodations and assistive technology and be properly included in State guidelines as required when States develop alternate assessments on alternate academic achievement standards. We were also content with provisions included to guide ED

in determining whether States can access annual waivers to exceed the cap on student participation at the State level on alternate assessments. Good statutory language helped support this thoughtful negotiation and we thank this committee for your leadership and support in protecting students with the most significant cognitive disabilities whose disabilities are often used as the sole reason to lower expectations and relegate such students to segregated settings thus limiting access to the regular classroom, to a regular diploma and to competitive employment.

We were disappointed however, that agreement was not reached to ensure funding equity in the “supplement, not supplant” provisions because title I funding is critical to improving our most impoverished schools. Although students with disabilities are found in every school, the disability community is particularly concerned about the needs of students with disabilities in high-poverty schools and are likely to bear the brunt of weak instruction, insufficient supports and inadequate services which further stresses teaching staff who already have to do too much with too little and it perpetuates and widens the achievement gap for these students. Students of color who have disabilities are some of the most marginalized students in our schools today, they are more likely to be found in high-poverty schools than their White, nondisabled peers and are disproportionately impacted by harsh and exclusionary disciplinary practices. We cannot continue to deny these schools their fair share. Students with disabilities in high-poverty schools are the short-changed of the short-changed. These dollars mean more to them than just about anyone.

CONCLUSION

It is COPAA’s hope that in State and district efforts to redesign and implement ESSA locally, that they will work with our families and others to use this as an opportunity to focus and target new policies and valuable resources on the serious and urgent needs of students. By doing so, COPAA believes ESSA implementation can support students in what is arguably the most important journey of their formative lives—their K–12 education. This new responsibility taken on by States can assure that the success of more students like Bruce Blair and Mariano are the reality for all of America’s children. Thank you for this opportunity and I look forward to your questions.

The CHAIRMAN. Thank you, Ms. Marshall.
Ms. Murguía.

STATEMENT OF JANET MURGUÍA, J.D., PRESIDENT AND CEO, NATIONAL COUNCIL OF LA RAZA, WASHINGTON, DC

Ms. MURGUÍA. Thank you, Mr. Chairman. Chairman Alexander and Ranking Member Murray, I really want to thank you all and all members of the committee for the opportunity to appear before you here today and to discuss a subject that is so critically important to the civil rights community, this implementation of ESSA.

For over a decade, I’ve served as President and CEO of the National Council of La Raza, NCLR. We’re the largest civil rights and advocacy organization in the United States representing Hispanics, and we represent over 250 affiliates which are community, local-based organizations serving Latino and immigrant populations nationwide.

I was very proud to stand with many of you behind the President when this important legislation was signed into law. Thank you for your leadership. We know it has the potential to benefit 13 million Latino students and 5 million English learners across the country. For the first time, English learner students will be included in States’ accountability systems, and States must standardize entrance and exit criteria for these students. That is a big step.

My remarks focus on Latino educational attainment. I will share ways that appropriate implementation of ESSA can improve outcomes for communities of color. Last year, American schools reached a significant demographic milestone. A majority of students in our classrooms were students of color. As schools across

the country have become increasingly diverse, Latino students make up 25 percent of our K through 12 enrollments, the second largest group of students in schools after white students.

In part as a result of comparable standardized assessments and college and career oriented curricula, Latino students are now graduating at higher rates than ever, and they are enrolling in postsecondary institutions in record numbers. However, despite improvements in key areas, inequalities in access and achievement among Latino and other students of color remain persistent, and still too many Latino students are not college ready.

According to the 2015 National Assessment of Educational Progress, regrettably, nearly half of Latino fourth graders were reading at below basic levels compared to 21 percent of whites, a startling statistic given our changing workforce. As the Department of Education moves forward implementing ESSA, it is important to recognize the legacy of the original Elementary and Secondary Education Act in promoting equity for our Nation's most vulnerable children.

It is imperative that Federal funds are used to supplement State and local resources for those most in need. Students in high poverty districts receive nearly 10 percent less in State and local funds per student than those in the lowest poverty districts, meaning students in districts most in need of extra services staff or educational supports, including English language instruction, are being short-changed. The future success of students of color and English learner students in large part depends on addressing this resource gap.

In addition to furthering equity, ESSA mandates that the Department of Education issue regulations to hold schools accountable if groups of students are not meeting challenging academic standards. While States and districts have flexibility in designing their accountability plans, the Federal Government must play a role to ensure progress for these students does not erode. To this end, the Department of Education should set clear parameters for State accountability systems and timely interventions for students falling behind.

Finally, we know the Department of Education cannot fulfill its mandate alone. Stakeholders from the business and civil rights communities have a role to play to ensure States and districts faithfully implement the law's requirements. Already, Conexión Américas, a Nashville-based affiliate, has organized partner organizations to jointly engage the Tennessee Department of Education on the State's accountability and equity plans, making the case for needs of Latino and immigrant students.

In the months ahead, these stakeholders will be closely monitoring the regulatory process to emphasize ESSA's potential to promote an educational system that is transparent, accountable, and equitable to further the achievement of all students.

Thank you, and I look forward to working with all of you as we implement this important law.

[The prepared statement of Ms. Murguía follows:]

PREPARED STATEMENT OF JANET MURGUÍA, J.D.

INTRODUCTION

Chairman Alexander, Ranking Member Murray, and distinguished members of the committee, thank you for inviting me to appear this morning on behalf of the National Council of La Raza (NCLR), where for more than a decade I have served as the president and CEO. I thank you for your leadership to enact bipartisan, comprehensive education reforms and I appreciate the opportunity to provide expert testimony today on the implementation of landmark civil rights legislation, the newly reauthorized Elementary and Secondary Education Act. This law is a top priority for the Nation's 55 million Latinos and its successful implementation is vital to the Nation's future.

NCLR is the largest national Hispanic civil rights and advocacy organization in the United States, an American institution recognized in the book *Forces for Good* as one of the leading nonprofits in the Nation. We have a network of more than 250 Affiliates—local, community-based organizations in 41 States and the District of Columbia that provide education, health, housing, workforce development, and other services to millions of Americans and immigrants annually.

Many of these Affiliates operate as charter schools, provide early education, or offer after-school programming or family literacy services. The programmatic efforts of our Affiliates helps to inform NCLR's national policy agenda.

NCLR was on the forefront of embracing standards-based education reforms and has a record of supporting policy grounded in student-based outcomes that will result in equality of opportunity for all children, regardless of circumstance. We applauded the passage of the Every Student Succeeds Act as a much-needed update to our Federal education law, but recognize that passage was just the first step. It is critical that ESSA be implemented in a manner consistent with the original Elementary and Secondary Education Act to ensure its promise for all students.

My testimony today will focus on the importance of ESSA in closing the achievement gap for students of color, and the ways in which implementation can further this goal. I strongly believe that if implemented appropriately, ESSA has the opportunity to prepare a new generation of students, including English learners, for a changing and competitive U.S. workforce.

CLOSING THE ACHIEVEMENT GAP

Last year, American schools reached a significant demographic milestone: a majority of students in our classrooms were students of color. As schools across the country have become increasingly diverse, much of the shift can be attributed to the Latino students who account for 25 percent of our K–12 enrollments and represent the second-largest group of students in schools after White students. In 2013, Hispanic 3- and 4-year-olds alone made up nearly 40 percent of our current pre-K enrollment.¹ This fact has prompted the U.S. Department of Education to project that by 2024, Hispanic students will account for nearly one-third of total enrollments, from early childhood through grade 12.²

In addition to overall population growth, the Latino population is no longer concentrated in a few States. In 2012, every region in the United States experienced growth in the share of Latino students in schools.³ In fact, according to a report from Pew Hispanic Center, in 2012, Hispanics made up more than 20 percent of kindergarten classes in 17 States. As a result, policymakers and other leaders in education must work to ensure that our educational system prepares all children, including the growing Latino population, for academic success.

As the number of Latino students has increased in recent years, the number of English learner (EL) students has also grown. Currently, there are nearly 5 million ELs enrolled in schools across the country.⁴ Nearly 80 percent of EL students are from a Spanish-speaking background.⁵ In the last decade, the EL population has in-

¹U.S. Department of Education, "Digest of Education Statistics 2014," Table 202.25, http://nces.ed.gov/programs/digest/d14/tables/dt14_202.25.asp?current=yes (accessed May 15, 2016).

²U.S. Department of Education, "Digest of Education Statistics 2013," Table 203.60, http://nces.ed.gov/programs/digest/d13/tables/dt13_203.60.asp (accessed May 15, 2016).

³U.S. Department of Education, "Digest of Education Statistics 2014," Table 203.50, http://nces.ed.gov/programs/digest/d14/tables/dt14_203.50.asp (accessed May 15, 2016).

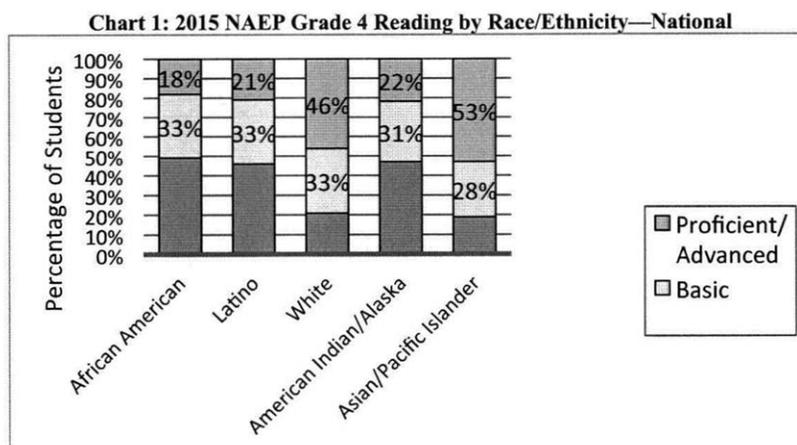
⁴U.S. Department of Education, *The Biennial Report to Congress On the Implementation of the Title III State Formula Grant Program*. Washington, DC, 2012, http://www.ncela.us/files/uploads/3/Biennial_Report_0810.pdf (accessed May 15, 2016).

⁵Ibid.

creased by 7.1 percent,⁶ predominately in States in the Midwest and Southeast that traditionally have not had significant EL populations.⁷

In part as a result of comparable standardized assessments and college- and career-oriented curricula, Latino students are now graduating from high school at higher rates than ever,⁸ their high school dropout rate is the lowest it has ever been, and they are enrolling in postsecondary institutions in record numbers.⁹ However, despite improvements in key areas, inequities in access and achievement between Latinos and their peers remain.

According to the 2015 National Assessment of Educational Progress (NAEP), nearly half of Latino fourth graders were reading at below basic levels compared to only 21 percent of Whites (Chart 1).¹⁰ These disparities are even starker for Black students: only 18 percent of students scored proficient in fourth-grade reading compared to 46 percent of Whites in the same year.¹¹ Scores for math show similar data in disparities among students of color and their White counterparts. Fewer than one-third of Black, Latino, and Native American students scored proficient in eighth-grade math,¹² a startling statistic given the increased demand for high-skilled jobs in our Nation's workforce.



Source: National Center for Education Statistics, NAEP Data Explorer, <http://nces.ed.gov/nationsreportcard/nde/>.

As diversity increasingly becomes a fact of our Nation's education system, it is important that policymakers at all levels of government assess current supports and services to ensure that the instructional needs of Latino students and their families are met. Schools must be prepared to teach a changing population of students, including more ELs. To address this reality, schools need financial resources to provide essential professional development for personnel and educational supports to create an inclusive environment that attends to the cultural and linguistic needs of Latino and EL students. Teachers, administrators, and others must have the tools necessary to help these students achieve college- or career-readiness.

ADDRESSING RESOURCE INEQUITIES

The Elementary and Secondary Education Act was enacted in 1965 to provide resources for our Nation's most vulnerable children—children living in poverty with few opportunities available. Consistent with this goal, it is imperative that Federal

⁶ Ibid.

⁷ NCLR calculation using U.S. Department of Education, "Digest of Education Statistics 2013," Table 203.50, http://nces.ed.gov/programs/digest/d13/tables/dt13_203.50.asp (accessed May 15, 2016).

⁸ U.S. Department of Education, "Digest of Education Statistics 2013," Table 219.70, http://nces.ed.gov/programs/digest/d13/tables/dt13_219.70.asp (accessed May 15, 2016).

⁹ U.S. Department of Education, "Digest of Education Statistics 2013," Table 302.60, http://nces.ed.gov/programs/digest/d13/tables/dt13_302.60.asp (accessed May 15, 2016).

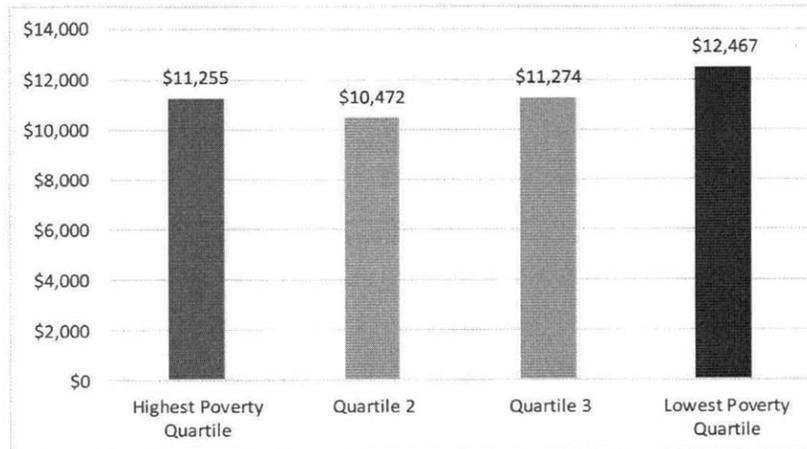
¹⁰ Daria Hall, "The Every Student Succeeds Act: Implications for State and Local Policymakers" (presentation, The Education Trust, Washington, DC, March 2016).

¹¹ Ibid.

¹² Ibid.

funds are used to supplement State and local resources for those most in need. Yet, a recent analysis from the Education Trust found that students in high-poverty districts receive nearly 10 percent less in State and local funds per student than those in the lowest-poverty districts (Chart 2).¹³ Students in districts most in need of supplemental funds are literally being short-changed.

Chart 2: Average State and Local Revenues Per Student, by Poverty Quartile



Source: Education Trust. 2015, *Funding Gaps 2015*, http://edtrust.org/wp-content/uploads/2014/09/FundingGaps2015_TheEducationTrust1.pdf.

When the data is disaggregated by race, patterns emerge wherein school districts with high numbers of students of color receive less in local funding than districts serving few students of color. Nationally, districts serving the most students of color receive roughly \$2,000 or 15 percent less in State and local funding per student than districts serving the fewest.¹⁴

As enacted, ESSA requires that Federal funds, including funds for titles I and III, *supplement* rather than *supplant* dedicated State and local funding. At its core, this provision is designed to provide eligible students in high-poverty districts with extra services, staff, or educational supports, including English language instruction, that would not otherwise be available to them.

However, there is a pattern of unequal access to educational resources for students of color and ELs:

- English learners represent 5 percent of high school students, but only 2 percent of Advanced Placement course enrollment.¹⁵
- Latino students represent 21 percent of high school enrollments, but only 12 percent of students enrolled in calculus.¹⁶
- Black and Latino students are 1.5 times more likely to be taught by novice teachers compared to schools with lower Black and Latino enrollments.¹⁷

Lack of access to rigorous coursework and effective teacher supports inhibit students from reaching their full potential. Unequal educational resources for students of color undermine the goals of our civil rights and K–12 law—to provide each stu-

¹³Natasha Ushomirsky and David Williams, “Funding Gaps 2015: Too Many States Still Spend Less on Educating Students Who Need the Most,” (Washington, DC, The Education Trust, 2015), http://edtrust.org/wp-content/uploads/2014/09/FundingGaps2015_TheEducationTrust1.pdf.

¹⁴Ibid.

¹⁵Letter from Catherine E. Lhamon, Assistant Secretary for Civil Rights, U.S. Department of Education, Office for Civil Rights, “Dear Colleague Letter: Resource Comparability,” <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

¹⁶Ibid.

¹⁷Ibid.

dent with a high-quality education regardless of race, ZIP code, or national origin.^{18 19}

FULFILLING ESSA'S PROMISE

As a result of the leadership on this committee, Congress, and stakeholders in the civil rights community, ESSA includes landmark provisions for EL students. For the first time, States must include EL students in their accountability systems. Moving forward, advocates must solidify these hard-fought policy victories through extensive State-level engagement. State plans must include challenging goals for English language proficiency and find appropriate ways to include English language proficiency in school ratings systems. States must also report on ELs with disabilities and long-term ELs so parents and stakeholders can ensure these students receive needed supports. Additional resources authorized under the law should be appropriated to help improve outcomes for EL students. For too long, programs for EL students, especially in high-poverty districts, have not been adequately supported.

ESSA provides the Federal Government with appropriate authority to pursue an education agenda strongly rooted in distributional equity to improve the educational outcomes for children. For example:

- The law requires States to adopt high standards aligned with credit-bearing coursework at State systems of public higher education to ensure students are receiving a 21st century education.
- States must annually assess students in reading and math in grades three through eight and once in high school and issue a science test at each grade span to ensure students are meeting challenging academic standards.
- Critically, the law requires targeted supports and interventions, including additional resources, for schools if a subgroup of students is consistently underperforming. This hard-fought victory for the civil rights and business communities ensures that all students, regardless of income-level or race or ethnicity, will have the opportunity for success.

The U.S. Department of Education has an obligation grounded in ESSA's legislative intent to promulgate robust regulations related to accountability. Likely, without strong Federal oversight, progress for students of color seen over the last decade will erode. While the law cedes significant discretion to States and districts in the design of their accountability plans, as a counter-measure it also mandates consultation with key stakeholders including the civil rights community, the business community, and community-based organizations, like NCLR Affiliates. For example, Conexión Américas, a Nashville-based Affiliate, has proactively engaged the Tennessee Department of Education on the State's accountability and equity plans, making the case for needs of Latino and immigrant students. Other States and districts may benefit from this type of stakeholder input.

In addition, the U.S. Department of Education has ample authority to regulate elements of ESSA to promote the educational advancement of low-income students. Beyond resource-based rulemaking, the Department of Education should examine the following:

- Making systems work for low-income kids through strong accountability guidance.
- Providing timely interventions for students who are falling behind academically.
- Addressing resource inequities for students in high-poverty schools and ensuring that students who need additional supports, like English learners and students with disabilities, can reach their full potential.

As the Department begins its regulatory process, the goal is always to ensure a thoughtful focus on educational equity and advancing the educational achievement for all kids, especially those in vulnerable situations.

CONCLUSION

Despite clear gains, barriers remain for students of color in achieving academic success. NCLR believes that poverty and other barriers to economic mobility will never be eradicated unless children from communities of color are thriving in our

¹⁸ *Every Student Succeeds Act*, Public Law 114–95, 114th Cong., 2d sess. (December 10, 2015).

¹⁹ *Civil Rights Act of 1964*, Public Law 88–352, 78 Stat. 241 (July 7, 1964), Title VI.

²⁰ Jens Manuel Krogstad and Richard Fry, “Dept. of Ed. projects public schools will be ‘majority-minority’ this fall,” *Pew Research Center*, August 18, 2014, <http://www.pewresearch.org/fact-tank/2014/08/18/u-s-public-schools-expected-to-be-majority-minority-starting-this-fall/> (accessed May 15, 2016).

classrooms. Composing more than 50 percent of today's public school students,²⁰ students of color are a significant presence in the K–12 system. The success of our Nation's workforce is intrinsically tied to the academic success of these students. As a result, it is in our Nation's interest to ensure that all children have the opportunity to obtain an excellent education, irrespective of the neighborhoods in which they live, their parents' education level, and their family's income. Targeted Federal intervention is necessary to set guardrails on State and district actions to achieve this. Our Nation's students deserve nothing less.

The CHAIRMAN. Thank you very much. We'll now move to a round of 5-minute questions by the Senators, and I'll begin.

Dr. Gordon, you're a scholar of education, finance, and legislation. Let me ask you this. The language in the law on supplement and supplant has as its goal to say that a school district can't use title I money to replace State and local money, a fairly straightforward proposal. The language, we thought, was pretty plain and clear.

Why is there a need for regulation of that law? Isn't it possible just to read the law and know what to do without the Department elaborating on it through regulation?

Mr. GORDON. Thank you for your question, Senator. I'll read the law, because there's a lot of questions about the law, and it's actually—

The CHAIRMAN. I only have 5 minutes here.

Mr. GORDON. One sentence. "The methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive were it not receiving assistance under this part," and this part is title I.

To me, that sentence is clear. I have read that sentence more times than most people. I understand how clarification could be useful to some people. But, interestingly, this part of the law already applied to school-wide programs under No Child Left Behind, and the Department of Education issued extensive guidance in July 2015 clarifying how to interpret this with examples—

The CHAIRMAN. Let me interrupt just because I have only 5 minutes for questions. If the effect of the proposed regulation, because it would require title I schools to spend, on average, an amount that's at least as much or greater than non-title I schools, would you say that would be an attempt to equalize spending among schools in a school district? Wouldn't the effect of doing that attempt to equalize spending?

Mr. GORDON. I'm not an attorney. I'm an economist. To me, yes.

The CHAIRMAN. There's a provision in the law, 1605, that says, "Nothing in this title shall be construed to mandate equalized spending per pupil for a State and local education agency or school." I agree that the proposed regulation specifically attempts to equalize spending, which could be a laudable goal. I think Wyoming may do that. It may be the only State that does that. But the Federal law says you may not do that.

Let me move to Ms. Weingarten for a moment. You mentioned in your testimony that you are not only concerned about this regu-

²⁰ Jens Manuel Krogstad and Richard Fry, "Dept. of Ed. projects public schools will be 'majority-minority' this fall," *Pew Research Center*, August 18, 2014, <http://www.pewresearch.org/fact-tank/2014/08/18/u-s-public-schools-expected-to-be-majority-minority-starting-this-fall/> (accessed May 15, 2016).

lation either contradicting or not following specific provisions of the law, but what that might mean for future regulations.

My understanding was that the whole discussion, or most of the discussion, about fixing No Child Left Behind was—the consensus that we had was we'd keep the federally required tests, and we'd even expand the amount of data that was used to let people know what the results of the tests were, but then what to do about the results of the tests became the responsibility of those closest to the children, the classroom teachers, the school boards, the Governors, the legislatures, and the parents. That's called the accountability system.

What about what the Department is doing with this proposed regulation worries you about what might happen with future regulations involving the so-called accountability system?

Ms. WEINGARTEN. Thank you for the question. I share Janet Murguía's concerns in terms of the accountability system. That is where most of the real thought needs to go into. What are the guardrails and what is the flexibility that States should have to actually think about what constitutes real student learning these days, and how do we actually help kids get there, particularly our most vulnerable kids?

The fact that the Department seems to be doing same old, same old, in terms of trying to rewrite history regarding supplement, not supplant as opposed to really thinking about how do we ensure that there's flexibility that really looks at what kids need through the lens of the practitioners, is what is concerning all of us—issues like the weights, the definition of significant, the definition of evidence, what's going to happen in terms of the 95 percent participation rate. So it is whittling away the good will that all of us have to actually helping all kids succeed, particularly our most vulnerable kids.

The CHAIRMAN. Thank you very much.

Senator Murray.

Senator MURRAY. As I said at the beginning of this hearing, ESEA is fundamentally a civil rights law to provide all children access to a fair and equitable high quality education. ESSA maintains that commitment by requiring States to annually classify each school where any subgroup of students is consistently underperforming and districts to take meaningful action in these schools to improve student achievement. I agree with the civil rights community, including those who advocate for the rights of students with disabilities, that without strong regulations, our Nation's most vulnerable students could be ignored or left behind.

Ms. Marshall, I wanted to ask you if you can speak to why a regulation should focus on performance of individual groups of students rather than on comparing students to each other within the same school. And can you explain why that's particularly important for students with disabilities?

Ms. MARSHALL. Thank you, Senator Murray, for your commitment to equality and protection of the civil rights of students with disabilities. Students with disabilities are general education students first. It's imperative that they be compared against the same State standards that every other student is compared against.

We want to make sure that they have a fair and equitable opportunity to both access and to benefit from their education. In order to find out how they're doing in that regard as compared to peers at their grade level, we have to look at the subgroup or individual scores against the State standard.

We want to make sure that we know how they're doing in regards to the possibility of getting a diploma. Research is very clear. High expectations equal being further in life. Having no diploma basically equals lack of outcomes, no jobs, sitting at home. So the stakes could not be higher for our students.

Senator MURRAY. For Ms. García and Ms. Weingarten, just yesterday was the 62d anniversary of the landmark *Brown v. Board* decision. GAO released a report detailing the relationship between resegregation and resource equity in our Nation's schools. In particular, GAO found that schools with high percentages of low-income and minority students are less likely to have access to advanced course work and more likely to experience high rates of exclusionary discipline.

ESSA requires any school in which one or more subgroups is performing at the level of the bottom 5 percent to address resource inequities and includes significant new reporting requirements related to resource equity. I want to ask both of you: How critical is the issue of resource equity, particularly in light of how far we still have to go in terms of the promise of *Brown v. Board*?

Ms. ESKELSEN GARCÍA. For all educators, resource equity is the game changer here. It's what we haven't been measuring. It's why so many of the comments today were about let's not go back to a numbers game where we pretend that if we hit this number, it must mean that we have equitable opportunity to learn.

You can be measuring things on that dashboard. The dashboard is absolutely crucial for us, because when you have that collaboration between the professional educator that knows the kids, the parents, the administrators, the elected school board members, saying, "Here's what we believe will be the game changer"—how many of our students are graduating from high school having already earned college credit? You can measure that.

That's an opportunity to learn. That's a program that could look very different if you're in a rural community or an urban community, if you have a community college, if you have AP classes, international baccalaureate programs. We want to actually have that dashboard measure the real services and supports that those kids have. We believe that that is how you're going to move the needle.

Senator MURRAY. Ms. Weingarten, on the issue of resource equity?

Ms. WEINGARTEN. Resource equity is absolutely essential. I would actually go a step further, which is not covered by this law, which is resource adequacy. We need to actually level the playing field for kids, and there are many, many times that vulnerable kids actually need a lot more, and that is baked into some of the title I formulas. What happens is we have to make sure that there's not counterproductive efforts here.

Adequacy and equity are essential to leveling the playing field. That includes a much broader view than just actual dollars. It includes—what are the programs? What do we need to do in terms

of dual-immersion? What do we need to do in terms of AP? What do we need to do to ensure that kids that I taught at Clara Barton High School, which was a title I school, could actually compete in debates against kids in Scarsdale High School, which was a very well-funded school? That requires a lot of thinking about how do you actually contour schools to the needs of your students.

Senator MURRAY. I'm out of time. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

Senator Enzi.

STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman, and I'd like to start by stating that the actions of the U.S. Department of Education that they've taken over the last few months on a number of issues is of grave concern to me and the people that I represent.

I want to thank all of you that have testified. You have provided some great information both in the printed testimony and what you've said.

I want to thank the Chairman and Ranking Member for the tremendous leadership that they've provided so that this committee could have an influence on changing the law in a way that the President signed and that we're now trying to get done. Now is not the time to implement the law differently. It's important that we implement it as it was written, and we're in charge of presiding over that, and this is a good start. It's not the time to bring up things that were not agreed to and change the outcome through executive action.

When I first got here, I had a principal who wanted to see where all the reports went that he had to do. He got leave from his school district to come back and spend a semester here, and he spent his time over at the Department of Education. When he reported back to me, he said, "You know, they take a look at every one of those forms. They make sure that every single blank has a logical answer. If it doesn't, they send it back. And then when it's completed, they file it and nobody looks at it." We've been in the process of eliminating some of those in the meantime.

This particular supplement, not supplant sounds like a new opportunity to get new reports that will contain a lot of information that may not be used or could be used detrimentally. I do know that the devastating effects that could be in the proposed changes—that it could have on States such as Wyoming. Wyoming's Constitution, as the chairman mentioned, calls for a complete and uniform system of public instruction, one that mandates the equitable allocation of resources among all school districts in the State.

Wyoming doesn't need the Federal Government telling it how to provide equalized education for all students. We've been doing it since 1889 and taking it to court regularly to make sure that that would happen. It's not just the dollars. It's the supplies, and it's even the school buildings that have to be equal.

I'm hearing from my State that the proposed action by the Department of Education would cause the forced transfer of public school teachers across our county and maybe even the State. I'm the father of a public school teacher and the grandfather of public

school students, and there's no reason that the Federal Government should be interfering with where my daughter chooses to teach or where my grandchildren get their instruction.

Dr. Evers, can you tell me how this will impact frontier areas such as Wyoming? We're the least populated State in the Nation. I understand the forced transfer of teachers sounds OK to individuals in this administration that don't understand States like Wyoming or Wisconsin. It seems to me that rural and frontier States will be hit the hardest with such an outcome. As the superintendent of a rural State, can you tell me what kind of an impact this will have?

Mr. EVERS. Absolutely. As an aside, one of the major issues in rural Wisconsin—and I'm sure in rural Wyoming—is who's going to teach in those schools. We're having an extraordinarily severe teacher shortage, and it can be blamed on a whole number of issues. I have my own opinions on that.

But when we take the ability for local school districts, rural or local, and confine the way they hire people in a way that isn't going to help kids necessarily, and we try to—and I get the idea that it's important to have some transparency around equitable distribution of money. This just doesn't get it. That's the main thing.

Rural districts have a very difficult time to begin with in hiring staff members. It would amplify that concern, in that it would take away principals and superintendents and those that do the hiring to really conflate a number of different issues that really doesn't matter, and that's the equalness of the distribution.

It's going to make their jobs more difficult to find high quality teachers. That's the bottom line. For rural Wisconsin and Wyoming, that's a huge issue. In rural areas, teachers are the main backbone of those communities, and we have to make sure that we get the best people in those positions.

Senator ENZI. Thank you. I'll be providing you with some written questions regarding the negotiated rulemaking panel that you're on.

I want to thank Dr. Gordon for the specificity of accounting consequences that you had in your testimony and in what you said, and I'll be providing some more questions regarding that. I know that those have a tendency to put the audience to sleep, but they're really important to what we're doing. Thank you.

The CHAIRMAN. We have one accountant on the committee, which is Senator Enzi.

Thank you, Senator Enzi.

Senator Bennet.

STATEMENT OF SENATOR BENNET

Senator BENNET. Thank you, Mr. Chairman.

Thank you to the panelists for being here today and for everything you do for our schools and for our kids. It's been said today that this Federal law is a civil rights law, and I believe that. What that means for me as we sit here is thinking about the millions of children that are marooned in public schools, rural and urban, in America today that are schools that nobody on this panel would ever send one of our own kids or grandkids to.

It's the reason I worked so hard to try to close the comparability loophole. We didn't get there. We did get important reporting language on reporting actual salaries and other costs. I think that's important because it will equip teachers and parents with information they need to be able to make the case going forward about how to create a system of public education that actually will work in America for kids living in poverty. That won't be done by the people on this panel. It's going to be done by all of you and the people that you represent all across America.

Let me start with one question. We are one of three countries in the OECD who spend more money on wealthy students than we do on poor students. Is there anybody on the panel who will defend that system in terms of closing the achievement gap in the United States? In other words, do you expect that if we continue to spend more money on wealthy kids than we do on poor kids that we will have any hope of closing America's achievement gap?

[No verbal response.]

Senator BENNET. It was said today—there was testimony today, Mr. Chairman—I think we spend \$620 billion all in on education in America, and if you're running a decent school district, 80 percent of that ought to be spent on teachers, or more, in my view. Testimony from my fellow superintendent today was that, "there is no relationship between salary level and teacher effectiveness." Does anybody want to defend that? There is no relationship between the expenditure of 80 percent of what we spend and effectiveness of teachers.

Randi.

Ms. WEINGARTEN. Of course, there's a relationship. I won't speak for who is an amazing superintendent in Des Moines. But there is much evidence that there is a relationship between the experience of teachers and the stability of schools, and, frankly, part of what we're trying to do in schools that are struggling is how do we nurture and secure great teachers to stay at those schools. Both in a macro and a micro way, there are real correlations here.

I think what my colleague was saying is that the dollar for dollar piece that the Department is proposing doesn't get you to the equity issues that you have spent your life, Senator—

Senator BENNET. You as well. What I'm saying is whether the Department ends up with this rule or doesn't end up with this rule, the reality is the way we are spending resources in this country, I'm the first to say—maybe I'll be the second or third, because the two of you are here—the first to say we should pay teachers more in this country. It's a disgrace what we pay teachers in the United States.

But how we pay them really is important. I don't think we should be having people come here 10 years from now and say, "There is no correlation between how we pay teachers and their effectiveness." I think we need to work together to make sure that's not the case, because then you can't make the case that we should have more resources.

It worries me that we continue to come here and tinker around the edges, and the reality is that if we don't have a solution to the kids that are showing up to kindergarten having heard 30 million fewer words than their more affluent peers, if kids don't have a

choice of a school that any of us would send our kid to, and if higher education continues to accelerate in its cost so that if you're in the bottom quartile of income earners, to go to college it costs you 85 percent of your net income, whereas if you're in the top income, it's 15 percent—you add all that together, and our system of education is reinforcing the income inequality that we have and the opportunity gap that we have, rather than liberating people from it.

That's an invitation from me to anybody on this panel to figure out how we go forward so that 10 years from now, we're not sitting here seeing these kinds of results. That's going to happen in America, not here.

Ms. MURGUÍA. Can I just comment on that, Senator?

Senator BENNET. I have 7 seconds left, but please do.

Ms. MURGUÍA. It took an extraordinary amount of effort for us all to barely come together to get this law over the finish line. It required a lot of engagement of a lot of stakeholders. Honestly, as we look to implement this law, we're going to have to do the same thing, local district by local school district, State by State.

For those of us who are very invested in seeing that equity outcome that we know is so important and consistent with our American values, we believe that that flexibility is there now that we've created this law. But it does not, in my view, undermine the importance of requiring appropriate rigorous Federal oversight. And striking that balance as we move forward is going to be the challenge and the charge for all of us.

I feel in many ways our work has just begun as we look at how we're going to try to do this with that flexibility in mind. But I want a guarantee of strong, appropriate Federal oversight as we move forward.

Senator BENNET. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bennet.

Senator Isakson.

Senator Murkowski, I made a mistake. Senator Murkowski is next. I've done that once before. I don't want to do it twice, Johnny. Excuse me.

Senator MURKOWSKI. Actually, Mr. Chairman, I will defer to Senator Isakson, as I just came back in and I'm just finding out what has already been discussed. I will defer to Senator Isakson.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Isakson.

STATEMENT OF SENATOR ISAKSON

Senator ISAKSON. Thank you, Mr. Chairman.

Thank you, Lisa. I appreciate that.

Thank you to Ranking Member Murray.

I want to commend the Chairman and the Ranking Member on their leadership on ESEA and the Every Student Succeeds and the point we're at today. I think it's going to be a great empowerment for local boards of education and for the State boards of education to carry out the educational mandate in their State.

Throughout the debate—and I'm one of the last remaining people that wrote No Child Left Behind, so I will still readily admit that. It was a great act for 6 years, but it went through 7 years where

it wasn't reauthorized, and it became an impediment rather than an asset because it became harder and harder to make adequate yearly progress, and the ceiling got too low, and people ended up being put into non-performing schools that shouldn't have been put in that category.

The thing I focused on the most were children with disabilities and the assessment of children with disabilities. I'm married to a special ed teacher. When I chaired the State Board of Education in Georgia, I worked hard on psycho-education and our kids with disabilities, learning disabilities, to try and provide as much quality rules as we could and quality education.

One of the things we had was a 1 percent exception, I guess you'd call it, for kids with that kind of disability to have an alternative assessment rather than the mandated test under No Child Left Behind. We rewrote in the Every Student Succeeds Act the 1 percent cap stayed for the State, but it was overruled by a regulation that said that the State board could not keep a local system from determining if a kid needed an alternative assessment based on the IEP or the Individuals with Disabilities in Education Act to ensure there was more flexibility.

The 1 percent cap really doesn't apply because the State and the local education agencies—IDEA governs and the IEP is the governing document to determine whether the alternative assessment is necessary or not. As two superintendents, Mr. Ahart and Dr. Evers, would you tell me how that's working and how you intend to carry that out in your respective systems?

Mr. EVERS. That was an issue of lots of discussion, if the negotiated regulations work. And it is. ESSA has flipped the equation in that. Schools aren't held to the 1 percent. States are. I think it's an obligation as a State to make sure that we don't, as a State, exceed the 1 percent.

Asking for a waiver for any particular district, we have to go through a relatively rigorous process to make sure it doesn't happen. It's going to be about providing technical assistance to those districts that exceed 1 percent, and we'll do that. It's our responsibility. In the past, it's been a local responsibility, but it's clear that this committee determined that the State needs to be accountable for that, which we will be. It's something that we take very seriously.

Senator ISAKSON. Dr. Ahart.

Mr. AHART. Thank you, Senator. My district probably has a bigger challenge in meeting that 1 percent mark simply because of some of the specialized programming that we have for medically fragile and severely and profound disabled students. We always fall under that 1 percent mark.

This is another example where it's very difficult at the Federal level to set benchmarks that translate into an equitable measure at the State and local level. One of the things that came up during regulations negotiations was just this issue, and there's certainly what seems to be a bit of a paradox there. The State can't go over 1 percent, but individual districts can.

I would argue that a district could have a lower percentage of students with that alternative assessment than what I have in my district and be inappropriately testing more students than I am be-

cause of the nature of the programming that we offer. I think with good guidance from the State and the State offices working closely with the local education agencies, I don't see this as being particularly problematic.

Senator ISAKSON. That's good to hear, because Chairman Alexander made a point of making sure that we got out of the national school board business and empowered the local and State school boards. And this is one of those areas where if the Federal agency decides to enforce its side of that 1 percent, it would be negative for the local systems and the State. We want to empower you to be in control of education, and we appreciate what you do for our kids.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Isakson.

Senator Warren.

STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you, Mr. Chairman.

We have spent a lot of time today talking about the financial accountability provisions in the new education law and about the Department of Education's plans for enforcing these provisions. Now, we've heard concerns from witnesses who represent the professionals on the front lines implementing ESSA, but I want to make sure we have an opportunity to clarify a few key points regarding these provisions and why they're in the law in the first place.

Congress strengthened the financial accountability provisions in ESSA for a simple reason: to ensure that Federal money is used to meet the purpose of title I—and I don't have a poster, but I'll read it—to provide all children significant opportunity to receive a fair, equitable, and high quality education. And I underline all, not just children in wealthy districts.

Ms. Weingarten, let me start there. Why do you believe that it is important for Federal law to require equity and adequacy in how education money is spent?

Ms. WEINGARTEN. ESSA is a civil rights law, and it is about trying to make sure that there's opportunity for all children. If that is the case, equity is absolutely essential in order to get to excellence.

But as I was saying to Senator Murray earlier, what we're seeing locally is that we have to actually have a fight for adequacy, too, because it's not simply, what is equal. In order to level the playing field, we actually have to give our vulnerable kids more. As Senator Bennet said, we have to flip what's going on in this country. What the law does is it starts us on that path, but it's at the end of that path, and we need to be vigorous and rigorous in making sure that the kids who have had the least get the most.

Senator WARREN. All right. Thank you. I agree. And let me followup on that by asking do you believe that the Department has the authority to ensure that States and districts do not divert State and local funds away from public schools in low-income neighborhoods?

Ms. WEINGARTEN. I am very glad, Senator Warren, you asked the question in that way, because the entire testimony, we've been talking about increasing as opposed to diverting. I believe that the

Federal Government and the Department of Education has the authority to ensure that there is no diversion.

They have that in three different ways. It's not just the title I funding formulas that focus on concentration of poverty—and I think Dr. Gordon is probably better at this than I would ever be—but it's the maintenance of effort issues and provisions, and it's the SNS provisions, as were clarified several months beforehand.

They do have that authority. They need that authority. Part of what we're concerned about is making sure that it's not overreach so that they can actually do their job.

Senator WARREN. Good. Let me then turn to that part of it. They have the authority, but how can the Department enforce these provisions in a manner that doesn't result in the unintended consequences that you and others have discussed?

Ms. WEINGARTEN. That, frankly, should have been what consumed the time of the Neg Reg committee, with all due respect. As Janet said earlier, this is a very complicated law, and there is a lot of complicated factors, because it is very much a law that is about human behavior and about lots of different multiple parts, as many of the Senators and many of the witnesses have talked about.

The law provides some very powerful new provisions, including transparency, and that transparency provision, as Dr. Gordon earlier said, can be over methodology, not just over resources. We need to actually see what the funding levels are. We need to see how those transparency provisions operate. That can be the first set of enforcement processes. Then, after that, one looks at what you do next.

Right now, to move to some one-size-fits-all enforcement mechanism that's not even allowed by the law seems not right.

Senator WARREN. All right. Not in the right direction. Thank you. And I will ask more questions for the record.

But financial accountability is about making sure that Federal dollars are used to make sure that the money goes to the children who need it most. There are legitimate disagreements over how the Department of Education can best enforce financial accountability provisions, but these are not disputes over whether those accountability provisions should be enforced or whether the Department of Education has the power to enforce those provisions.

On that issue, I believe that the Democrats and the teachers are in very strong agreement. Republicans, on the other hand, seem to be arguing that financial accountability provisions of the law should simply be ignored. The Department needs to figure out how to enforce financial accountability in a way that doesn't have unintended consequences that disrupt schools. It is critical that the Department listen to our teachers and to our school leaders.

But ignoring accountability provisions is not an option. Financial accountability is essential to ensure that States and districts actually give our teachers the resources they need to do their jobs and that the States and districts use Federal money to help our most vulnerable kids get a decent education. That is the law.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Warren.

I'd like to say to the witnesses that I have an unavoidable conflict at 11:40, and I will need to leave. But Senator Cassidy has agreed to chair the remainder of the hearing. I want to thank each of you for coming and for your excellent written testimony and for what you've said this morning.

Senator Murkowski.

STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

Thank you all for the discussion this morning—very important on a lot of different levels. I come from a State where we spend a lot of money per pupil on our students, and yet the outcomes are not consistent throughout, most particularly in our rural areas.

Back in 2007, a case was heard before our State supreme court brought by stakeholders in three rural districts, and this was based on the concern that these districts were low-performing because of a lack of funding equity. There was considerable deliberation, long-term fact finding. But the judge came back and said that the problem wasn't money, because each rural district got about the same per pupil, but what they were seeing, again, were very different outcomes among them and among the individual schools.

What the judge found was that the issue was the degree of State support and its effectiveness within different communities, or perhaps a lack thereof within the communities. So it was local support for schools. It was community-school relationships. It was effective and culturally relevant curriculum. It was teacher and principal effectiveness.

The data really demonstrated that this was what mattered here, not that money doesn't matter. You have to have the money in order to do these things. But the judge, back in 2007, denied the move for more money and ruled that what the State needed to provide was more effective State support.

Then back in 2012, there was a settlement, because there was still an argument about whether or not adequate financial funding was being provided. In 2012, we see a settlement where the Department of Education and the State agreed to create programs to support pre-K, targeted resources, grants, teacher retention grants, exit exam remediation. But it went specifically to the level of support that could be made available to these respective districts, rather than a dollar for dollar comparison.

I guess I'd throw it out to anyone here on the panel. Ms. Eskelsen García, I wasn't here when you made the comment, but you apparently made a comment that we want to measure actual service and supports, not just the dollars.

Can you all comment on this situation in Alaska and what our State's courts found?

Ms. ESKELSEN GARCÍA. I want to begin by saying I was a Utah teacher, but I was a Fairbanks, AK, student at Ryan Junior High.

Senator MURKOWSKI. There you go. A great middle school there.

Ms. ESKELSEN GARCÍA. I know what it's like to go to school when the stars are still out in the middle of the day. I want to tell you that the best teaching assignment I ever had was the Salt Lake homeless shelter, because of the surrounding support that I had as the teacher that the district placed there. There were social work-

ers that worked with the family. There was a health clinic. There was a dentist that came in every 2 weeks. There were nutrition programs that they had.

I was never alone. I had the support I needed, a professional who could deal with sometimes mental health issues that that family had. I understand when you say you do need—every school needs the technology, the textbooks, the facility. You need the stuff.

You also need to deal with the reality of that child's life, and some children come to us with so many more needs that aren't met in their home, in their community. They come from homes where they don't have disposable income sometimes to take a child to the dentist. So that child walks into our classroom in pain, and we have to do something about it, whether we've been given the resources to do anything about it or not.

For me, it is more than just counting the dollars. The dollars are important, but you also have to say, "How creative can I be in seeing what kind of service and supports, what kind of community organizations are out there that can help me?"

In Utah, we're the lowest per-pupil funded school district in the Nation. We can stretch a dollar until you can see through it. We are the most creative educators on the planet. Give us more money. That would be nice. But whatever we're given, then we try and leverage that into something more meaningful and supporting those children.

That's why we want to say which services, which supports, which programs—it may cost a different number of dollars in this community than in this community. For instance, I keep using support as—how can we make sure our kids graduate from high school having already earned college credit? What would that look like? It might look like something very different if you're in Nome than if you're in Anchorage, where you have a university right there, and another might look like something online.

But what we want is that power of professionals working in collaboration in each community to design something that makes sense for that community. If what you're measuring—do you have the ability; do these children have the opportunity to earn college credit before they graduate from high school; how many of them are doing that; how many of them used graduation day as a springboard into higher education? Describe what you're trying to accomplish and then be creative about designing something that meets the needs of that specific school community.

Ms. MARSHALL. Senator Murkowski, may I respond briefly?

Senator MURKOWSKI. I'm over my time, but if the chairman allows it.

Ms. MARSHALL. What jumped out at me that you said initially about the case was that the judge ruled that there was already a per-pupil equality in the expenditures. It sounded like that's what you said, that he said it wasn't the money that necessarily made the difference.

For us, that equality is important, because I've been in a lot of schools on both ends of the spectrum. And when you walk in the front door, and the starkness of the resources hits you in the face, I cannot imagine how adding some extra dollars there actually equals supplement when the scale is so tipped.

Ms. MURGUÍA. I would just add a point. We know right now that black and Latino students are 1.5 times more likely to be taught by novice teachers. Is there a dollar for dollar solution that's going to directly address that in every part of the country and in every district and in every State? I'm not sure. But I do know that a zip code should not dictate the resources available to students.

We need to make sure that there is an opportunity for the voices of those communities most affected and impacted by the plans that are going to be set forth at the State level to be represented. For us, having affiliates—and we have affiliates in Alaska—to have that voice heard so that they can be represented in those State plans is going to be an important part of getting to an outcome that, hopefully, achieves that equity that is at the heart of the original legislation and I believe is still embodied in this legislation.

It's the strong Federal oversight role that is going to ultimately be the counterbalance to making sure that that is set forward in a manner that's consistent with what we've intended.

Senator Cassidy [presiding]. Thank you. I didn't mean to cut you off, but—

Senator MURKOWSKI. Mr. Chairman, thank you, and I would like to add that within the Alaska court, the supreme court there, the funding may have been equally adequate, but the problem was that the results are not. Again, when you're trying to measure this dollar for dollar, this is where the discussion gets even more intriguing. I thank you for the additional allowance of time for others to answer and the opportunity to speak.

Senator CASSIDY. Senator Casey.

STATEMENT OF SENATOR CASEY

Senator CASEY. Mr. Chairman, thanks very much. In the interest of time, let me first say thank you to the panel for being here and for your good work on this legislation. I'll submit a question for the record, which will focus on NEA, AFT, and La Raza. But I do, in my very limited time, want to direct a question to Ms. Marshall regarding the 1 percent cap on assessments for students with the most significant cognitive disabilities. I guess maybe two, if I can get to that.

It's good that we have this win, that we codified an important policy and made it law. I just wanted to ask you how do you think—in terms of how it's going to work, how will this policy, which is a continuation of prior policy, help special education teams, help schools, help school districts making that very critical decision about which children should take which tests?

Ms. MARSHALL. Thank you, Senator Casey, and I want to thank you for your leadership on this issue. It was a huge win for us to get this cap, and we are the students that are represented around the table at the IEPs whose teams are making these decisions, all too often for whom there is a lack of presumption of competence. Before there was such a cap, we saw untold numbers of students taken off access to the general education curriculum as early as second grade, and that's just unconscionable.

We think this cap is important. As someone alluded to earlier or stated earlier, it's adequate. We have far more fights for students

trying to stay on the regular assessment and graduate than we have who are not allowed to take an alternate assessment. That's critical.

I think the Neg Reg process put up some important guardrails to make sure that States and teams are asking the right questions and that they're very careful not to put students on there on the basis of their disability or on the basis of their past test performance, but that they push harder to make sure those students have what they need to succeed.

Senator CASEY. I wanted to ask you because I know your work validates this principle, and I think the policy we were able to get done in this bill validates that students with disabilities have a lot of ability, and that's an important validation. I want to ask you how can we ensure that districts and States implement this guidance to ensure that all students are held to these very high expectations? What would you hope would happen?

Ms. MARSHALL. In our experience, the clearer the guidelines, the brighter the lines, the easier it is for the families to enforce the law, and it falls on their shoulders. That's why we appreciate the Federal oversight. We have needed it repeatedly. We continue to need it to this day to make sure our kids have access to what they need.

In response to what Senator Enzi was saying before about the Department of Ed and the check boxes, we rely on that data. We need it. That's how we can show how our kids are being short-changed and what they need to be able to get equitable access to receive the benefit they deserve from an appropriate and excellent education, just like any other student.

Senator CASEY. Thanks very much. I appreciate it.

Senator CASSIDY. Thank you, Senator Casey.

STATEMENT OF SENATOR CASSIDY

Senator CASSIDY. I may take a little contrarian viewpoint to some.

Ms. Marshall, you mentioned the 1 percent cap. Let's go back to those dyslexic children. I don't think there's any school district in the Nation which screens for dyslexia at grade one. And if anyone knows of such a district, please let me know.

We have 20 percent of the population dyslexic, and at some point, somewhere between third and fourth grade, children—a typical child begins to learn to read, whereas the dyslexic child is still learning to read. I think I got that right. We're going to have a standardized test in fourth grade which assumes fluency, and yet that child who is dyslexic is still learning to decode and is not a fluent reader. In a sense we have program failure.

At fourth grade, we're going to test 20 percent of the children in a way which they are not yet ready to be tested by. I suppose if you have a 1 percent cap, let's imagine that in the future, some progressive school district would actually screen all the children and find that 20 percent. Would we still test them with the same standardized test, knowing by grade four that they will still not be reading adequately? For some reason, that doesn't make sense to me.

Dr. Evers, do you have any thoughts on that?

Mr. EVERS. I can tell you in my home, we do screening for children entering school, and it's—

Senator CASSIDY. For dyslexia?

Mr. EVERS. It's a more general screening, but it has to do with understanding and decoding skills and skills relating to phonics and things like that. I'm sure some of those children are caught or captured by that screening. We have a State law that, at third grade, if students are requiring additional help because they're not at grade level in reading, that school districts have to develop a plan for them, whether it's special ed or not.

I can answer the question generally. I believe our State is working hard to address the needs of dyslexic children. But if your question is do we do a screening specifically for dyslexia, the answer would be no.

Senator CASSIDY. I haven't found one that does, actually. Most rely upon, sort of, the child not doing well. But by grade three, the horse is out of the barn. If the child is not doing well by grade three, typically, that deficiency is going to persist. If we were able to screen these children, and knowing that they've not yet learned to read fluently, would we still give them the same standardized test at grade four that the other children are receiving, even if we know they have not yet learned to read fluently?

Ms. Marshall, would you advocate doing so?

Ms. MARSHALL. Yes, Senator Casey, I would actually—

Senator CASSIDY. I'm—Casey is the right—

Ms. MARSHALL. Oh, Cassidy. I'm sorry.

Senator CASSIDY. That's OK. My mother-in-law gets the same mistake. So don't worry about it.

Ms. MARSHALL. I don't have my glasses on, so without that accommodation, I'm in trouble, and that actually gets to my point.

We absolutely agree that students with dyslexia are not being screened, are not being taught, and the teachers don't have the training they need. In fact, I will broaden that to say that all students with disabilities who this law protects, as well as every other student, have trouble reading and are not getting the services that they need to succeed.

We often hear the argument that you have put forth around not taking the test. But it is our belief, again, that we need to know where students are against the standards. We should not throw them in there without the accommodations, and we should make sure—

Senator CASSIDY. Now, what would you say—

Ms. MARSHALL [continuing]. If you could just let me finish—

Senator CASSIDY. But I have limited time. What would you say is an accommodation for the child who has not yet learned to read?

Ms. MARSHALL. It differs for each child. But they need to be able to have the accommodations and the supports that they use in the classroom to learn when they take the test, and that is of grave concern to us right now. We find that students are not having that accessibility. They have to be tested on the content, not on their ability to take the test.

Senator CASSIDY. Let's get granular, not just conceptual, but granular. If the child has not learned to decode, and the child does not read fluently, taking a test which presumes fluency, that child

is going to fail, period. Do we really want to make that child take that particular test, as opposed to another test which may—a different test which may, indeed, adjust for the fact that the child has not yet learned to read fluently?

Ms. MARSHALL. I can't make those decisions. It's on an individual basis with each student. But as a general principle, we want our kids to count, and we want them to be part of the tests that all kids are taking to see where they are on grade level according to the State standards.

Senator CASSIDY. But we would know that these 20 percent of the kids, despite whatever their IQ is, they're going to read less—by definition, dyslexia is a disconnection between the two—those children are going to read less well.

Ms. MARSHALL. But we've gotten rid of the punitive nature. The intention of the tests, the reason to take them, is to know where the students are and to give them the appropriate services and supports to move them forward.

Senator CASSIDY. I'm not sure that we came to a common mind, but I'm out of time.

Senator Murphy.

STATEMENT OF SENATOR MURPHY

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

Thank you to all the panelists for your time today. I have one general comment, and then one specific question for, our favorite target today, Ms. Marshall.

Here's my general comment. I think Ms. Weingarten got it right when she made it clear that this law is a civil rights law, first and foremost. The Federal Government is in the business of education policy because we're in the business of civil rights. There's no reason for us to be writing Federal education policy if it's not, at the foundation, about equal opportunity for disabled kids and poor kids and minority kids, and I thought your answers to Senator Warren's questions were spot on.

But that's a real uncomfortable thing for us to talk about, especially an uncomfortable thing for us to talk about when we're sitting in front of a bunch of educators and superintendents and State officials, because what we're saying is that without some Federal requirement that kids of color or poor kids or disabled kids be treated fairly, local political dynamics are going to accrue to the detriment of those kids, and that if you don't have a Federal requirement, ultimately, those kids are not going to get a fair shake.

It becomes a very difficult thing for us to talk about here. But it's been at the foundation of our Federal commitment to civil rights and at the foundation of our Federal education law for decades.

I do think it's important and I have since the beginning of the drafting process for this law to have some strong accountability requirements and some high expectations for schools and for kids. I don't think it ends at the text of the law. I think there's a very important and appropriate role for the Department of Education to play in setting the guardrails for the financial accountability, as Senator Warren was talking about, or this accountability system.

I understand, Dr. Gordon, the ways in which a requirement to spend more money on poor kids may occasionally not work to their benefit. But I think in the aggregate, if you're spending more money on title I schools, that's going to help students in title I schools, even if maybe it provides some perverse disincentives here and there.

On accountability, I think we've got a good accountability section in this bill. But we've got to make sure that the interventions that are being used to try to turn around schools are not just white-wash. If a school is failing, it's not enough just to paint the front of the school green. You've got to actually do something that's meaningful.

It's uncomfortable, because I don't doubt the willingness of school districts and States to try to be partners in this. But the regulations are important to make sure that we've got some basic guard-rails to make sure that what is happening to make these schools better for these populations is based on what we know works and what we know doesn't work.

I appreciate the conversation here. But I'm interested in the Department of Education continuing to move forward on regulations that are in the spirit of the accountability sections of our bill, and I don't think there's a lot of disagreement on that.

Here's my specific question to you, Ms. Marshall, and it's on a narrow issue that is a passion of mine, and that's the use of seclusion and restraints in our schools. According to the Department of Education's latest civil rights data collection in 2011 and 2012, 70,000 students across the country were physically restrained, and 37,000 of them were secluded, and I think that's the tip of the iceberg.

I don't think we understand how deep and broad this problem is, and I'll take ownership of it in Connecticut. We've got a problem. Scream rooms being used to throw kids into so that they can scream out their problems so they're not a disruption to everybody else. We included language in this bill, bipartisan language, that would require State plans to address the use of what the bill calls aversive behavioral interventions, which really means seclusion and restraint.

What do you want to see from the Department of Education when it comes to the guidance that they give to schools on how they attack this issue of the overuse of both seclusion and restraint?

Ms. MARSHALL. Thank you very much, Senator Murphy, for asking me this question, because it's also a passion of mine, and also for your leadership in ensuring that that clause was added to the law. There were many tears and dances of joy when this portion of the law was included to make sure that there are positive school climates and that we need to take steps—schools need to unequivocally stop this abuse of students in our schools.

Secluding a student in a locked room from which they cannot escape is known to be one of the most torturous things you can do to another person. Why are we doing that to our kids?

Restraint can only be used in emergency situations. The research is clear. It's used for power and control on little tiny kids. That must stop. I'd be happy to submit more comments for the record.

I would like to say one more thing, which is I spent years as a positive behavior support specialist in the school dealing with the kids with the most challenging behaviors to keep them in school and keep them learning. If you're in a seclusion room or you've got four adults sitting on top of you, what are you or the other students who are watching this learning?

The scream rooms in Connecticut were called that by the other students, because that's what they heard, kids in a room screaming. Imagine that effect on a little child when they're trying to learn. That's a life lesson no child in this country should be subjected to.

What I know has made the difference is not money. It is about training. It is about the belief and the confidence of the teacher to keep all kids safe, the support of the principals and the other people in the building to make sure they have those services around the kids who challenge the most. But it can be done positively, and it can be done without those barbaric practices.

Senator MURPHY. No teacher ever wants to engage in that kind of practice.

Ms. MARSHALL. Right.

Senator MURPHY. You are right. This is about supporting plans to create the climates and atmospheres in schools to make sure that those situations never arise.

Mr. Chairman, one additional caveat to my initial comment. I want to make the point that this conversation about accountability is also uncomfortable because we often place the burden on accountability simply on the superintendents and the administrators and the teachers. When you look at the difference in educational outcomes that still persist among different groups, it often has to do with all sorts of factors that exist outside of schools.

This conversation about accountability that, of course, I think is incredibly important is not a conversation just about what happens inside the school. It's a conversation about what is happening in systems at large that are controlled by, frankly, folks way above the pay grade of teachers and administrators and superintendents.

Thank you, Mr. Chairman.

Senator CASSIDY. Senator Whitehouse.

STATEMENT OF SENATOR WHITEHOUSE

Senator WHITEHOUSE. Thank you, Chairman Cassidy. I would like, first, to make the point that under title I, we said quite clearly that a school must get—if I quote the text correctly—the funds it would otherwise receive under title I. We did not say it should get the same funds as other schools receive. We could have said that, but there wouldn't have been agreement on it, and the law is fairly clear.

What worries me is that if we get into a wrangle over this regulation re-reading the law as the latter statement rather than the former statement, which seems to me, as a lawyer, a reasonably clear statement, then we're going to start to get distracted from all of the areas that we baked into this law where there was common agreement that there is a great opportunity for reform and innovation.

One of the keys was to open up curriculum. We had curriculum get slaughtered in title I schools, because everything that didn't teach to the test got thrown overboard for fear that the boat would sink if the testing came back poorly. That was a terrible disservice to the students in those schools. We set up innovative dashboard opportunities for people to report in much more effectively on how schools are doing so that there can be real accountability, not ersatz accountability.

We have opened up the realm for interventions in failing and struggling schools so that there's a lot more opportunity to bring different perspectives and different opportunities to bear. We've opened up the opportunity for innovation schools to exist.

There are bright green lights in this bill saying, "Let's do this better." To insist on driving down a street that has a red light on it doesn't seem to me to be constructive, and I hope that it does not take us into a place where we're not taking advantage of all the green lights that this bill clearly lays out.

Teachers, school administrators, pretty much everybody in Rhode Island is very excited about the new tools that this bill gives us. If we can avoid driving into this particular ditch and instead focus on the areas where there really is very, very significant bipartisan solid and legally founded opportunity for reform and innovation, boy, I'd like to encourage that.

That said, it is absolutely clear and bipartisan and has always been the case that nobody wants to see Federal title I money come in and provide an excuse to school districts or States to quietly ease money out of those schools and out of those districts to the favored and wealthier districts knowing that title I was going to come in and make up the gap.

If the equality of expenditure rule is not the one that we should be following, I would ask that each of the witnesses let us know what rule they would recommend that the Department of Education follow, because I don't want to end up in a situation in which no regulation ever—nobody would agree with any regulation of this because people are waiting to be against anything and everything, no matter what it is.

I think it is important that there be some affirmative statement from folks who are here about what they think the regulation should look like, not just what it should not look like. I only have about a minute, but I do see at least one hand up.

And let me make it, Mr. Chairman, a question for the record so that anybody can fill in if they'd like to in writing.

Ms. ESKELSEN GARCÍA. I know what my NEA members think is the standard. There's one thing about inter-district equality and equity. It's much more dramatic when you look across district lines within a State.

If you were to ask anyone with two eyes to go into the best school, the best public school in that State, and everyone can think about what public school that would be—in Utah, you'd go to Park City—and you'd say, "Let's do an inventory of the services, the school nurses, the professional librarians, the programs, the international baccalaureate programs, the art classes, the theater classes, the field trips—if you were to go in and take an inventory of

the service supports and the programs in the best school in your State, make that your standard.

Make that the dashboard. Why not? Then say, “Now, we are going to compare every single school in our State by how well it measures up.” Do you have a school nurse? Do you have a professional librarian? What’s your counselor-to-student ratio? How are you serving your special ed kids? What’s your ELL program? Do you have clubs after school?

If you were to do that—and the Federal Government, by the way, is not saying if you don’t have perfect equality, somebody’s head rolls. You’re saying that role of the Federal Government is to be transparent, to give good information to people like the advocates sitting at this table, to say put that information in our hands so we can go back, and we can fight for the students that are being shortchanged.

There are ways that you can do this without micromanaging from the Federal level and making it one more level of bureaucracy.

Senator WHITEHOUSE. We’ve gone over my time. I appreciate it, Senator Cassidy, and I thank the panel very much for a very helpful conversation.

Senator CASSIDY. I also thank y’all, to put a little southern touch there—y’all. Thank you for being here.

The hearing record will remain open for 10 business days. Members may submit additional information and questions to our witnesses for the record within the time if they would like.

Thanks for being here today. The committee will stand adjourned.

[Additional material follows.]

ADDITIONAL MATERIAL

RESPONSE BY LILY ESKELSEN GARCÍA TO QUESTIONS OF SENATOR COLLINS, SENATOR SANDERS, AND SENATOR WHITEHOUSE

SENATOR COLLINS

Question 1. During the reauthorization process, I worked with the junior Senator from Vermont and others to develop and improve an innovative assessment pilot program. We sought to give States and school districts the opportunity to move away from standardized tests and toward assessments that measure learning competency and proficiency in innovative ways. The pilot program is one way to address concerns about over-testing. And it is a way of supporting Maine and other States that want to focus on what students are learning and how well they are applying what they learn—not just how well they take a test.

How do you recommend the Department of Education go about implementing this program? What does the Department need to do to maintain the flexibility Congress intended to provide to help foster innovative assessments?

Answer 1. Senator Collins, we are so grateful to you and Senator Sanders—we deeply appreciate your tireless, bipartisan work on the innovative assessment pilot program. It is a critical component of the new law for the many educators, students, and parents who found the test-and-punish approach of No Child Left Behind counterproductive to both teaching and learning. I want to be clear that teachers invented tests—we aren't opposed to assessment! But, in fact, we support assessment that is authentic and meaningful to both the student and the teacher. That means that it is linked to real standards and curriculum, and that results are available for teachers and parents in a timely way. Further, it means that results can help inform instruction immediately, rather than arrive deep into the summer, long after most students have moved on to the next grade. This is what we believe is authentic assessment, and something we strongly support. We believe that ESSA goes a long way to supporting movement to this ideal through a variety of mechanisms, including and especially through the innovative assessment pilot program.

We strongly recommend having the Department take a “less is more” approach when it comes to regulating the innovative assessment pilot program. We hope that the Department follows congressional intent and allows each State to develop an assessment plan that works for its students, communities, and educators without dragging down a new program with onerous regulations that force “innovation” to look a specific predetermined way.

As you said, those plans should include looking at competency and proficiency, as well as how students apply what they learn. It should also be possible to compare and disaggregate assessment results for different student subgroups. Disaggregation is really important. Above all, the new assessment systems should be meaningful, which means they must be relevant to students, parents, and educators.

Question 2. During Secretary King's confirmation hearing, I asked for his assurance that the Department would engage rural communities in the ESSA implementation processes. I am not sure that is happening. For example, I was alarmed that the Department held its initial public listening sessions in Washington, DC and Los Angeles, CA—both major urban areas. Rural districts also seem to have been under-represented on the committee of negotiators selected for the negotiated rulemaking.

It is vital for rural communities and rural educators to have a seat at the decisionmaking table. What should the Department be doing to ensure that rural communities are represented during the rulemaking process? What are you doing to ensure that rural voices are heard and contribute to State and local planning efforts?

Answer 2. Senator Collins, thank you for that question. I share your concern about the engagement level the Department has shown in rural communities. There is definitely room for improvement. I agree that the selected negotiators during the rulemaking process could have been more representative of the broad range of types of schools across the country, particularly rural schools. As we know from NCLB, what works in Des Moines, IA, may not work in Southwest Harbor, ME, but in many cases some of those differences are not immediately obvious unless drawn out through meaningful engaged conversation and real listening on both sides. Negotiated rulemaking was a missed opportunity in this regard. We have to make sure these conversations are happening. Yet, ultimately, the same regulations must apply to all districts. This is why we argue that final regulations must provide States and communities the flexibility necessary to meet the unique needs of their communities.

Many States are doing a better job engaging stakeholders. For example, in Oregon, the State is holding listening sessions across the State in geographically diverse communities. We applaud these efforts. In addition, we at NEA are doing our part to engage our members across the geographic spectrum. Across the country, in every NEA affiliate, we are working hand-in-hand with local leaders and stakeholders, striving to help them understand the critical role they play in the decision-making process under ESSA. In every State, we want representation of our full membership—urban and rural, teacher and education support professional—at the table when key decisions are being made. We are also encouraging our members to file comments with the Department on the proposed rules and share their individual perspectives, and we hope the breadth of those comments showing the diverse makeup of the education community will impress upon the Department our members' deep interest in the potential impacts of the proposed regulations.

In addition, we have strongly advocated for the Department of Education to provide guidance to States about the importance of providing support—in both leave time and, if necessary, mileage—to make it possible for stakeholders to participate in the decisionmaking process. This is especially critical for rural educators who may have to travel long distances in order to take part in key conversations.

In many States, one criticism we heard early on was that educators were not given a place at the decisionmaking table. Accordingly, we have focused on breaking down barriers to educators' participation in stakeholder conversations. We are working with our partners—both here in Washington, DC and at the State level—to make sure that all voices are heard at the decisionmaking table.

SENATOR SANDERS

Question 1. We must do everything that we can to ensure that every child—regardless of her or his circumstances—has access to a high-quality education. We know that a high-quality education is a resource-intensive endeavor. We also know that disadvantaged children need additional resources to combat the ravages of poverty and discrimination. The Elementary and Secondary Education Act (ESEA) of 1965 marked the beginning of a strong role for the Federal Government in combating inequities on both fronts. Clearly, there is much more work that must be done.

A key component of the Federal Government's role in education is ensuring that our schools have the additional resources needed to ensure that every child can reach her or his full potential. Today, over half of all public school children come from low-income families. Examining the most recent data available, there is clearly an increased need, as well as a lack of sufficient Federal resources, to meet this need (see figure 1, page 3). Between school year 2004–5 and school year 2013–14, we have seen a 32 percent increase in children eligible for free or reduced lunch—an increase of over 6 million children.

Yet not only has the main source of Federal funding for public schools serving low-income children—Title I-A of ESEA—failed to keep pace with the reality that our public schools are serving more low-income children than a decade ago, it has not even kept up with inflation. Real title I-A funding is down 6 percent since fiscal year 2005 while the percentage of low-income kids in public schools has increased by 32 percent over the same time period. If, at a bare minimum, title-I-A funding had kept pace with inflation since fiscal year 2005, appropriations for title-I-A would have been \$15.2 billion in fiscal year 2014 instead of \$14.4 billion—a difference of nearly a billion dollars. Furthermore, if title I-A funding had kept pace with both inflation and the growing number of children coming from low-income families since fiscal year 2005, title-I-A funding would have hit \$20.2 billion in fiscal year 2014—a gap of over \$5.5 billion when considering reality versus actual funding (see figure 2, page 4).

Ms. Eskelsen García, can you please speak to the importance of Federal education funding meeting the increased needs of our public schools? Beyond a dramatic increase to title-I-A funding, what other funding streams within ESEA and in other Federal programs require an increase to meet the realities of today's public schools?

Answer 1. Senator Sanders, we at the NEA could not agree with you more. Like you, we believe that ESSA is first and foremost a civil rights bill, and that preserving the historic Federal role in ensuring equal opportunity is critical.

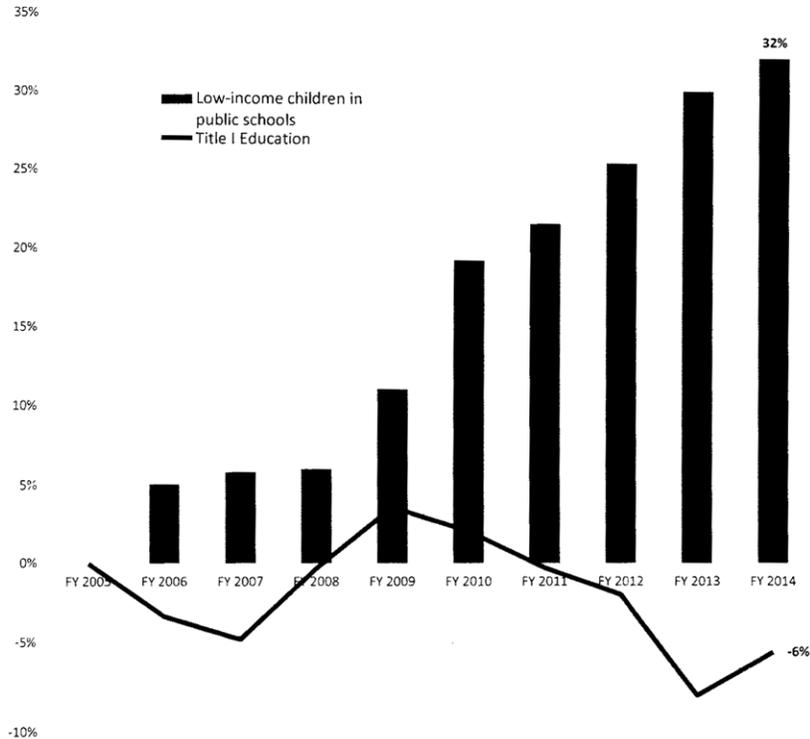
We are deeply concerned, as we know you are, that funding for formula-grant programs has not kept pace with either the growth in the student population or the rate of inflation. This is especially troubling with regard to programs serving the students most in need—among them, title I, IDEA, and Perkins grants for career and technical and education.

To answer your question about what Federal funding streams need to be increased to address today's realities, I would argue all those that target the students most in need—the reason ESEA was passed in the first place. That includes not just K–12 education programs, but high-quality child care, early childhood education, health care, school meals, safe and affordable housing, and on and on down the list.

Over time, investments in these programs will more than pay for themselves. To give just one example: investments in high-quality early childhood education consistently generate benefit-to-cost ratios of at least 3-to-1—\$3 or more for every single dollar spent, according to the Economic Policy Institute.

Figure 1

Real Title I Education Funding Has Not Kept Up With A Growing Vulnerable Student Population
 Cumulative percent change since 2005 of population and inflation-adjusted funding



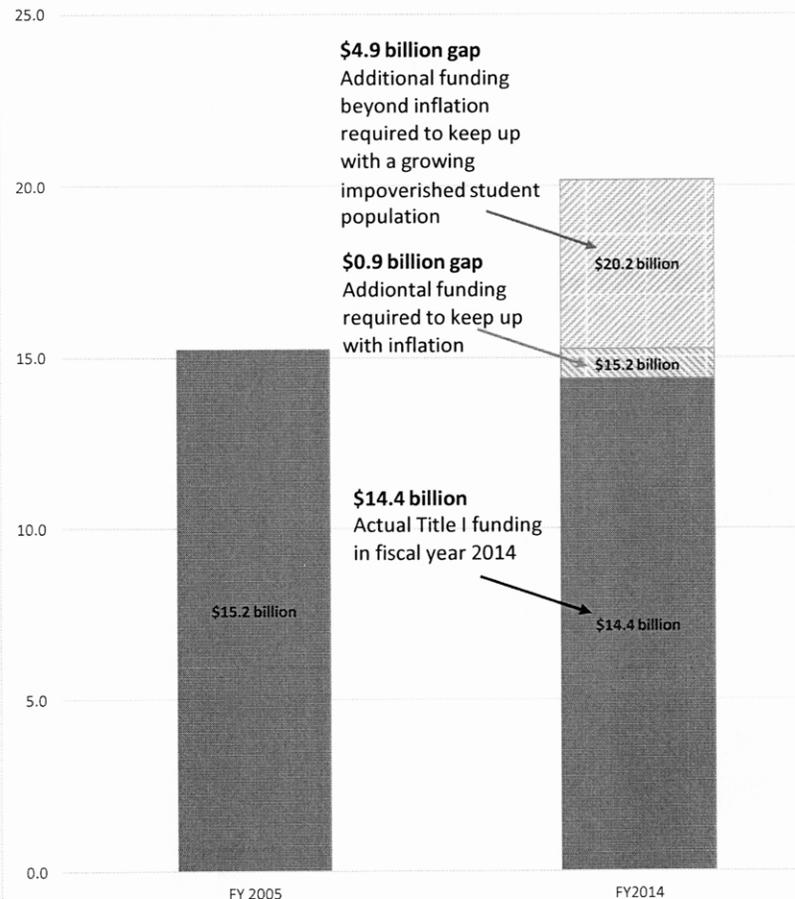
Note: Title I Education funding has been inflated using the OMB composite non-defense outlay deflator. 2009 value excludes additional ARRA funding. Population reflects the number of students approved for free or reduced school lunches.

Source: SBC calculations from Title I historical funding, OMB Historical Table 10.1, National Center for Education Statistics enrollment data

Figure 2

Real Title I Funding Versus Real Need

Budget Authority in billions of 2014 dollars



Note: Title I Education funding has been inflated using the OMB composite non-defense outlay deflator. Population reflects the number of students approved for free or reduced school lunches.

Source: SBC calculations from Title I historical funding, OMB Historical Table 10.1, National Center for Education Statistics enrollment data

Question 2. I am very concerned that our schools and communities are dealing with a surge of students exposed to multiple adverse experiences, and that they are not equipped with the resources, training, and support to accommodate this crisis.

According to the national Adverse Childhood Experience Study, over half of those surveyed reported at least one form of childhood adversity. Shockingly, two in three children in our Nation—46 million children—are exposed to violence, crime, abuse, or psychological trauma a year. In Vermont, over 20 percent of children have had two or more adverse experiences, which include traumatic events like living in chronic poverty, living with someone with a substance abuse problem, experiencing community or family violence, and more. Even more alarming is the fact that our youngest citizens and their parents are at the forefront of this crisis. Since 2014, the Department for Children and Families in Vermont has seen a 33 percent in-

crease of children in State custody with children under the age of six making up more than two-thirds of this increase. Further, similar to nationwide trends, in my home State over 40 percent of children come from low-income families—and young children are the most likely of any age group to be poor.

Ms. Eskelsen Garcia, what can the Department of Education do to help schools, educators, and communities be prepared to deliver trauma-informed approaches to education when implementing the Every Student Succeeds Act (ESSA)? Additionally, what can the Department of Education do to ensure that educators teaching in environments where a large percentage of students have had adverse childhood experiences (ACEs) have the support and the self-care they need to succeed? Furthermore, what policies should Congress enact to help communities combat these challenges and attack the root causes—like poverty, exposure to violence and substance abuse—driving these adverse experiences? How would increased Federal investments in child care, preschool, maternal and child home visiting; before-school, after-school, and summer programming; nutritional supports; and wraparound services for schools help fight this crisis? Likewise, how would raising the Federal minimum wage, addressing under-employment and unemployment, implementing paid family leave, and enacting universal health care coverage help attack the root causes of these adverse experiences?

As national education leaders, what plans are your organizations making to work with States to ensure that their schools and practitioners have trauma-informed approached to education? How will you make States and school districts aware of opportunities under ESSA to create trauma-informed environments?

Answer 2. I agree with your assessment of the impact of trauma on our Nation's public schools. NEA provides a wealth of resources on a wide range of topics, including many of those you cited, to help educators provide trauma-informed support for their students. We also provide hands-on training to help educators create safe, supportive learning environments. And, increasingly, educators are using collective bargaining to advocate for more resources and support for their students.

For example, earlier this year in St. Paul, MN—a joint NEA-AFT affiliate—teachers used contract negotiations to advocate for greater investments in safety and resources for their students. And they succeeded! The school district will be investing \$4.5 million over the next 3 years in restorative practices to help lift up struggling students. Thirty additional, specialized staff—a combination of social workers, nurses, counselors, school psychologists, and teachers for English-language learners—will be hired to help ensure that all the students in that district receive the support they need and deserve.

NEA is committed to translating our members' commitment to helping vulnerable students into action. Through a series of one-on-one conversations over the coming year, we aim to ensure that every single educator is aware of the opportunities created by ESSA. Then, we plan to mobilize them to work for change and equity for all students—to truly fulfill the promise of the original law, the Elementary and Secondary Act of 1965 that was a centerpiece of our Nation's War on Poverty. One major way that educators can work for more inclusive environments for trauma impacted students is by making sure that voices of educators are included in State and local plans and that entire communities are engaged and lifted up. Teachers understand what their students need to succeed. We should listen to their voices and include their expertise in planning and decisionmaking in order to best serve all children, but particularly those who are most vulnerable.

Question 3. On the 62d anniversary of the *Brown v. Board* decision, the Government Accountability Office (GAO) released a report confirming what educators, families, students, and community stakeholders have been telling us anecdotally for some time—our public schools are becoming more segregated by both race and family income.

The share of public schools that are doubly segregated by race and income—where 75 percent or more of the kids come from low-income families and are black or Hispanic—has risen from 9 percent in school year 2000–2001 to 16 percent in school year 2013–14. Today, one in five public school students attends a school that is doubly segregated, more than twice as many as 15 years ago. Hispanic children are often triply segregated—by race, family income, and native language. Shamefully, 75 percent or more of the children are black and Hispanic at nearly two-thirds—61 percent—of high-poverty schools.

Segregation and isolation by race and income in our public schools is an alarming phenomenon on its own. Even more troubling, these doubly segregated schools are not offering students an education comparable to that offered by non-segregated schools or schools at the other end of the spectrum—those in wealthy districts where the student population is predominately white. The GAO report reveals that doubly

segregated schools have fewer resources, do not offer the full range of core courses like math and science, offer less advanced coursework, and have disproportionately more disciplinary actions than other public schools.

I'd like to ask this entire panel what the Federal Government can do to reverse the troubling trend of segregation by race and income, and ensure an equal and adequate education for all children? Please feel free to expound on reforms within education as well as system-wide changes in areas such as housing, transportation, jobs, and more. Additionally, through the implementation of the Every Student Succeeds Act (ESSA), what can the Department of Education do to make States and school districts aware of new opportunities to increase racial and socioeconomic diversity?

I also invite Ms. Eskelsen García, Ms. Marshall, Ms. Murguía, and Ms. Weingarten to address the related issue of increasing diversity in our schools. ESSA gives States and local school districts greater autonomy with regard to key educational decisions. How do your organizations plan to make States and districts aware of opportunities to increase diversity provided by the new law? Additionally, what tools or resources do States and communities need to tackle the difficult task of diversifying our schools to help ensure that they provide an equal and adequate education for all students?

Answer 3. When discussing equity, we must be clear that it does not necessarily mean equality. In many under-served communities, the resource hole is so deep that providing funding equal to that in wealthier communities is not enough to compensate for the lack of opportunity. Instead, we must focus on parity—moving sufficient resources into under-served communities to achieve the same standards as better-served communities. We believe the promise of the additional indicator in accountability plans is just for this purpose. Holding schools accountable, even for just one additional indicator of school quality beyond a test score, can be a powerful tool to shed light on the critical gaps in opportunity for children that exist even within a single district. Further, we are also pleased by the extensive report card requirements around equity and opportunity that will offer parents and communities additional information about opportunity gaps in order to push for change.

ESSA provides many tools that can be used to support the diversity of the student population. For example, we strongly support the use of magnet schools to provide challenging educational environments for children from all kinds of backgrounds. We also must take a clear look at the way in which charter schools enroll students to ensure that they do not resegregate communities, as some research has suggested.

We also strongly support the use of community school strategies to support students. Community schools is a model of school support in which community organizations, parents, and educators all work together in creative ways to create supportive environments that support the whole child. Each community school is a little different. Community school models are as unique as the schools and communities they serve. Sustainable community schools try to ensure that every child has an opportunity to learn and succeed, which is a cornerstone of ESSA. As a union, we know how to organize, build connections between schools and the community, survey needs, and forge alliances. We are working across the country in diverse communities to build capacity around this incredibly promising model.

We must also do more to increase diversity within the education professions. While growing numbers of children in public schools are members of minority groups, the majority of educators—especially teachers—continue to be white women. We must do more to put role models in our classrooms who reflect the cultural and ethnic diversity of America today, as well as to attract more men who can serve as role models. In addition, to support families and strengthen the social safety net, we must ensure high-quality child care, access to good nutrition and health care, and provide employment training.

Finally, NEA has embarked on new work to deepen understanding of the role segregated housing policies—implicit or explicit—play in educational inequities and the many ways that growing up in segregated communities impacts students. This work is hard and requires each of us—as an organization and as individuals—to look deep within ourselves and confront ways in which we contribute to persistent inequality and then to dig even deeper to change our hearts, minds, and policies toward the path of justice.

Question 4. The Every Student Succeeds Act (ESSA) rightly moves away from the blame and shame approach of the No Child Left Behind (NCLB) Act. In crafting the new law, Congress listened to educators, parents, students, stakeholders, and communities when they said, loudly and clearly, that schools and students are more

than test scores. That is why ESSA requires the use of multiple measures to assess our schools and students.

Ms. Eskelsen García, as we move toward implementation of the new law, can you speak to the importance of using multiple measures and not just test scores in determining how well our schools and students are doing? Furthermore, as States begin to plan new accountability systems under ESSA, what recommendations do you have? What indicators of school quality and student success should States think about including in their accountability systems?

Answer 4. NEA strongly advocated for accountability systems to include measures of the resources and opportunities available to students in different schools and districts. We also support holding States and school districts accountable for addressing any resource or opportunity gaps those measures reveal—specifically, for developing plans to address such gaps.

ESSA requires the new State-developed accountability systems that take effect in the 2017–18 school year to be based on multiple measures, not test scores alone. Those systems must include at least one indicator of school success to student support—and we view that as the floor not the ceiling.

Furthermore, the new law requires a needs assessment for most plans and programs—an examination of current resources such as funding, programs, policies, and performance. NEA’s *Guide to Educator-Led School Improvement and GPS Indicators Framework* provide detailed information on the type of accountability systems we envision and support.

SENATOR WHITEHOUSE

Question 1. ESSA is a relief to many, especially in Rhode Island. Everyone who I’ve talked to is very excited about this bipartisan bill and the opportunities it presents.

However, I am concerned about the “supplement, not supplant” issue. Many of you have said that the Department of Education’s proposed regulations on supplement, not supplant are an overreach. At the same time, I am aware of many inequities in local and State funding for education.

Absolutely no one wants to see Federal money provide an excuse for redirecting other funding to wealthy, well-connected school districts—for title I to fill funding gaps in such districts.

I’ve heard from many about the problems with the Department’s draft proposal on supplement, not supplant. My question is not what are the problems, but what should the Department do instead? That is, what would you affirmatively propose to ensure that title I funds are supplemental and that they do not supplant State and local funds?

Answer 1. The affirmative action the Department of Education should take is reissuing and updating—to reflect changes made by ESSA—the non-regulatory guidance provided in July 2015, *Supporting School Reform by Leveraging Federal Funds in a Schoolwide Program* (<https://www2.ed.gov/policy/elsec/guid/eseatitleiswguidance.pdf>).

The Department’s “Dear Colleague” letter discusses how to use Federal funds to supplement school reform in ways that are consistent with ESSA’s supplement, not supplant provision. It also says that local educational agencies (LEAs) should be given flexibility while required to use Federal funds efficiently and effectively.

Question 2. Under NCLB and the Obama administration’s waivers, I consistently heard from Rhode Island teachers and principals that they could achieve better results if not for the layers of bureaucracy stifling innovation at multiple levels.

I am very pleased that ESSA steps away from that one-size-fits-all, overly prescriptive posture. You have all heard me talk about the provisions I fought for in ESSA—requiring States to describe how they will encourage opportunities for more autonomy and flexibility.

I am concerned because I do not want to see the Department of Education use the regulatory process to grab back the control that ESSA intended to push down to the State and local level. What could the Department do on the supplement, not supplant issue that would support greater innovation at the local level?

Answer 2. My answer to this question is similar to my answer to the previous question. We believe that the Department of Education should reissue its non-regulatory guidance from July 2015 to reflect changes under ESSA. That guidance, not regulation, is consistent with ESSA’s devolution of responsibility to the local level—and it stresses how local districts can use existing flexibility to implement title I programs efficiently and effectively.

RESPONSE BY RANDI WEINGARTEN, J.D., TO QUESTIONS OF SENATOR BURR, SENATOR COLLINS, SENATOR SANDERS, AND SENATOR WHITEHOUSE

SENATOR BURR

Question 1. I noted with some interest during your unprepared remarks you spoke about title I's formula and its inadequacy in targeting poverty. I couldn't agree more, which is why I and Senator Michael Bennet of Colorado put forward a plan, the Funding Educational Opportunity Act, during last year's ESEA reauthorization debate. My understanding is you vocally opposed my amendment. Is that true?

Answer 1. Senator Burr, you are 100 percent correct in characterizing my opposition to the inclusion of the Funding Educational Opportunity Act as part of the ESEA reauthorization proposal that moved through the Congress last year.

We both share a commitment to targeting title I funding to districts serving the highest concentrations of poor students. The need to do this today is as important as it was 50 years ago when President Lyndon Johnson, a former schoolteacher, advocated for ESEA to level the playing field so disadvantaged students could have the same opportunities as their more-advantaged peers. Just like when ESEA was enacted into law in 1965, the need to invest resources to meet students' needs remains vitally important as today's poor students confront an ever-changing world and need extra assistance to help meet new and higher standards.

However, I truly believe that your legislation would not achieve its intended goal. Your proposal would have a damaging effect on the distribution of title I funds to States and local educational agencies. Last year, it was estimated that your proposal would negatively affect nearly 10,000 LEAs (or more than 70 percent of all school districts), more than half of all eligible low-income children, and 1.9 million teachers working in districts receiving title I funds. This does not sound like better targeting to me.

This would occur because your legislation seeks to turn on its face the value that a State's average per-pupil expenditure plays in their title I allocation. The use of an "expenditure factor" in the current formula recognizes that there are differences in the cost of operating schools in different parts of the Nation, and allows a higher allocation in high-cost areas. Your proposal eliminates the expenditure factor, which would result in a cut in services for students in high-cost areas. States that invest significant resources in their education system are rewarded and incentivized to do so through the current Federal formula. Your legislation would negate that. In addition, another part of the title I formula is an "effort factor" that looks at how much a State spends relative to per capita income (PCI). States that spend a high percentage on education relative to PCI are rewarded by taking effort into account. Your bill would remove both the State average per-pupil expenditure and the effort factor in the title I formula. This means that it would hurt both States that spend a lot on education and States that have high effort relative to PCI.

This amendment would have eliminated much of the formula funding structure, specifically the PCI provisions and the effort factor that still rewards poorer States for showing a willingness to invest in education. It would instead reward States that do not invest as much in education, in essence taking money from low-income students in one State and give it to low-income students in another State. This would amount to nothing more than robbing Peter to pay Paul and shows the need for additional investment rather than stripping it from some at-risk children in States that have historically made more of an investment in their students. I am pleased that Congress recognized the flaws in this proposed methodology and decided not to include it in the final version of the Every Student Succeeds Act.

However, I would note that your efforts to better target the distribution of title II funds was successful because it actually removed a long-standing hold-harmless provision that was not sensitive to the shifting populations and concentrations of poor students. Unlike the changes you sought in title I, this change will actually lead to the better targeting of Federal funds to disadvantaged students, and I congratulate you on this accomplishment.

Question 2. You also noted that a targeted title I formula should fund low-income schools, such as Clara Barton High School, while lessening funding for wealthier schools, such as Scarsdale High School because, as you noted, Scarsdale is "well-funded." As you might know, Scarsdale's school district receives about \$95,000 in title I dollars, despite a \$150 million annual operating budget. My amendment attempted to do something akin to the concept you articulated by redirecting funds from higher wealth districts to the most impoverished across our Nation. Ninety-five thousand title I dollars could go a lot further in high-poverty districts in other parts of the country, such as Charlotte Mecklenburg Schools.

Given that we seem to share similar goals on this matter and that increasing title I's overall appropriation alone cannot fully address these inequities, can you share your plan for making title I's formula itself—not just more funding—more equitable through targeting poverty?

Answer 2. Senator, we are in agreement that we should focus on the schools and districts that have high concentrations of poverty. The provision in your legislation that implemented a minimum poverty rate threshold for school districts that could benefit from higher weights based on their numbers of formula children was laudable. Unfortunately, there were other provisions in the legislation (as I discussed in my response to Question 1) that eliminated the targeting benefits that the current formula provides to school districts today.

SENATOR COLLINS

Question 1. During the reauthorization process, I worked with the junior Senator from Vermont and others to develop and improve an innovative assessment pilot program to give States and school districts the opportunity to move away from standardized tests and toward assessments that can measure learning competency and proficiency in innovative ways. This pilot program is one way to address concerns about over testing and could support those States, like Maine and others, that want to focus on what students are learning and how well they are applying that knowledge, not just how well they can take a test.

How do you recommend that the Department implement this program, so that it maintains the flexibility Congress intended to foster innovation around assessments?

Answer 1. The AFT views the assessment pilot as a crucial component of ESSA and worked hard to have it included in the final bill eventually signed into law. As we've seen with the supplement-not-supplant and accountability regulations proposed by the Department of Education, details and intent are crucial. The Department must respect the underlying goal of ESSA's assessment pilot language, which is to allow States the opportunity to develop alternatives to the "drill-and-kill" testing regime NCLB has created. In practice, this means the Department should quickly establish the pilot program to allow States to get their innovative assessment systems up and running. It should also operate in the spirit of the law and exercise maximum flexibility in ensuring that a variety of innovative assessment systems be granted the waivers. In particular, the assessment system managed by the New York Performance Standards Consortium, with its decadeslong track record of effectively serving a diverse population, should be upheld as a model that can assist States in developing high-quality applications.

Question 2. During Secretary King's confirmation hearing, I asked for his assurance that the Department would engage rural communities in its ESSA implementation processes. For example, I was alarmed that the Department held its initial public listening sessions in DC and Los Angeles. Rural districts also seem to have been underrepresented on the committee of negotiators selected for the negotiated rulemaking.

It's vital that rural communities and rural educators have a seat at the table. What should the Department be doing to ensure rural communities are represented in its rulemaking?

In your States, what are you doing, as stakeholders, to ensure rural voices are heard in your State and local planning efforts?

Answer 2. Senator Collins, thank you for this question. The AFT is committed to making sure that all stakeholders have a voice in how ESSA is implemented, and that includes all educators working in urban, suburban or rural communities. One example of how the AFT has engaged with rural communities is our work in West Virginia.

For more than 4 years, the AFT has guided the efforts of a public-private partnership to bring much-needed resources and services to McDowell County, WV, a geographically isolated area in the heart of Appalachia whose educators are AFT members. Known as Reconnecting McDowell, the initiative has encouraged a renewed emphasis on improving the county's schools by focusing on mentoring students and establishing community schools.

Some of the efforts that have begun to yield positive results in student achievement include providing thousands of books to replenish the book inventories at the seven literacy centers that were opened by Reconnecting McDowell throughout the county; establishing a new program starting in the fall that will put books on school buses so elementary school-age kids can read during their long rides to and from school; clearing the way for construction of Renaissance Village, an apartment building primarily intended as housing to help recruit and retain teachers; and creating

community schools with healthcare, mental and oral health services, food programs and other wraparound services that the community determined were needed for students and their families.

It's clear that rural educators may face unique challenges in helping their students succeed, and we support efforts to allow their voice to be heard during ESSA decisionmaking. Scheduling—time and location—of stakeholder meetings matters in order to make these meetings accessible to all educators, as does the appropriate use of technology. We also encourage the Department of Education to make use of the input of teacher unions, which are composed of the educators who will directly feel the impact of decisions relating to ESSA implementation.

SENATOR SANDERS

Question 1. We must do everything that we can to ensure that every child—regardless of her or his circumstances—has access to a high-quality education. We know that a high-quality education is a resource-intensive endeavor. We also know that disadvantaged children need additional resources to combat the ravages of poverty and discrimination. The Elementary and Secondary Education Act (ESEA) of 1965 marked the beginning of a strong role for the Federal Government in combating inequities on both fronts. Clearly, there is much more work that must be done.

A key component of the Federal Government's role in education is ensuring that our schools have the additional resources needed to ensure that every child can reach her or his full potential. Today, over half of all public school children come from low-income families. Examining the most recent data available, there is clearly an increased need, as well as a lack of sufficient Federal resources to meet this need (figure 1). Between school year 2004–5 and school year 2013–14 we have seen a 32 percent increase in children eligible for free or reduced lunch—an increase of over 6 million children.

Yet the main source of Federal funding for public schools serving low-income children—Title I-A of ESEA—has not only not failed to keep pace with the reality that our public schools are serving more low-income children than a decade ago, funding has not even kept up with inflation. Real title I-A funding is down 6 percent since fiscal year 2005 while the percentage of low-income kids in public schools has increased by 32 percent over the same time period. If at a bare minimum title-I-A funding had kept pace with inflation since fiscal year 2005, appropriations for title-I-A would have been \$15.2 billion in fiscal year 2014 instead of \$14.4 billion—a difference of nearly a billion dollars. Furthermore, if title I-A funding had kept pace with both inflation and the growing number of children coming from low-income families since fiscal year 2005, title-I-A funding would have hit \$20.2 billion in fiscal year 2014, a gap of over \$5.5 billion when considering reality versus actual funding (figure 2).

Ms. Weingarten, can you please speak to the importance of Federal education funding meeting the increased needs of our public schools? Beyond a dramatic increase to title-I-A funding, what other funding streams within ESEA and in other Federal programs require an increase to meet the realities of today's public schools?

Answer 1. Senator Sanders, I couldn't agree with you more about the need to provide adequate support for students, especially vulnerable populations. Funding for education is an investment in the future of our individual students and our Nation as a whole. As the country continues its recovery from lingering effects of the Great Recession, as our student body grows more diverse, and as we work to implement the new provisions of the Every Student Succeeds Act, the Federal role in supporting schools is extremely important.

The NCLB system of test-and-punish offered neither the time nor the tools for educators to teach and provide the supports all students need to succeed. Title I funding is foundational to that effort and to supporting Congress' historic commitment to target Federal resources where there are concentrations of students in poverty. With half our kids in public schools coming from poverty, it's vital to increase title I funding so that resources are available to the students who need it most.

But as you point out, there are many pieces of the Federal funding puzzle that affect our students. It is difficult for children to learn if they are hungry, or don't have adequate healthcare, or don't have clean, safe water to drink. Federal funds in these areas are necessary investments for our students to succeed. Congress has never provided the promised level of funding for the Individuals with Disabilities Education Act to help our special education students get the services they are entitled to and deserve. For our students, and our country, to succeed, it is imperative to ensure robust support for providing all children a strong start through early education such as Head Start and pre-K; for ESSA Title II to provide teachers the tools,

time, and leadership opportunities they need to help our children succeed; for ESSA Title III to meet the needs of our country's growing English language learner population; and for ESSA Title IV, which supports a well-rounded education and supportive, holistic school intervention strategies such as community schools.

Question 2. I am very concerned that our schools and communities are dealing with a surge of students exposed to multiple adverse experiences and are not equipped with the resources, training, and support to accommodate this crisis.

According to the national Adverse Childhood Experience Study, over half of those surveyed reported at least one form of childhood adversity. Shockingly, two in three children in our Nation—46 million children—are exposed to violence, crime, abuse, or psychological trauma a year. In Vermont, over 20 percent of children have had two or more adverse experiences, which include traumatic events like living in chronic poverty, living with someone with a substance abuse problem, experiencing community or family violence, and more. Even more alarming is the fact that our youngest citizens and their parents are at the forefront of this crisis. Since 2014, the Department for Children and Families in Vermont has seen a 33 percent increase of children in State custody with children under the age of six making up more than two-thirds of this increase. Further, similar to nationwide trends, over 40 percent of children come from low-income families in my home State, with young children the most likely of any age group to be poor.

Ms. Weingarten, what can the Department of Education do to help schools, educators, and communities be prepared to deliver trauma-informed approaches to education when implementing the Every Student Succeeds Act (ESSA)? Additionally, what can the Department of Education do to ensure that educators teaching in environments where a large percentage of students have had adverse childhood experiences (ACEs) have the support and the self-care they need to succeed? Furthermore, what policies should Congress enact to help communities combat these challenges and attack the root causes—like poverty, exposure to violence and substance abuse—driving these adverse experiences? How would increased Federal investments in child care, preschool, maternal and child home visiting, before-school, afterschool, and summer programming, nutritional supports, wrap-around services for schools and more help to fight this crisis? Likewise, how would raising the Federal minimum wage, addressing under-employment and unemployment, implementing paid family leave, and enacting universal health care coverage help attack the root causes of these adverse experiences?

As national education leaders, what plans are your organizations making to work with States to ensure that their schools and practitioners have trauma-informed approached to education? How will you make States and school districts aware of opportunities under ESSA to create trauma-informed environments?

Answer 2. Research shows that two-thirds of what affects student achievement occurs outside of the classroom. When this fact is placed in the context of half of all public school students living in poverty, it is not surprising that schools have become much more than education institutions. Teachers, paraprofessionals, nurses, counselors and other members of the school team try to meet student needs that are caused by poverty. When poverty is combined with additional traumatic experiences, educators and schools are pushed over the brink and are often challenged to do anything beyond responding to immediate crises.

While these challenges have long been known, the Federal Government has sought to maintain an educational accountability system that ignores the impact of “adverse experiences.” It is crucial to address poverty and trauma if the country wishes to have strong educational and economic outputs. This means increasing revenue so the Nation can provide services and supports to all who need them, including: free/low-cost child care and preschool; maternal and child home visitation programs; high-quality before- and after-school programs; effective apprenticeship programs; access to affordable higher education; a livable minimum wage; investment in the Nation's infrastructure, schools and struggling communities to provide well-paying jobs; and ensuring that pharmaceutical and other healthcare costs do not bankrupt families.

More specifically, the AFT has found that community schools are an effective strategy that can be used to address the “multiple adverse experiences” described in your question. The Department can work to ensure that it supports the community school model under Title IV of ESSA, highlight the ability of schools to use title I funds to provide wraparound services where they are absent, circulate the Department of Health and Human Services' 2014 letter stating that schools may seek reimbursement from Medicaid for the provision of health services, and develop regulations and guidance that encourage States to incorporate measures of student well-being into their accountability systems. Regarding the last point, the AFT is offering

a framework of indicators beyond test scores for school quality and student success that stakeholders can consider in designing accountability systems. This framework includes academic outcomes such as measures of students participating in and completing advanced coursework or career and technical education courses, measures that gauge students' opportunity to learn such as access to safe and adequate facilities, and measures of students' engagement and support such as chronic absenteeism. This framework is available at: http://dbweb01.aft.org/sites/default/files/essa_new-accountability032116.pdf.

The AFT is working to make sure our affiliates are aware of the positive potential ESSA represents and is encouraging our locals to be involved in the implementation process. The AFT has also developed guides to help educators support students threatened by Immigration and Customs Enforcement raids, assisted educators in addressing gun violence across the country after the mass murder of elementary students and educators in Newtown, CT, and convened a task force to address issues of racial bias. The task force produced a report titled "Reclaiming the Promise of Racial Equity: In Education, Economics and Our Criminal Justice System," which provides a framework for the development of policy in national and State legislation, at the school board level and inside the AFT itself. The report can be found at: <http://www.aft.org/news/aft-issues-groundbreaking-report-racial-equity#sthash.qIsHHuOd.dpuf>.

Question 3. Yesterday, on the 62d anniversary of the *Brown v. Board* decision, the Government Accountability Office (GAO) released a report confirming what educators, families, students, and community stakeholders have been telling us anecdotally for some time—our public schools are becoming more segregated by both race and family income.

The number of schools that are doubly segregated by both race and income—where 75 percent or more of the kids at these schools come from low-income families and are black or Hispanic—has increased from 9 percent of all public schools in school year 2000–2001 to 16 percent of all public schools in school year 2013–14. Additionally, today, nearly one in five public students attend these doubly segregated public schools—more than double the amount of kids who attended these schools almost 15 years ago. Furthermore, Hispanic children are often triply segregated by race, family income, and native language. Shamefully, nearly two-thirds—61 percent—of all high-poverty schools are schools where over 75 percent or more of the children are black and Hispanic.

Segregation and isolation by race and income in our public school is an alarming phenomenon on its own. Even more troubling is that the fact that these doubly segregated schools are not offering students a comparable education to non-segregated schools and schools at the other end of the spectrum that are wealthy and predominately white. The GAO report uncovers that these doubly segregated schools have fewer resources, do not offer the full range of core courses like math and science, offer less advanced coursework, and have disproportionately more disciplinary actions than other public schools.

I'd like to ask this entire panel—what can the Federal Government do to reverse this troubling trend of segregation by race and income, and ensure an equal and adequate education for all children? Please feel free to expound on reforms within education and greater system wide changes including housing, transportation, jobs, and more. Additionally, through the implementation of the Every Student Succeeds Act (ESSA) what can the Department of Education do to make States and school districts aware of opportunities within this new law to increase racial and socioeconomic diversity in our schools?

Relatedly, Ms. Eskelsen García, Ms. Marshall, Ms. Murguía, and Ms. Weingarten, ESSA provides States and local school districts more autonomy to make key educational decisions. What are your organizations' plans to make States and local school districts aware of opportunities to increase diversity under this new law? Additionally, what other tools or resources do States and communities need to tackle the difficult task of diversify our schools are providing equal and adequate education for all students?

Answer 3. The AFT will continue to be committed to informing its members, parents, students and the public of the scope and impact of segregation, desegregation and resegregation across the Nation and take the appropriate actions to publicize, promote and motivate the unfulfilled goal of the integration of our public schools.

We recently commemorated the 62d anniversary of the *Brown v. Board* decision, and data show that America's schools are resegregating at an alarming rate. It is clear that, as a Nation, we have failed to carry out our moral and legal duty to ensure that educational opportunity is "available to all on equal terms."

The fight for all children to have access to an excellent education is the *Brown* decision's legacy. It requires a focus on equitable access and resources, evidence of effectiveness, and scaling and sustaining successful practices. One way that some school districts and States have addressed this in recent years—including my hometown district, New York City, led by Mayor de Blasio—is by providing high-quality early childhood education.

Decades of research show that early childhood education can produce significant educational and economic benefits. Such programs help level the playing field for disadvantaged children, a particular concern in districts with concentrated poverty and deep segregation.

Another way to overcome segregation and poverty is through community schools. In the Cincinnati Public Schools district, every public school is a community learning center offering supports ranging from healthcare, to legal and housing assistance, to mentoring. Cincinnati's successful community schools approach demonstrates that while poverty matters in education, its effects can be mitigated. Ten years ago, one of every two students in this high-poverty district did not complete high school. Today, the graduation rate has surged to 80 percent. Achievement gaps between African American and white students are narrowing. Student mobility, which can be so disruptive to a child's education, is down. And discipline referrals have dropped sharply—keeping students in school, keeping them learning.

Through ESSA, this Congress and the Department of Education can significantly invest in early childhood education and community schools, programs that fight poverty and enable economic and racial integration.

Additionally, through greater investments in title I, the AFT believes that American students and schools will benefit. ESSA continues important equity safeguards so States cannot deny disadvantaged children the additional funding that the Federal Government has provided to level the playing field. Starting with ESSA and continuing with some of the efforts outlined above, the Federal Government can play a vital role in ensuring that all American students enjoy the benefits of diversity and experience the joy that comes from learning in an invigorating, inspiring and inclusive integrated environment.

Question 4. The Every Student Succeeds Act (ESSA) rightly moves away from the blame and shame approach of the No Child Left Behind (NCLB) Act. In crafting this new law, Congress listened to educators, parents, students, stakeholders, and communities, who spoke out loudly and clearly that schools and students are more than a test score. That is why ESSA uses multiple measures to examine the success of our schools and students.

Ms. Weingarten, as we move toward implementation of this new law, can you speak to the importance of using multiple measures and not just test scores in determining how well our schools and students are doing? Furthermore, as States begin to plan new accountability systems under ESSA, what recommendations do you have? What indicators of school quality and student success should States think about including in their accountability system?

Answer 4. Under NCLB, our public schools were subject to a test-and-punish accountability system that not only impeded learning but also led to unintended consequences. This system discouraged educational innovation, demoralized teachers, narrowed instruction and, most important, failed to address the needs of children, particularly the most disadvantaged. The passage of the Every Student Succeeds Act provides an opportunity for us to replace this faulty system with a new paradigm for accountability, one that supports deeper levels of learning for all students and one that incorporates measures beyond test scores.

The AFT encourages States to meaningfully engage with their stakeholders—including educators, parents and community members—as to what they value in their children's school. The AFT is offering a framework of indicators beyond test scores for school quality and student success that stakeholders can consider in designing accountability systems. This framework includes academic outcomes, such as measures of students participating in and completing advanced coursework or career and technical education courses; measures that gauge students' opportunity to learn, such as access to safe and adequate facilities; and measures of students' engagement and support, such as chronic absenteeism. This framework is available at: http://dbweb01.aft.org/sites/default/files/essa_new-accountability032116.pdf.

SENATOR WHITEHOUSE

Question 1. ESSA is a relief to many, especially in Rhode Island. Everyone who I've talked to is very excited about this bipartisan bill and the opportunities it presents.

I am concerned about the supplement, not supplant issue. Many of you have said that ED's proposed regulations on "supplement, not supplant" are an overreach. But I am also aware of many inequities that exist in local and State funding for education.

Absolutely no one wants to see Federal money come in and provide an excuse to send other funding into wealthier, well-connected school districts and have title I fill the gap.

I've heard from many about the problems with ED's draft proposal. My question is not what are the problems, but what should ED do instead? That is, what would you affirmatively propose to ensure that title I funds are supplemental and not supplanting State and local funds?

Answer 1. Thank you for this question. What is absolutely essential is that we do not put in place rules that exacerbate inequitable school funding or that disrupt schools that are stable places in their communities for students and their families. Unfortunately, having witnessed many school funding scenarios during my time in New York City, and having watched closely and participated in the recent debate over supplement-not-supplant regulations, I see few good ways of mandating supplement-not-supplant methodologies at the Federal level without leveling down funding for some schools, thus destabilizing such schools.

I am very willing to consider supplement-not-supplant proposals that give school systems time to level up funding so that they can ensure that resources—including but not limited to wraparound services, staffing, facilities and supplies—are provided to schools that are currently receiving less than their fair share. But this must be done without taking away such funding from schools that are just getting enough to maintain the services, staffing and supports they are providing students. Such a proposal must also protect students from having the staff at their schools move from year to year so that districts can balance funding allotments between schools, because a stable workforce with familiar faces from year to year is exactly what many of our most vulnerable students desperately need.

Question 2. Under NCLB and the Obama administration's waivers, I consistently heard from Rhode Island teachers and principals that they could achieve better results if not for the layers of bureaucracy stifling innovation at multiple levels.

I am very pleased that ESSA is a step away from that one-size-fits-all, overly prescriptive posture. You have all heard me talk about the provisions I fought for in ESSA—requiring States to describe how they will encourage opportunities for increased autonomy and flexibility.

I am concerned because I do not want to see ED use the regulatory process to grab back the control that ESSA intended to push down to the State and local level. What could ED do on the supplement, not supplant issue that would support greater innovation at the local level?

Answer 2. ESSA's predecessor, the No Child Left Behind Act, was in place for more than 14 years. One lesson this Congress and this administration can take from that is that it should not put in place overly prescriptive rules that stifle innovation now and in the future. We don't know what schooling in 2026 or 2030 is going to look like, so this administration has a responsibility to not require box checking and dollar-for-dollar comparisons that can't take into account how education will evolve over the next decade-plus.

Affirmatively, one thing that the Education Department can do is encourage States and districts to fund initiatives like early childhood education, community schools and wraparound services at schools serving students in poverty. Such programs are rarely inexpensive, but research shows that they are exactly the investments needed to combat the effects of poverty, increase student learning and address the needs of the whole child.

RESPONSE BY TONY EVERS, PH.D. TO QUESTIONS OF SENATOR ENZI, SENATOR COLLINS, SENATOR SANDERS, AND SENATOR WHITEHOUSE

SENATOR ENZI

Question 1. Dr. Evers, as a State Education Chief, what has been the response of your rural districts as to the "supplement, not supplant" proposal you saw during the negotiated rulemaking session and how it will affect them, especially with the knowledge that it could cause the forced transfer of teachers?

Answer 1. All school districts are wondering what direction the supplement, not supplant (SnS) rules will take when they are put out for public comment. There is great concern from both rural and urban school districts with the proposal the Department of Education (ED) presented in the negotiated rulemaking session earlier this year. Concerns range from the amount of administrative reporting that would

be created, and add onto already full plates, to the impact this could have on teacher assignments, teacher pay, and programs offered to students. The initial proposal seems predicated on a premise that school districts will be able to spend more to ensure compliance, when in reality our school districts are stretched thin in terms of resources and reallocation of those resources is the most likely response to come into compliance.

Question 2. Dr. Evers, I'm an accountant by trade. I know that reporting school level expenditures by specific funding source is not supported by the fiscal data systems used by schools in Wyoming and would cause significant changes in order to comply. Can you talk about what feedback you received, after viewing the "supplement, not supplant" proposal during the negotiated rulemaking panel, from your data team as to the size of the changes that would be necessary if such a change were to be put into place?

Answer 2. For many school districts across the country, ED's supplement, not supplant proposal would require fundamental change from current practice. For example, under ED's negotiated rulemaking proposal, school districts would be required to account for district-wide costs and services on a per-school basis. In general, these type of services are provided on a district-wide basis and aren't presently accounted for on a school-by-school basis. For example, if a district provides district-wide professional development opportunities for its teachers, systems presently treat this as a district-wide expenditure, and not a school-by-school expenditure. In addition, districts often fund schools on a position-by-position (rather than per-pupil) basis, and the proposal would force them to create accounting systems that measure costs on a per-pupil basis.

In terms of the size of the change needed to implement this different type of accounting system, it would largely depend on what services a given district might provide district-wide and the structure of their existing accounting systems along with State-level reporting and data collection requirements. In Wisconsin, this would involve significant new data collections at the State level that we would have to build into our existing school finance system. At the State level Wisconsin does not collect school building-level finance data. We do not know all that would be required of us at the moment to do so, but given the timelines involved, it will be difficult to impossible for us to build these systems and have them up and running for the next school year so they can be reported out in 2017-18.

SENATOR COLLINS

Question. During Secretary King's confirmation hearing, I asked for his assurance that the Department would engage rural communities in its ESSA implementation processes. For example, I was alarmed that the Department held its initial public listening sessions in DC and Los Angeles. Rural districts also seem to have been underrepresented on the committee of negotiators selected for the negotiated rulemaking.

It's vital that rural communities and rural educators have a seat at the table. What should the Department be doing to ensure rural communities are represented in its rulemaking?

In your States, what are you doing, as stakeholders, to ensure rural voices are heard in your State and local planning efforts?

Answer. As States, we work hard to represent all of our constituencies. As State Superintendent, CCSSO President, and a member of the negotiated rulemaking committee, I worked to represent the interests of my State, which includes many rural schools, as well as those of other chief State school officers who share both rural and urban concerns.

In Wisconsin a quarter of our 424 school districts have fewer than 500 students and we have set up a significant process to solicit feedback on ESSA from across our State, including rural schools and communities.

As we begin our planning efforts around ESSA, we are ensuring that at least one of our three school improvement and accountability listening sessions is located in northern Wisconsin to reach more rural communities. We sent special invitations to rural groups and school districts to participate in listening sessions. Wisconsin is also hosting a virtual listening session and an online feedback form to ensure that distance is not a barrier to providing input. Additionally, we will be soliciting feedback from the State Superintendent's Rural Advisory Council and the Wisconsin Rural Schools Alliance.

SENATOR SANDERS

Question 1. We must do everything that we can to ensure that every child—regardless of her or his circumstances—has access to a high-quality education. We know that a high-quality education is a resource-intensive endeavor. We also know that disadvantaged children need additional resources to combat the ravages of poverty and discrimination. The Elementary and Secondary Education Act (ESEA) of 1965 marked the beginning of a strong role for the Federal Government in combating inequities on both fronts. Clearly, there is much more work that must be done.

A key component of the Federal Government's role in education is ensuring that our schools have the additional resources needed to ensure that every child can reach her or his full potential. Today, over half of all public school children come from low-income families. Examining the most recent data available, there is clearly an increased need, as well as a lack of sufficient Federal resources to meet this need (figure 1). Between school year 2004–5 and school year 2013–14 we have seen a 32 percent increase in children eligible for free or reduced lunch—an increase of over 6 million children.

Yet the main source of Federal funding for public schools serving low-income children—Title I-A of ESEA—has not only not failed to keep pace with the reality that our public schools are serving more low-income children than a decade ago, funding has not even kept up with inflation. Real title I-A funding is down 6 percent since fiscal year 2005 while the percentage of low-income kids in public schools has increased by 32 percent over the same time period. If at a bare minimum title-I-A funding had kept pace with inflation since fiscal year 2005, appropriations for title-I-A would have been \$15.2 billion in fiscal year 2014 instead of \$14.4 billion—a difference of nearly a billion dollars. Furthermore, if title I-A funding had kept pace with both inflation and the growing number of children coming from low-income families since fiscal year 2005, title-I-A funding would have hit \$20.2 billion in fiscal year 2014, a gap of over \$5.5 billion when considering reality versus actual funding (figure 2).

Dr. Evers, can you please speak to the importance of Federal education funding meeting the increased needs of our public schools? Beyond a dramatic increase to title-I-A funding, what other funding streams within ESEA and in other Federal programs require an increase to meet the realities of today's public schools?

Answer 1. Funding matters at both the State and Federal level. In Wisconsin, this is enshrined in our State constitution which states in Article X, Section 3 that “The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable . . .” It is our responsibility to ensure that all children graduate college and career ready. Yet, all children do not come to us with equal needs or equally prepared. In this regard, Federal support for public education is critical to State and local efforts to provide all children—regardless of socioeconomic background—with a high quality education.

The *Every Student Succeeds Act* (ESSA), which reauthorizes the *Elementary and Secondary Education Act* (ESEA), authorizes essential funding that will allow States to support school improvement, help recruit and train high-quality teachers, principals, and other school leaders, address the needs of students who face specific barriers to learning, and pursue innovations to improve the delivery of programming; together, these efforts should expand educational opportunity for all students, including those from low-income backgrounds.

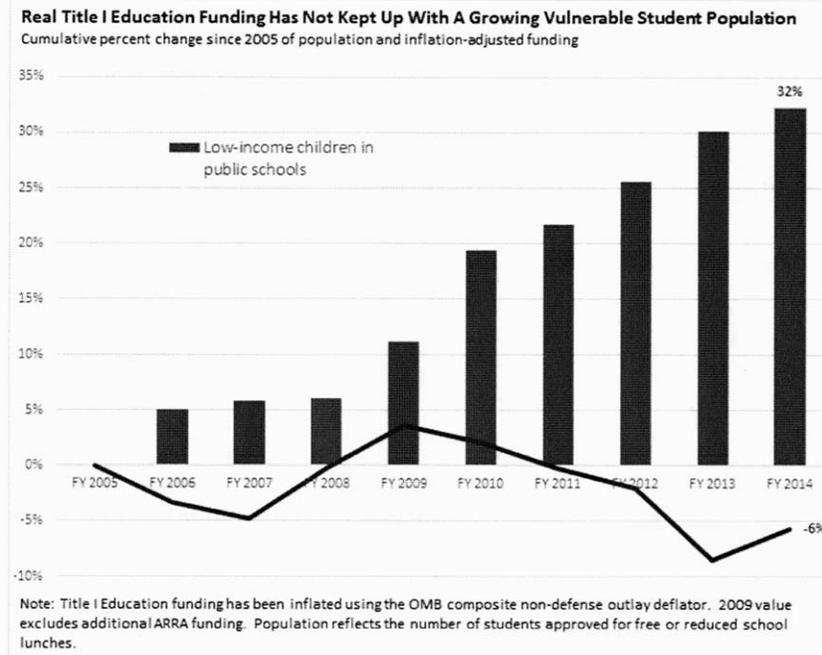
Yet ESSA is part, but not the whole picture when it comes to important Federal supports. For instance, I would point out that the Individuals with Disabilities Education Act (IDEA) is critically underfunded; we need fewer children coming to school hungry so reimbursements for school breakfast, lunch, and community nutrition programs are important; we need more dollars for mental health services in schools; and we need universal quality pre-kindergarten programs.

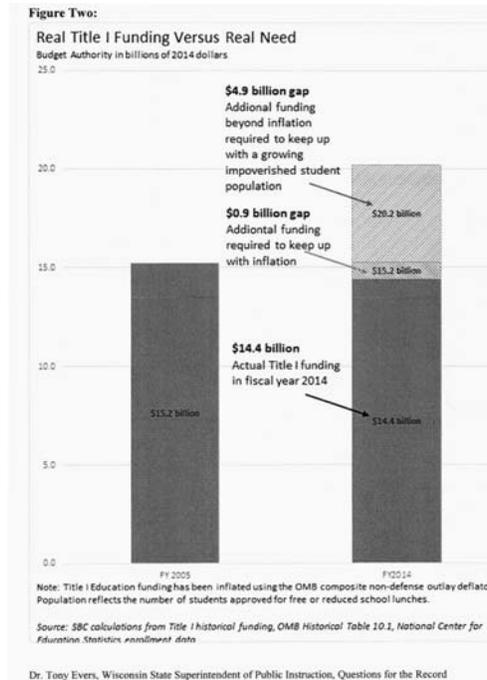
While adequate funding is, obviously, tremendously important, it is equally important that Federal administrators maintain the flexibility embodied in ESSA—empowering States and local districts to use available funding effectively and efficiently to address the needs of their unique student populations. When it comes to deciding how to leverage Federal funding, State and local officials and educators have a critical role to play in identifying or developing strategies that will be effective for their schools and students.

Finally, I should note that there is a wide variance among Wisconsin school districts in the share of their budgets that are from Federal sources. In the 2014–15 school year, while Federal revenues represented 7.5 percent of all revenues received by school districts on a statewide basis in Wisconsin, they were 41 percent of all revenues (Federal, State, property taxes, and other local receipts) received by the

Lac du Flambeau School District and only 1.3 percent of the total revenues received by the Central Westosha School District. In short, Federal funding issues and requirements related to their receipt affect different school districts differently.

Figure One:





Question 2. I am very concerned that our schools and communities are dealing with a surge of students exposed to multiple adverse experiences and are not equipped with the resources, training, and support to accommodate this crisis.

According to the national Adverse Childhood Experience Study, over half of those surveyed reported at least one form of childhood adversity. Shockingly, two in three children in our Nation—46 million children—are exposed to violence, crime, abuse, or psychological trauma a year. In Vermont, over 20 percent of children have had two or more adverse experiences, which include traumatic events like living in chronic poverty, living with someone with a substance abuse problem, experiencing community or family violence, and more. Even more alarming is the fact that our youngest citizens and their parents are at the forefront of this crisis. Since 2014, the Department for Children and Families in Vermont has seen a 33 percent increase of children in State custody with children under the age of six making up more than two-thirds of this increase. Further, similar to nationwide trends, over 40 percent of children come from low-income families in my home State, with young children the most likely of any age group to be poor.

Dr. Evers, what can the Department of Education do to help schools, educators, and communities be prepared to deliver trauma-informed approaches to education when implementing the Every Student Succeeds Act (ESSA)? Additionally, what can the Department of Education do to ensure that educators teaching in environments where a large percentage of students have had adverse childhood experiences (ACEs) have the support and the self-care they need to succeed? Furthermore, what policies should Congress enact to help communities combat these challenges and attack the root causes—like poverty, exposure to violence and substance abuse—driving these adverse experiences? How would increased Federal investments in child care, preschool, maternal and child home visiting, before-school, afterschool, and summer programming, nutritional supports, wrap-around services for schools and more help to fight this crisis? Likewise, how would raising the Federal minimum wage, addressing under-employment and unemployment, implementing paid family leave, and enacting universal health care coverage help attack the root causes of these adverse experiences?

As national education leaders, what plans are your organizations making to work with States to ensure that their schools and practitioners have trauma-informed ap-

proaches to education? How will you make States and school districts aware of opportunities under ESSA to create trauma-informed environments?

Answer 2. Far too many children face challenges—including poverty, hunger, exposure to violence, lack of reliable healthcare, and other sources of trauma—that make it extremely difficult for them to learn when they come to school. In this context, our education system cannot exist in isolation. States understand the importance of being intentional and strategic to ensure that our education system works in close coordination with other systems that help address the day-to-day challenges faced by children and families.

While States would welcome increased Federal funding for programs that address the needs of students living in poverty and other students exposed to adverse experiences, ensuring flexibility for States, districts, and schools in the use of Federal education funding is also important to supporting the development of a more integrated system that puts students in the best position to learn when they come to school. It is essential the Federal rules allow States and districts the discretion to allocate funding in ways that effectively address the unique challenges faced by their students, including, but not limited to, providing professional development on trauma-informed responses to educators.

ESSA emphasizes the need for comprehensive supports for students, and States are prepared to tackle this challenge. Now, it is important that States and districts are empowered to utilize Federal funding to create responsive, effective systems. It is also important that we work with our national organizations and the Department of Education to ensure that we are sharing best practices as to what is working in our States and why.

In Wisconsin, we have undertaken a number of steps to help school districts and provide an integrated approach to care.

- Wisconsin provides access to training and supports around Trauma Sensitive Schools/Practices (TSS)—Wisconsin’s TSS *resources* and *online learning modules* are examples, as are our *professional development resources* for training and technical assistance.

- Wisconsin has developed a *school mental health framework* that provides guidance to build and strengthen a comprehensive school mental health system.

- We have made investments in resources, training, and implementation supports for Social Emotional Learning (SEL) competencies, especially at the early childhood and preschool levels. SEL programs implemented by school staff members (e.g., teachers, student support personnel) improve children’s behavior, attitudes toward school, and levels of academic achievement (CASEL, 2008).

- We have developed statewide *Response to Intervention and Positive Behavioral Intervention and Supports* centers to help increase academic performance, improve safety and establish a positive school culture.

Question 3. Yesterday, on the 62d anniversary of the *Brown v. Board* decision, the Government Accountability Office (GAO) released a report confirming what educators, families, students, and community stakeholders have been telling us anecdotally for some time—our public schools are becoming more segregated by both race and family income.

The number of schools that are doubly segregated by both race and income—where 75 percent or more of the kids at these schools come from low-income families and are black or Hispanic—has increased from 9 percent of all public schools in school year 2000–2001 to 16 percent of all public schools in school year 2013–14. Additionally, today, nearly one in five public students attend these doubly segregated public schools—more than double the amount of kids who attended these schools almost 15 years ago. Furthermore, Hispanic children are often triply segregated by race, family income, and native language. Shamefully, nearly two-thirds—61 percent—of all high-poverty schools are schools where over 75 percent or more of the children are black and Hispanic.

Segregation and isolation by race and income in our public school is an alarming phenomenon on its own. Even more troubling is the fact that these doubly segregated schools are not offering students a comparable education to non-segregated schools and schools at the other end of the spectrum that are wealthy and predominantly white. The GAO report uncovers that these doubly segregated schools have fewer resources, do not offer the full range of core courses like math and science, offer less advanced coursework, and have disproportionately more disciplinary actions than other public schools.

I’d like to ask this entire panel—what can the Federal Government do to reverse this troubling trend of segregation by race and income, and ensure an equal and adequate education for all children? Please feel free to expound on reforms within education and greater system wide changes including housing, transportation, jobs,

and more. Additionally, through the implementation of the Every Student Succeeds Act (ESSA) what can the Department of Education do to make States and school districts aware of opportunities within this new law to increase racial and socioeconomic diversity in our schools?

Answer 3. ESEA is, fundamentally, a civil rights law; one of its core tenets is ensuring that every child—regardless of race or income—has the opportunity to get a high-quality education.

It was introduced as part of President Lyndon B. Johnson’s War on Poverty and on the occasion of its signing, President Johnson stated, “By passing this bill, we bridge the gap between helplessness and hope for more than five million educationally deprived children.”

President Johnson’s words cannot be just an aspirational statement. Ensuring a quality education where every student graduates college- and career-ready is critical to fulfilling the original promise of ESEA. I am not proud of the fact that Wisconsin has one of the largest achievement gaps between African American students and their peers. I have taken active steps to address our gaps by providing intensive supports to school districts, identifying key issues through our State educator equity plan regarding the qualifications of educators teaching our students, and convened a task force to provide best practices that can be used in the classroom to address achievement gaps. I have also made closing gaps and equity my priority as President of the Chief Council of State School Officers.

I know I am not alone in working to address this issue. All States have significant work to do. It is work that transcends education and calls for an examination of other policies surrounding housing, transportation, and economic development that result in concentrations of poverty that are reflected in our local schools.

ESSA helps us address this concentration in the law’s pointed references to the importance of ensuring that low-income and minority students are afforded the same educational opportunities as their peers and requirements for stakeholder consultation. A good example of how concrete policy solutions must be offered at the State and local level can be found in ESSA’s requirement for States to describe, as part of their title I State plans, “how low-income and minority children . . . are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers.” Local school districts are also required to address the findings. States take the responsibility for ensuring equitable educational opportunity seriously and will work with school districts and other stakeholders to that end.

At the same time, the Department of Education has an important role to play in ensuring that States and districts remain within the strong Federal guardrails included in ESSA, while still maintaining State and local flexibility to innovate and share effective and evidence-based practices. As I noted in earlier testimony before this committee, in States like Wisconsin we welcome Federal oversight of the progress we are making, but it is important that States and local districts have the flexibility to identify measures and design interventions that reflect the realities facing their unique student populations, because we have seen that No Child Left Behind’s one-size-fits-all approach is ineffective.

Question 4. Dr. Evers, in the United States, over 1.7 million students attend about 18,000 schools with student bodies that are less than 200 hundred students. In Vermont nearly 14,500 students attend 130 schools that have less than 200 students.

The Every Child Achieves Act (ESSA) maintains important accountability and transparency requirements to help us ensure that each child can reach their full potential. States must choose their own “n-size” or the minimum number of students necessary to comprise the student subgroup categories of low-income students, students from major racial and ethnic groups, children with disabilities, and English Language Learners. As you know, accountability under this law is conducted at the school level.

States with many small schools struggle with finding an n-size that accurately captures the performance of all students and student subgroups. In Vermont for example, setting an n-size of 11, and using school-based accountability would still suppress the outcomes of 25 percent of all elementary schools and nearly 70 percent of all low-income students. Setting a higher n-size of 40, and using school-based accountability, would suppress student outcome data of almost 80 percent of all elementary schools.

As the chief State school officer of a State with many rural areas and small schools, how do you negotiate the tension of setting an appropriate n-size with the reality of small schools and the fact that some children may not be identified using school-level accountability? What recommendations do you have for the U.S. Department of Education and other States where school-level accountability creates a chal-

lenge to setting an n-size that will appropriately capture the educational outcomes of students? Is school-district wide accountability an appropriate substitute for the resource intensive small school verification process or an additional layer of accountability for States to use when the size of schools obfuscates the reporting on outcomes of student achievement?

Answer 4. How to ensure reliable and valid data is not simple in a State like Wisconsin given the variance in the size of our school districts. In Wisconsin, we have 424 school districts, 24 independent charter schools who are their own local educational agency, and an additional 218 charter schools authorized by school districts. We have over 867,000 students. Our largest school district serves over 75,000 students and our smallest under 100. Moreover a quarter of our school districts have less than 500 students.

As a result, we feel the need to strike a balance between valid and reliable accountability measures, which nod toward higher cell sizes, and including as many students in the accountability system as possible. I think we have made significant progress in crafting an accountability system that is reliable and valid. To that end, I've provided below a description of how Wisconsin has approached cell sizes.

- When we applied for a waiver in ESEA, we changed our cell size from 40 to 20. My staff ran analyses to identify a new smaller cell size and the impact of the change.

- At the time, 35.3 percent more students with disabilities were included with a cell size of 20 instead of 40.
- 18.2 percent more English learners were included.
- 412 or 19.5 percent more schools were included.

- The cell size change admittedly decreased initial reliability of some measures, so we've looked to address those challenges by using multiple years of data and, in some cases, pooling small groups of students together in order to include them in the system.

- Almost every measure of our accountability report card uses at least 2 years of data in the calculation, in order to buffer the group size and stabilize the measure. Trend calculations are weighted so that the current year has the highest weight in order to ensure that using more years doesn't obscure progress or challenges.

- We use a supplemental supergroup in cases in which economically disadvantaged students, English learners, and students with disabilities groups do not meet cell size on their own. This includes more students in the accountability system. We consider this a supplemental group because it does not replace any existing subgroups; we only use this group if the individual subgroups do not alone meet minimum cell size.

- At the time of initial implementation (for 2011–12 reports), we were able to provide gap closure scores for over 100 more schools than without supergroups.

- Even with all this, we still have students not included in school-level accountability. One way we've made some progress on this is by creating district accountability report cards. In some cases, a student group at a school level may not be large enough to meet a school-level cell size of 20, but when students in that group are pooled together across a district, there is a greater chance they will be included in that level of reporting.

SENATOR WHITEHOUSE

Question 1. ESSA is a relief to many, especially in Rhode Island. Everyone who I've talked to is very excited about this bipartisan bill and the opportunities it presents.

I am concerned about the supplement, not supplant issue. Many of you have said that ED's proposed regulations on "supplement, not supplant" are an overreach. But I am also aware of many inequities that exist in local and State funding for education.

Absolutely no one wants to see Federal money come in and provide an excuse to send other funding into wealthier, well-connected school districts and have title I fill the gap.

I've heard from many about the problems with ED's draft proposal. My question is not what are the problems, but what should ED do instead? That is, what would you affirmatively propose to ensure that title I funds are supplemental and not supplanting State and local funds?

Answer 1. I'm not sure I have a silver bullet solution, but there are options that may be considered. For instance, the simplest thing would be to require an assurance that Federal funds will supplement State and local funds. That is very similar

to what we're doing now, and we could keep it as an assurance for which we are responsible and on which our Federal funds are contingent.

If there is a need for a methodology to prove what districts are doing, one could consider linking supplement, not supplant with comparability provisions. Could current comparability provisions be used to satisfy ESSA supplement, not supplant requirements? A benefit to this approach is that schools may use full-time equivalency instead of actual salaries. The current comparability rules work from our perspective and we think could be an option to meet the requirements in ESSA by allowing it in the regulations.

Yet another option could involve keeping existing supplement, not supplant requirements and, additionally, requiring States to assure they will establish a method to compare spending on low-income students at the building and district level to statewide averages. Any discrepancy outside of a certain range would have to be explained to ED.

Question 2. Under NCLB and the Obama administration's waivers, I consistently heard from Rhode Island teachers and principals that they could achieve better results if not for the layers of bureaucracy stifling innovation at multiple levels.

I am very pleased that ESSA is a step away from that one-size-fits-all, overly prescriptive posture. You have all heard me talk about the provisions I fought for in ESSA—requiring States to describe how they will encourage opportunities for increased autonomy and flexibility.

I am concerned because I do not want to see ED use the regulatory process to grab back the control that ESSA intended to push down to the State and local level. What could ED do on the supplement, not supplant issue that would support greater innovation at the local level?

Answer 2. I'm going to refer to my answer in your first question regarding supplement, not supplant. I don't know if supplement, not supplant can engender innovation, but, related to your first question, if we want to eliminate bureaucracy the Department of Education could make changes to simplify the supplement, not supplant proposed rules to recognize how complex compliance would be under the system they put forward in negotiated rulemaking.

Separately, under the many flexibilities granted under ESSA, one that I believe will result in significant innovation is the new provision to allow State education agencies to waive the poverty requirement for a school to become schoolwide program. This, I believe, will result in significant and more innovative programming in schools and districts.

RESPONSE BY THOMAS AHART, ED.D., TO QUESTIONS OF CHAIRMAN ALEXANDER,
SENATOR COLLINS, SENATOR SANDERS, AND SENATOR WHITEHOUSE

CHAIRMAN ALEXANDER

Question. We've heard through testimony that this proposed rule could require forced teacher transfers, require costly overhauls of district finance systems, and promote practices that serve to further segregate poor students in the poorest schools.

You mention the rule "provides regulatory barriers to effective instructional services for students, interference in school autonomy in staff recruitment and selection, intrusion in the deployment of effective school leaders, unworkable criteria and unnecessary requirements, additional costs, and unrealistic administratively created obligations."

As a district leader, what specific actions in the Des Moines Public School system or other systems in which you've worked would you need to take in order to comply with this proposed rule on supplement, not supplant? What problems would those actions pose that run counter to efforts to improve schools in your district?

Answer. What often seems to be lost on the Department is that our ability to best serve schools with concentrated poverty that do not benefit from title I funds will be jeopardized under the proposed supplement, not supplant regulations if districts are forced to spend additional State and local funds to cover the salary differentials between higher paid and lower paid teachers. Many high poverty schools are not served with title I because, frankly, there is not enough to go around. While a 40 percent free/reduced rate can qualify a school for title I services, there are currently 14 Des Moines schools with a poverty rate between 73 percent and 40 percent that we are not able to provide with title I services. The very children the legislation is designed to support will be negatively impacted under the proposed regulations.

Operationally, this proposed regulation would effectively require salary equivalency between title and non-title schools or require school districts to make up the difference with State and local funds. Since the Nation's teacher salary system is

primarily based on increasing salary increments for years of experience (as well as for advanced educational attainment), schools with older, higher paid staff compared to younger, less highly paid staff would necessarily trigger noncompliance on an unprecedented scale.

To comply, districts would have to spend additional State and local funds to cover the salary differentials between higher paid and lower paid teachers. Or, in an alternative compliance scenario, districts potentially could shift their higher-paid teachers to title I schools and their lower-paid teachers to non-title I schools. The Center of American Progress (CAP) reported in 2012 that the cost of compliance with this type of per-pupil comparability requirement would be \$6.8 billion based on national data at the time, and in 2015 CAP estimated the compliance cost at \$8.5 billion nationally using the most recent OCR expenditure data. The Council of the Great City Schools estimated the compliance cost for their 69 member school districts could reach \$3.9 billion, ranging from millions to hundreds of millions of dollars in individual districts. (C)

Unfortunately, neither of these options correlate with improving student academic performance because, to state it simply: there is no relationship between salary level and teacher effectiveness. This would result in unwarranted disruptions in instructional continuity and communities of practice in our schools.

Higher paid teachers teach for the same 6 hours daily and 180 school days annually as teachers with lower pay and less time in the profession; students receive an equivalent level of service from their teachers regardless of pay or years of service. Lower pay can be attributed to a variety of factors including individuals entering the profession later in life as a second career, the difference between taking single or family coverage for insurance benefits, or advanced educational attainment—which may or may not be in an area related to the individual's teaching assignment. None of these factors translate to the quality instruction provided by the teacher. The issue is complicated and cannot be narrowed to the simplistic issues identified in the draft regulations.

Moreover, current Federal requirements already ensure that at least the same number of full-time equivalent teachers are deployed in title I as in non-title I schools.

School districts clearly do not have the State and local funds to cover the salary differential costs of compliance, nor should districts disrupt instructional continuity and communities of practice in our schools by summarily transferring teachers. Moreover, the teacher transfer option would violate most collective bargaining agreements. Many districts literally would be faced with an impossibility of performance under these regulations—which have no reasonable basis in the Act and appear to violate at least three separate statutory prohibitions in ESSA. I hasten to add that neither of these solutions, even if possible, reflect best education practice.

These operational concerns relate to regulatory barriers to effective instructional services for students, interference in school autonomy in staff recruitment, selection, and placement, unworkable criteria, unnecessary requirements, additional costs, and unrealistic administratively created obligations.

SENATOR COLLINS

Question. During Secretary King's confirmation hearing, I asked for his assurance that the Department would engage rural communities in its ESSA implementation processes. For example, I was alarmed that the Department held its initial public listening sessions in DC and Los Angeles. Rural districts also seem to have been underrepresented on the committee of negotiators selected for the negotiated rule-making.

It's vital that rural communities and rural educators have a seat at the table. What should the Department be doing to ensure rural communities are represented in its rulemaking?

In your States, what are you doing, as stakeholders, to ensure rural voices are heard in your State and local planning efforts?

Answer. The Iowa Department of Education has organized internal teams to begin work on Iowa's State plan to implement the provisions included in ESSA. The Director of the Iowa Department of Education, Ryan Wise, has assured superintendents in our 333 districts they will have regular opportunities for timely and meaningful consultation with relevant stakeholders, including parents, local educational agencies, teachers, and principals, when developing the transition plan.

Even in Iowa, the broad range of individual district characteristics and the students and families they serve vary widely. It has been a long-standing practice of the Iowa Department of Education to ensure representation of the diversity of our State and its school districts when seeking input on important issues—rural, urban,

large and small districts, as well as the geographic distribution of individuals providing input and the demographics of the districts they represent.

I look forward to the development of a more thoughtful State accountability system under ESSA, and we are working closely with our State department of education on a statewide implementation process.

SENATOR SANDERS

Question 1. We must do everything that we can to ensure that every child—regardless of her or his circumstances—has access to a high-quality education. We know that a high-quality education is a resource-intensive endeavor. We also know that disadvantaged children need additional resources to combat the ravages of poverty and discrimination. The Elementary and Secondary Education Act (ESEA) of 1965 marked the beginning of a strong role for the Federal Government in combating inequities on both fronts. Clearly, there is much more work that must be done.

A key component of the Federal Government's role in education is ensuring that our schools have the additional resources needed to ensure that every child can reach her or his full potential. Today, over half of all public school children come from low-income families. Examining the most recent data available, there is clearly an increased need, as well as a lack of sufficient Federal resources to meet this need (figure 1). Between school year 2004–5 and school year 2013–14 we have seen a 32 percent increase in children eligible for free or reduced lunch—an increase of over 6 million children.

Yet the main source of Federal funding for public schools serving low-income children—Title I-A of ESEA—has not only not failed to keep pace with the reality that our public schools are serving more low-income children than a decade ago, funding has not even kept up with inflation. Real title I-A funding is down 6 percent since fiscal year 2005 while the percentage of low-income kids in public schools has increased by 32 percent over the same time period. If at a bare minimum title-I-A funding had kept pace with inflation since fiscal year 2005, appropriations for title-I-A would have been \$15.2 billion in fiscal year 2014 instead of \$14.4 billion—a difference of nearly a billion dollars. Furthermore, if title I-A funding had kept pace with both inflation and the growing number of children coming from low-income families since fiscal year 2005, title-I-A funding would have hit \$20.2 billion in fiscal year 2014, a gap of over \$5.5 billion when considering reality versus actual funding (figure 2).

Dr. Ahart, can you please speak to the importance of Federal education funding meeting the increased needs of our public schools? Beyond a dramatic increase to title-I-A funding, what other funding streams within ESEA and in other Federal programs require an increase to meet the realities of today's public schools?

Answer 2. The changing demographics of Des Moines Public Schools reflects the myriad of needs and potential barriers we face without adequate funds in meeting the needs of all of our students and supporting them in reaching high academic standards.

DMPS is a majority minority urban district, serving over 33,000 students, 58 percent of whom are minorities. Two ongoing challenges faced by the district are poverty and the high number of students who are English Language Learners.

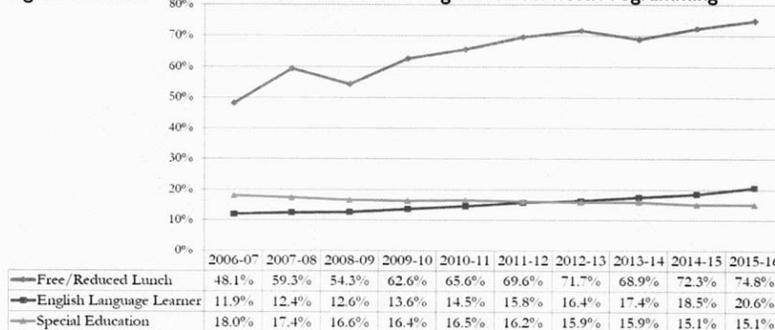
The majority of families in the district are low-income, and this rate has steadily increased over the past two decades. In 1993, only 33 percent of district students qualified for the Free and Reduced Lunch (FRPL) program. This has increased to over 73 percent of students qualifying today. Most schools provide free breakfast and lunch to students. And the poverty levels continue to grow, as evidenced by increased numbers of kindergarten students qualifying for FRPL in the context of an increasing enrollment for the district. The poverty levels in Des Moines' poorest zip codes, known as the Urban Core, resemble other high poverty cities, such as Detroit or Philadelphia.

Figure 1 highlights the changes in K–12 enrollment with regard to eligibility for free/reduced priced lunch, English language learner programming, and special education services. DMPS mirrors the State's upward trend of children eligible for free/reduced priced lunch through 2014–15. However, Iowa's rate of eligibility is lower than DMPS's, with 38.8 percent (2015–16 data not yet available) of students in Iowa (excluding DMPS) eligible in 2014–15 and 74.8 percent of DMPS students eligible in 2015–16.

The number of English language learner (ELL) students has steadily increased in DMPS and Iowa. In the past 10 years, the ELL population at DMPS has grown by over 70 percent. Currently, ELL students represent 20.6 percent of DMPS students. DMPS is ranked 11th in the State with regard to percentage of ELL students.

DMPS educates approximately 6,500 ELL students in grades K–12. The number of ELL students at DMPS is more than the total number students enrolled at 96 percent of Iowa districts. The percentage of students requiring special education services has held steady in DMPS. In 2014–15, 12.6 percent (2015–16 data not yet available) of students statewide required services, while 15.1 percent of DMPS students required services in 2015–16.

Figure 1. DMPS Grade K-12 Percent Enrolled Eligible for Services/Programming



Since the early 1970s, Iowa has chosen to serve as a resettlement State for refugees from around the world. As a result, the number of English Language Learners (ELL) at DMPS has greatly increased from 300 students who speak five native languages in the mid-1970's, to the current level of 6,580 students (20.6 percent of students) speaking over 100 different languages and dialects. The language barriers for both students and their families create significant obstacles to learning. Further complicating their learning is that many ELL's are illiterate in their native languages. Parent communication with school staff and their ability to assist their children with school work is limited. As ELL students learn English, they often become one of the only links between their linguistically isolated families and the world within which they are trying to survive.

Additionally, student disengagement increases during the transition from elementary to middle school. The percentage of DMPS students proficient in reading dropped from 72 percent in 5th grade (2010–11) to 49 percent in 6th grade (2011–12). Furthermore, the Iowa Youth Survey gauged the number of DMPS students who felt committed to school and learning. Results show that the percentage significantly decreased between elementary school (86 percent) to middle school (67 percent) and stayed the same from middle school to high school (67 percent). Students who drop out of school face significant consequences. They earn lower wages, are eight times more likely to commit crimes, are twice as likely to live in poverty, and earn \$1,000,000 less than their graduating peers over their lifetimes (Alliance for Excellent Education, 2011).

The changing demographics of our district and the needs of our students associated with these demographics demonstrate the need for increased funding in the following title Programs:

- Title I—Improving Basic Programs Offered by State and Local Educational Agencies
- Title II—Preparing, training, and recruiting high quality teachers, principals, or other school leaders
- Title II—Language Instruction for English Language Learners and Immigrant Students
- Title IV—21st Century Schools
- Title V—State Innovation and Local Flexibility
- Title VI—Indian, Native Hawaiian, and Alaska Native Education
- Title VII—Impact Aid
- Title IX—Education for the Homeless and Other Laws

Figure One:

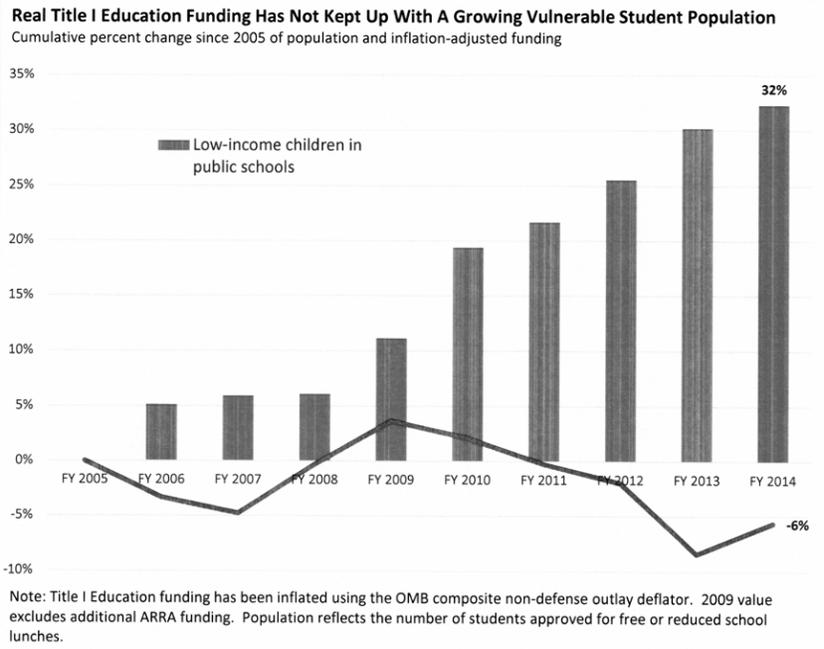
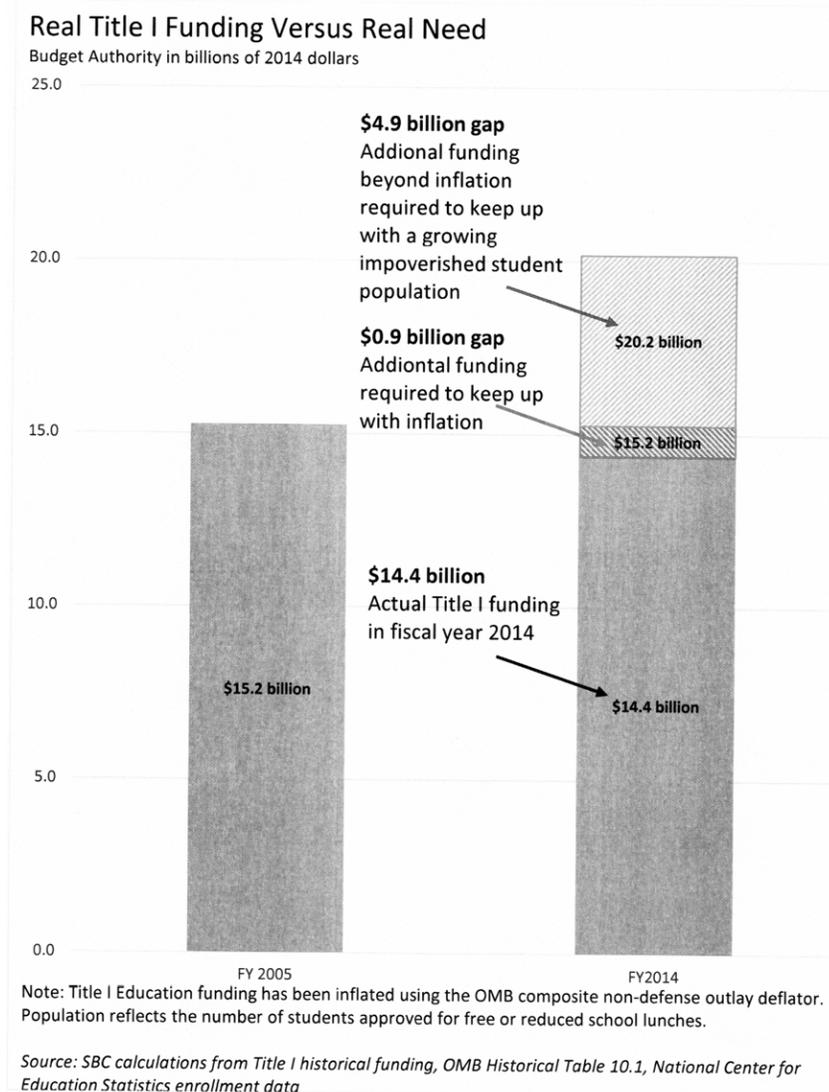


Figure Two:



Question 2. Yesterday, on the 62d anniversary of the *Brown v. Board* decision, the Government Accountability Office (GAO) released a report confirming what educators, families, students, and community stakeholders have been telling us anecdotally for some time—our public schools are becoming more segregated by both race and family income.

The number of schools that are doubly segregated by both race and income—where 75 percent or more of the kids at these schools come from low-income families and are black or Hispanic—has increased from 9 percent of all public schools in school year 2000–2001 to 16 percent of all public schools in school year 2013–14. Additionally, today, nearly one in five public students attend these doubly segregated public schools—more than double the amount of kids who attended these schools almost 15 years ago. Furthermore, Hispanic children are often triply segregated by race, family income, and native language. Shamefully, nearly two-

thirds—61 percent—of all high-poverty schools are schools where over 75 percent or more of the children are black and Hispanic.

Segregation and isolation by race and income in our public school is an alarming phenomenon on its own. Even more troubling is that the fact that these doubly segregated schools are not offering students a comparable education to non-segregated schools and schools at the other end of the spectrum that are wealthy and predominately white. The GAO report uncovers that these doubly segregated schools have fewer resources, do not offer the full range of core courses like math and science, offer less advanced coursework, and have disproportionately more disciplinary actions than other public schools.

I'd like to ask this entire panel—what can the Federal Government do to reverse this troubling trend of segregation by race and income, and ensure an equal and adequate education for all children? Please feel free to expound on reforms within education and greater system wide changes including housing, transportation, jobs, and more. Additionally, through the implementation of the Every Student Succeeds Act (ESSA) what can the Department of Education do to make States and school districts aware of opportunities within this new law to increase racial and socioeconomic diversity in our schools?

Answer 2. Best and promising practices regarding counteracting the re-segregation of schools include:

1. Additional incentives, training, and support for teachers to work in diverse/urban environments.

a. Urban districts can often compete for new highly qualified teachers in terms of salary and benefits, but struggle with adequate housing, appropriate training.

b. Programs in DMPS like the Alternative teacher Contract which offer specific training, with longer commitment and a Master degree fit these needs and show increasing promise.

2. Equitable facilities funding.

a. Many families are drawn to districts that have competitive advantages, from state-of-the-art Libraries, modern gymnasiums, innovated laboratories, and athletic fields, families with means are determining where they would like to settle based on the amenities the school offers.

b. New buildings in DMPS has improved moral, provided enhanced opportunity/Suburban districts continue to see benefit from facilities upgrades in all areas as well.

3. Redraw school attendance boundaries in a way that captures a more diverse student population, including the consideration for specific program opportunities unique to a geographical location.

a. State like Iowa would benefit from school districts that are struggling to maintain capacity.

b. Internal boundary changes have created more equitable opportunities for students, District is working on tackling greater access to gifted and talented programming. DMPS has already seen impact in AP programming.

4. Additional competitive grants to encourage diversity and will work with other agencies to encourage more integrated schools and communities. Such as the new I3 grant.

a. Resources are an indicator of priority. Current grant funding has been highly effective in increasing the capacity, accountability, and fidelity of implementation for other initiatives. Additional grant funding would allow innovative practices to prove effectiveness and establishing scalability.

5. Reinforcement of school segregation policies to consider income.

a. School re-segregation largely intersects race with income as an effect on the impact.

SENATOR WHITEHOUSE

Question 1. ESSA is a relief to many, especially in Rhode Island. Everyone who I've talked to is very excited about this bipartisan bill and the opportunities it presents.

I am concerned about the supplement, not supplant issue. Many of you have said that ED's proposed regulations on "supplement, not supplant" are an overreach. But I am also aware of many inequities that exist in local and State funding for education.

Absolutely no one wants to see Federal money come in and provide an excuse to send other funding into wealthier, well-connected school districts and have title I fill the gap.

I've heard from many about the problems with ED's draft proposal. My question is not what are the problems, but what should ED do instead? That is, what would you affirmatively propose to ensure that title I funds are supplemental and not supplanting State and local funds?

Answer 1. The Title I Statement of Purpose declares:

The purpose of this title is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.

Further, section 1111 delineates the obligation of States to file a State plan that is:

... developed by the State educational agency with timely and meaningful consultation with the Governor, members of the State legislature and State board of education (if the State has a State board of education), local education agencies (including those located in rural areas), representatives of Indian tribes located in the State, teachers, principals, other school leaders, charter school leaders (if the State has charter schools), specialized instructional support personnel, paraprofessionals, administrations, other staff, and parents ...

States and local school districts have widely diverse characteristics related to their size, local funding, demographics of the students they serve, and State laws that govern public schools.

Let those closest to the local school districts and the students and families we serve determine what the qualities of a fair, equitable, and high-quality education are that will close educational achievement gaps.

Use the processes put into place by ESSA, along with the knowledge and skills of these on the ESSA planning committees, to develop a State plan to ensure title I funds are supplemental and not supplanting State and local funds.

And most importantly, allow these planning committees to put together a plan that ensures an equitable education for all children—remembering that equitable does not mean equal. The only hope for successful results from ESSA rests in the State agencies' ability to craft guidance that is meaningful to individual State and district contexts.

Question 2. Under NCLB and the Obama administration's waivers, I consistently heard from Rhode Island teachers and principals that they could achieve better results if not for the layers of bureaucracy stifling innovation at multiple levels.

I am very pleased that ESSA is a step away from that one-size-fits-all, overly prescriptive posture. You have all heard me talk about the provisions I fought for in ESSA—requiring States to describe how they will encourage opportunities for increased autonomy and flexibility.

I am concerned because I do not want to see ED use the regulatory process to grab back the control that ESSA intended to push down to the State and local level. What could ED do on the supplement, not supplant issue that would support greater innovation at the local level?

Answer 2. While regulations are intended to clarify provisions of the statute and facilitate effective implementation, many of the regulatory provisions appear to restrict, condition, redefine, and even expand ESSA.

These operational concerns relate to regulatory barriers to effective instructional services for students, interference in school autonomy in staff recruitment, selection, and placement, unworkable criteria, unnecessary requirements, additional costs, and unrealistic administratively created obligations.

The Education Department could be helpful in issuing non-regulatory guidance that provides a non-exclusive range of examples of implementation options for various provisions of ESSA. There is no such thing as one-size-fits-all. Even in Iowa, the broad range of individual district characteristics vary widely.

In addition, use the processes put into place by ESSA, along with the knowledge and skills of those charged with developing a State plan to ensure title I funds are supplemental and not supplanting State and local funds.

And most importantly, allow these planning committees ESSA charged with putting together a State plan to do their jobs. These are the people best able to put together an innovative plan that provides for equity, understanding that does not mean equal.

The only hope for successful results from ESSA rests in the State agencies' ability to craft guidance that is meaningful to individual State and district contexts.

RESPONSE BY NORA GORDON, PH.D. TO QUESTIONS OF CHAIRMAN ALEXANDER,
 SENATOR SANDERS, AND SENATOR WHITEHOUSE

CHAIRMAN ALEXANDER

Question. In your testimony, you discuss how prior to the new law, compliance with Supplement, not Supplant was typically determined by districts detailing individual costs and proving that everything paid for by title I money was extra for students.

You note that this was a burdensome practice that often led to inefficient spending.

However, the changes Congress made to “Supplement, not Supplant” actually serve to encourage more effective spending with title I money and decrease compliance burden for school districts, and the proposed rule actually runs counter to congressional intent.

How does the proposed rule run counter to congressional intent by actually increasing the burden and discouraging better, flexible spending decisions by local school districts and schools?

Answer. The proposed rule would not *simply* “undo” the congressional intent in ESSA to encourage effective spending. Rather, it would require school districts to change how they allocate State and local resources across schools. Many districts would not comply with the rule, even if they allocate more teachers to high-poverty schools. In the CRDC data, I have identified districts that weight additionally for student poverty, using student-based budgeting/weighted student formulas (which are largely viewed as one of the most equitable approaches to funding schools) that would fail to comply with the rule. The reasons for non-compliance likely vary—but one reason could be that high-poverty students who generate more funds—may not all be concentrated only in title I schools.

Many non-title I schools have high poverty levels. I analyzed the 2011–12 Common Core of Data Public School Universe and found (of those schools reporting free-lunch eligibility data) 9,015 schools that do not participate in title I and have at least 40 percent of their students eligible for free lunch; of these non-title I schools, 2,826 had at least 60 percent of their students eligible for free lunch.

To comply with the proposed rule, districts would be forced to make annual after-the-fact adjustments to their staffing and other distributions of funds. The adjustments needed to comply with the proposed rule would in fact make it quite difficult to comply with statutory language itself (requiring a methodology that demonstrates title I schools do not get less State and local funds because of their participation in title I), because consistently applied methodologies would likely fail to deliver the result required by the draft rule.

Rather than encouraging innovation and transparency, the proposed rule would push districts away from consistent resource allocation methods that permit leaders to plan coherently and effectively for the future.

SENATOR SANDERS

Question. Yesterday, on the 62d anniversary of the *Brown v. Board* decision, the Government Accountability Office (GAO) released a report confirming what educators, families, students, and community stakeholders have been telling us anecdotally for some time—our public schools are becoming more segregated by both race and family income.

The number of schools that are doubly segregated by both race and income—where 75 percent or more of the kids at these schools come from low-income families and are black or Hispanic—has increased from 9 percent of all public schools in school year 2000–2001 to 16 percent of all public schools in school year 2013–14. Additionally, today, nearly one in five public students attend these doubly segregated public schools—more than double the amount of kids who attended these schools almost 15 years ago. Furthermore, Hispanic children are often triply segregated by race, family income, and native language. Shamefully, nearly two-thirds—61 percent—of all high-poverty schools are schools where over 75 percent or more of the children are black and Hispanic.

Segregation and isolation by race and income in our public school is an alarming phenomenon on its own. Even more troubling is that the fact that these doubly segregated schools are not offering students a comparable education to non-segregated schools and schools at the other end of the spectrum that are wealthy and predominately white. The GAO report uncovers that these doubly segregated schools have fewer resources, do not offer the full range of core courses like math and science, offer less advanced coursework, and have disproportionately more disciplinary actions than other public schools.

I'd like to ask this entire panel—what can the Federal Government do to reverse this troubling trend of segregation by race and income, and ensure an equal and adequate education for all children? Please feel free to expound on reforms within education and greater system wide changes including housing, transportation, jobs, and more. Additionally, through the implementation of the Every Student Succeeds Act (ESSA) what can the Department of Education do to make States and school districts aware of opportunities within this new law to increase racial and socio-economic diversity in our schools?

Answer. Local approaches to school desegregation often involve extra costs. For example, voluntary integration plans, whether magnets or more general intradistrict choice options, may offer special programming to all students in order to draw students from a wealthier attendance area to a low-income attendance area. Alternatively, a district may provide additional funds or services to low-income disadvantaged students in economic integration programs in order to provide additional supports to these students in more rigorous school settings (which can be in higher wealth attendance areas.) These expensive programs may take place outside of title I schools, and outside of high poverty schools within diverse districts. In addition to actions such as those now being pursued to encourage cross-agency efforts tackling segregation in education and housing, and the role of transportation, ED should be sure its interpretation of SNS does not rule out such racial and economic integration efforts.

SENATOR WHITEHOUSE

Question 1. ESSA is a relief to many, especially in Rhode Island. Everyone who I've talked to is very excited about this bipartisan bill and the opportunities it presents.

I am concerned about the supplement, not supplant issue. Many of you have said that ED's proposed regulations on "supplement, not supplant" are an overreach. But I am also aware of many inequities that exist in local and State funding for education.

Absolutely no one wants to see Federal money come in and provide an excuse to send other funding into wealthier, well-connected school districts and have title I fill the gap.

I've heard from many about the problems with ED's draft proposal. My question is not what are the problems, but what should ED do instead? That is, what would you affirmatively propose to ensure that title I funds are supplemental and not supplanting State and local funds?

Answer 1. In ESSA, Congress set forth an actual test of whether title I funds are supplemental and not supplanting State and local funds in a title I school. Under the test, each LEA must describe how it allocates funds across schools, and demonstrate that this methodology does not result in title I schools receiving fewer State and local dollars than they would were they not participating in the title I program.

In the discussion surrounding ED's draft proposal, it has somehow been assumed that absent this proposal, ED would not be doing anything to ensure the integrity of program funds via this new, clear, easily tested SNS standard. To the contrary, ED and SEAs, must enforce the law, and the law sets a new high bar for SNS.

For more details on how districts could be sure they are meeting the new standard—which under NCLB was optional for schoolwide programs under NCLB—ED's July 2015 schoolwide program guidance is a useful tool. The same test that was optional (and rarely used) under NCLB for SWP schools, is now required rather than optional under ESSA. The explanation in ED's July 2015 schoolwide guidance, which is consistent with the ESSA language, should be the basis for compliance with SNS.

- July, 2015—ESEA Title I Schoolwide Guidance, Non-Regulatory Guidance PDF (3.30MB).

Congress and ED should also ensure that ESSA's new reporting requirements are used to produce high-quality data that can inform future Federal decisionmaking. Though there have been past efforts at collecting school-level finance data based on actual, not average, teacher salaries, given existing data infrastructure in districts, the reliability of these data is unclear. ED can help promote the integrity of future data by: (1) seeking extensive feedback from State and local agencies about how their accounting systems are currently structured, because any Federal reporting requirements will pull from these frameworks and aligning Federal reporting with existing data elements will both lessen local burden and improve Federal data quality; and (2) cross-validate data for randomly selected districts with any available local administrative sources.

Question 2. Under NCLB and the Obama administration’s waivers, I consistently heard from Rhode Island teachers and principals that they could achieve better results if not for the layers of bureaucracy stifling innovation at multiple levels.

I am very pleased that ESSA is a step away from that one-size-fits-all, overly prescriptive posture. You have all heard me talk about the provisions I fought for in ESSA—requiring States to describe how they will encourage opportunities for increased autonomy and flexibility.

I am concerned because I do not want to see ED use the regulatory process to grab back the control that ESSA intended to push down to the State and local level. What could ED do on the supplement, not supplant issue that would support greater innovation at the local level?

Answer 2. Congress’ approach to SNS opens title I to innovative uses of funds. As I have documented in my research with Sarah Reber, confusion over the SNS requirement led to significant bureaucratic requirements, and perhaps more importantly, title I being “locked out” for innovative programs that are good for students.¹ The most important thing ED can do to encourage innovation with title I funds is to make sure SEAs and LEAs understand their spending options.

At this point, ED has built up a sizable body of nonregulatory policy guidance that in some way relates to the pre-ESSA version of supplement, not supplant. Whether ED clarifies SNS under ESSA through regulations, through non-regulatory guidance, or lets the statutory language speak for itself, *it is imperative to strike old guidance that relates to the pre-ESSA definition of SNS*. These documents should be removed from ED’s Web site. ED should actively engage with SEAs to be sure that they also remove the documents which they post on their own State Web sites as well, and encourage States to communicate the new requirements clearly to their LEAs. In each of these cases, ED should communicate the new rule as described in the July 2015 schoolwide guidance.

This is not a straightforward process, because in many cases, SNS is just one small part of a larger guidance document. ED should not leave them intact (including outdated text) even if noting in another document that it supersedes the previous guidance. Rather it should create a new version of the old one, that either removes all reference to SNS or replaces the old language with new language.

This would be an excellent opportunity to modernize the user-interface on ED’s guidance, so that users can search across what are now multiple documents from a web browser (if they do not know which documents will be relevant to their question), rather than downloading numerous PDF documents and searching one by one.

Even the July 2015 schoolwide guidance, which was the clearest communication yet of the rule, noted that the guidance should be used with other pre-existing guidance. ED should facilitate understanding of the rule by putting everything in one place, so administrators do not need to seek out the SNS portion of multiple documents.

Here is a (likely not exhaustive) list of now-outdated guidance documents:

- November 2010—When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 *WORD* (471K) / *PDF* (271K).
- September 3, 2009—*Title I, Part A Recovery Funds for Grants to Local Educational Agencies* Uses of Funds Guidance.
- March 2010—Title I, Part A Guidance on Funds Made Available under the American Recovery and Reinvestment Act of 2009 (ARRA): <http://www2.ed.gov/policy/gen/leg/recovery/guidance/title-i-rev-201003.doc>.
- February, 2008—Fiscal Issues: Title I, Part A, Non-Regulatory Guidance *MS WORD* (995K) / *PDF* (254K).

Note: I am including schoolwide guidance documents below despite their previous allowed use of the new SNS test because one could get the mistaken impression from these that the new SNS test is optional for schoolwide programs, and that it is prohibited for targeted assistance schools.

- October 13, 2015—ESEA Title I Schoolwide Guidance Webinar (PPT) *PDF* (3.63MB).
- July, 2015—ESEA Title I Schoolwide Guidance, Non-Regulatory Guidance *PDF* (3.30MB).
- March, 2006—Designing Schoolwide Programs, Non-Regulatory Guidance *MS WORD* (452K).

¹Gordon, Nora and Sarah Reber. 2015. “The Quest for a Targeted and Effective Title I: Challenges in Designing and Implementing Fiscal Compliance Rules.” *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 1(3), 129–147.

- Guidance on Targeted Assistance Schools: http://www2.ed.gov/legislation/ESEA/Title_I/target.html.

Finally, ED should devote a section of its Web site to showcasing innovative uses of title I funds. SEAs and LEAs could submit ideas and ED could write up very short descriptions of the programs. ED might seek to encourage submission of cases in which LEAs have partnered with other local not for profit or governmental agencies to provide services, or when LEAs have fiscally consolidated funds. Local administrators could comment briefly on hurdles they overcame and what they were newly able to accomplish.

RESPONSE BY DENISE MARSHALL TO QUESTIONS OF SENATOR COLLINS, SENATOR SANDERS, AND SENATOR WHITEHOUSE

SENATOR COLLINS

Question. During Secretary King's confirmation hearing, I asked for his assurance that the Department would engage rural communities in its ESSA implementation processes. For example, I was alarmed that the Department held its initial public listening sessions in DC and Los Angeles. Rural districts also seem to have been underrepresented on the committee of negotiators selected for the negotiated rule-making.

It's vital that rural communities and rural educators have a seat at the table. What should the Department be doing to ensure rural communities are represented in its rulemaking?

In your States, what are you doing, as stakeholders, to ensure rural voices are heard in your State and local planning efforts?

Answer. COPAA is actively engaged with the business, civil rights and disability communities in developing resources for broad distribution and training to help stakeholders know how to work within their State to influence title I plan development. There is an effort to assure that issues such as those facing rural communities will be given attention so that parents and advocates in those communities will know how to engage and connect in their State planning process.

SENATOR SANDERS

Question 1. We must do everything that we can to ensure that every child—regardless of her or his circumstances—has access to a high-quality education. We know that a high-quality education is a resource-intensive endeavor. We also know that disadvantaged children need additional resources to combat the ravages of poverty and discrimination. The Elementary and Secondary Education Act (ESEA) of 1965 marked the beginning of a strong role for the Federal Government in combating inequities on both fronts. Clearly, there is much more work that must be done.

A key component of the Federal Government's role in education is ensuring that our schools have the additional resources needed to ensure that every child can reach her or his full potential. Today, over half of all public school children come from low-income families. Examining the most recent data available, there is clearly an increased need, as well as a lack of sufficient Federal resources to meet this need (figure 1). Between school year 2004–5 and school year 2013–14 we have seen a 32 percent increase in children eligible for free or reduced lunch—an increase of over 6 million children.

Yet the main source of Federal funding for public schools serving low-income children—Title I-A of ESEA—has not only not failed to keep pace with the reality that our public schools are serving more low-income children than a decade ago, funding has not even kept up with inflation. Real title I-A funding is down 6 percent since fiscal year 2005 while the percentage of low-income kids in public schools has increased by 32 percent over the same time period. If at a bare minimum title-I-A funding had kept pace with inflation since fiscal year 2005, appropriations for title-I-A would have been \$15.2 billion in fiscal year 2014 instead of \$14.4 billion—a difference of nearly a billion dollars. Furthermore, if title I-A funding had kept pace with both inflation and the growing number of children coming from low-income families since fiscal year 2005, title-I-A funding would have hit \$20.2 billion in fiscal year 2014, a gap of over \$5.5 billion when considering reality versus actual funding (figure 2).

Ms. Marshall, can you please speak to the importance of Federal education funding meeting the increased needs of our public schools? Beyond a dramatic increase to title-I-A funding, what other funding streams within ESEA and in other Federal programs require an increase to meet the realities of today's public schools?

Answer 1. Schools and districts continue to struggle to meet the educational needs of all students and especially those of students with disabilities. COPAA has long advocated for increases to all Titles of ESEA and in addition to title I-A, increased funding for titles II-IV are imperative so that ESEA—now the Every Student Succeeds Act (ESSA) can be implemented effectively by providing the professional development, English Learner funds and important grants to States. In addition, for over 40 years, Congress has failed to meet its obligation to States as promised in 1975 when P.L. 94-142 was passed which is now the Individuals with Disabilities Education Act (IDEA). To date, States don't receive even half of the funds promised under Part B of the IDEA—with just 16 percent of the per pupil expenditure currently covered when 40 percent of such funds were part of the original agreement. COPAA urges the Senate to fully fund the IDEA.

Figure One:

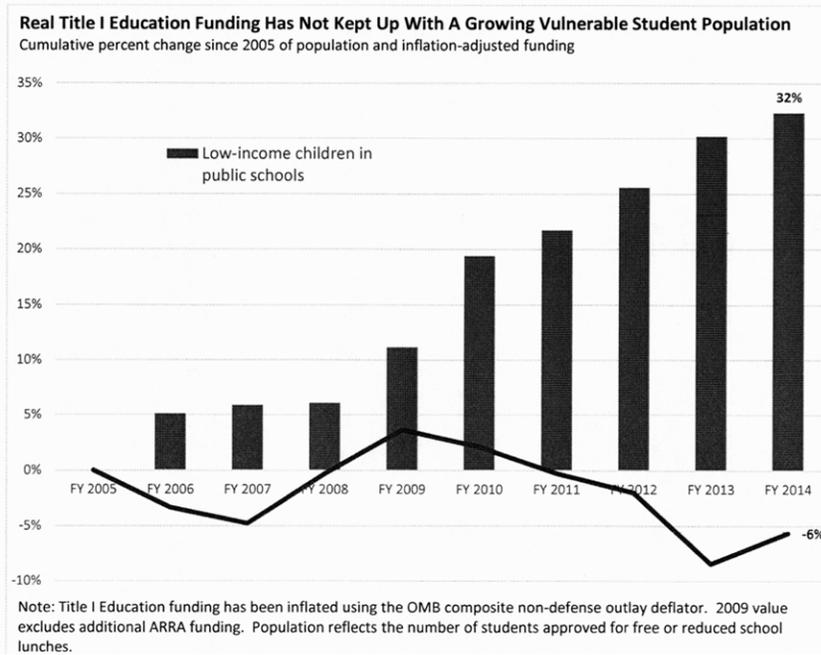
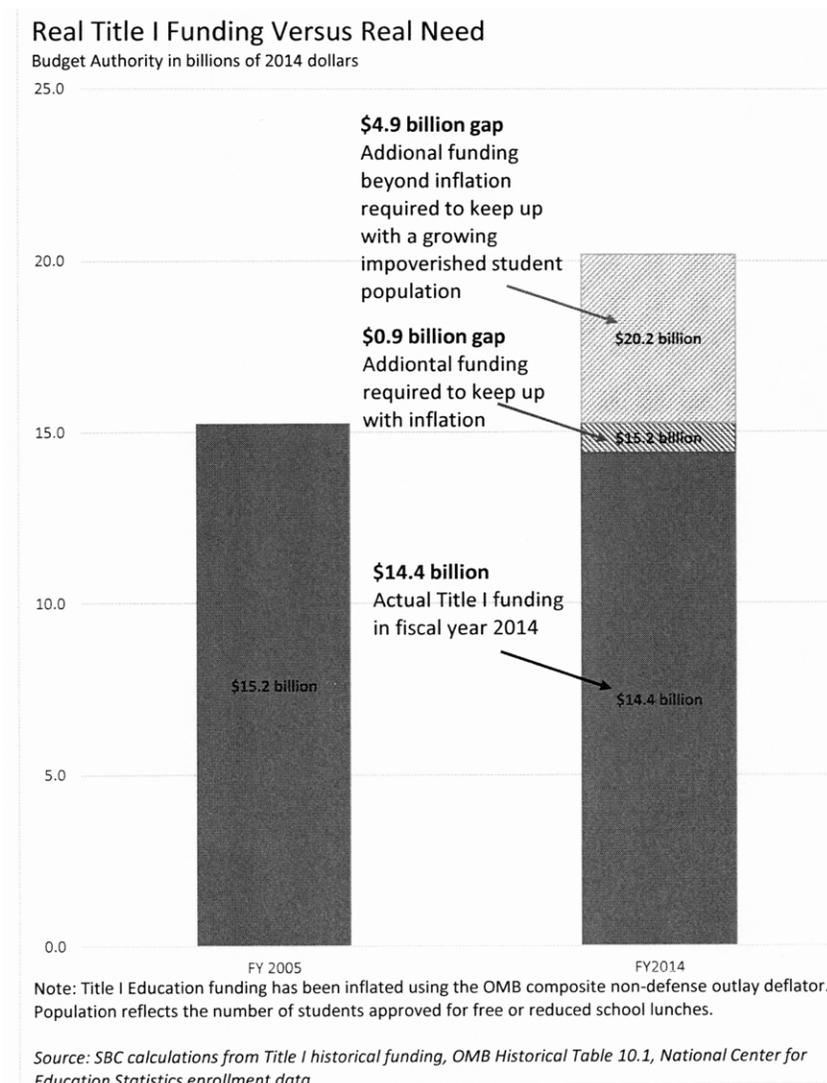


Figure Two:

Question 2. It is abundantly clear that low-income and disadvantaged children need additional support in order to succeed. That is why, title-I-A education funding is supposed to be in addition to and not in-lieu of local and State education funding. Since 1970, Congress has included supplement, not supplant (SNS) provisions in ESEA to codify this fundamental principle.

The Negotiated Rulemaking Committee for Title I, Part A of ESEA as amended by the Every Student Succeeds Act was unable to meet consensus on SNS regulations. It is now up to the U.S. Department of Education to draft regulations on SNS that ensure that Federal funding is on top of State and local funding and not used as backfill to compensate for unfair State and local spending practices on education.

Ms. Marshall, can you speak to the importance of the Department of Education crafting strong regulations for SNS? Ms. Marshall, what would a strong SNS regulation mean for the 6.4 million children with disabilities in our public schools? Ms. Murguia, what would a strong SNS regulation mean for children of color including

Latino girls and boys who represent a majority of the children in our public schools, and what would it mean for English Language Learners? Finally, what progress can be made for all students if title-I-A funding is truly supplemental?

Answer 2. COPAA is in agreement with the Leadership Conference on Human and Civil Rights on this. We have signed a letter that says to the Congress and to the U.S. Department of Education:

A strong SNS regulation would mean that the U.S. Department of Education would measure compliance by examining actual school level expenditures, which builds upon the ESSA's new reporting requirements. In order for Federal funds to be considered supplemental, each title I school must receive from State and local sources at least as much per-pupil funding as the average of non-title I schools in the district. Unless title I schools are receiving an equitable base of funds from non-Federal sources to ensure that the Federal funds are truly supplemental, then title I funds are being used to supplant by filling in gaps of funds the schools should be receiving. This is a violation of the law. A comparison of spending between each title I and the average of non-title I schools allows for considerable variability among both title I and non-title I schools in State and local expenditures, therefore not running afoul of the law's prohibition against requiring the equalization of spending.

Compliance with an "actual expenditures test" also recognizes the reality that equitable means fair, not equal—underscoring the law's aim to ensure that students impacted by concentrated poverty have the unique supports and services that will address their needs. This also preserves flexibility for districts to use weighted student funding, formulas for staffing and materials, or any other methodology for allocating State and local funds to schools. The integrity of title I funds must be preserved to fully realize the aim of ensuring equity and equal access to quality educational opportunities.

COPAA believes the progress we could expect to see from such regulation would result in equities that research and effective/best practice show result in healthy, safe and outcomes-driven school environments where school leaders, teachers, support personnel and students have a stronger shot at having what they need. Access to AP classes, up-to-date technology, expanded learning time, experienced educators, basic clean and safe facilities, at a minimum will contribute to assuring student achievement will rise and learning gaps will close.

Question 3. I am very concerned that our schools and communities are dealing with a surge of students exposed to multiple adverse experiences and are not equipped with the resources, training, and support to accommodate this crisis.

According to the national Adverse Childhood Experience Study, over half of those surveyed reported at least one form of childhood adversity. Shockingly, two in three children in our Nation—46 million children—are exposed to violence, crime, abuse, or psychological trauma a year. In Vermont, over 20 percent of children have had two or more adverse experiences, which include traumatic events like living in chronic poverty, living with someone with a substance abuse problem, experiencing community or family violence, and more. Even more alarming is the fact that our youngest citizens and their parents are at the forefront of this crisis. Since 2014, the Department for Children and Families in Vermont has seen a 33 percent increase of children in State custody with children under the age of six making up more than two-thirds of this increase. Further, similar to nationwide trends, over 40 percent of children come from low-income families in my home State, with young children the most likely of any age group to be poor.

Ms. Marshall, what can the Department of Education do to help schools, educators, and communities be prepared to deliver trauma-informed approaches to education when implementing the Every Student Succeeds Act (ESSA)? Additionally, what can the Department of Education do to ensure that educators teaching in environments where a large percentage of students have had adverse childhood experiences (ACEs) have the support and the self-care they need to succeed? Furthermore, what policies should Congress enact to help communities combat these challenges and attack the root causes—like poverty, exposure to violence and substance abuse—driving these adverse experiences? How would increased Federal investments in child care, preschool, maternal and child home visiting, before-school, afterschool, and summer programming, nutritional supports, wrap-around services for schools and more help to fight this crisis? Likewise, how would raising the Federal minimum wage, addressing under-employment and unemployment, implementing paid family leave, and enacting universal health care coverage help attack the root causes of these adverse experiences?

As national education leaders, what plans are your organizations making to work with States to ensure that their schools and practitioners have trauma-informed ap-

proached to education? How will you make States and school districts aware of opportunities under ESSA to create trauma-informed environments?

Answer 3. COPAA has actively engaged with the disability and civil rights community to promote the use of best practices to provide trauma-informed care—in both our policy and advocacy work. We know that traumatizing experiences, which include the use of aversives such as seclusion and restraint, can affect children’s brain development and behavior. In fact, children with intellectual and/or developmental disabilities (IDDs) are at greater risk than the general population for experiencing abuse, neglect, and the associated trauma. Behaviors resulting from trauma can create challenging and sometimes dangerous situations for the child, providers, and educators.

Historically, seclusion and restraint have been used to control the behavior challenges of children with mental health conditions in psychiatric hospitals, treatment facilities, and schools.¹ For decades, it was frequently thought that, without effective seclusion and restraint practices, children, youth, and adults were in danger of injuring themselves and others.² Children continue to be subjected to seclusion and restraint interventions at high rates and are at risk of injury from these practices.³ The controversial practice of secluding or restraining children when they are agitated continues to be used in public schools. Yet, research confirms that seclusion and restraint practices re-traumatize children, increase rather than decrease challenging behaviors, and do not calm the child. Even if no physical injury is sustained, children, especially those with an IDD, are at risk of traumatization and re-traumatization during and after use of seclusion and restraint. A child does not learn meaningful lessons on alternative ways to communicate or interact when a teacher or treatment staff member responds to the child’s challenging behavior with seclusion and restraint. For decades, policymakers, clinicians, teachers, school principals, and direct care providers in child-serving systems have been challenged with not just reducing but eliminating seclusion and restraint as control and safety interventions. Teachers must know how to replace these practices with effective, non-traumatizing practices.

Trends in public policy have also reflected a discontent in the use of seclusion, restraint, and aversive procedures. A consensus has emerged within children’s mental health settings, hospitals, nursing homes, and psychiatric facilities over the last two decades that restraint and seclusion should not be included in treatment plans, and that restraint should be used only for emergencies and targeted for elimination. Instead, practices should be based on “trauma informed care” requiring an awareness of the psychological effects of aversive actions on children. Elements of trauma informed care mirror the standards of positive behavior support to address students who exhibit extremely challenging behaviors.⁴

Eliminating seclusion and restraint is a trauma-informed practice. Being trauma informed requires a paradigm shift for educators and other child-serving providers in addressing behavioral challenges. A trauma-informed approach requires providers to change the question from “What is wrong with you?” to “What happened to you?”⁵ Trauma-informed practices help children, teachers, and providers feel safe, protected, and valued. Trauma sensitive schools are schools where teachers and administrators comprehend the prevalence of childhood trauma, a place where students have the opportunity to build trusting relationships with nurturing adults, a place where instructional strategies are based on an understanding of the neurobiology of trauma, and a place where behaviors present a learning opportunity.⁶

Students with disabilities and students of color continue to be subjected to disproportionate use of suspension and expulsion according to the 2014–2015 U.S. De-

¹Haimowitz, S., Urff, J., & Huckshorn, K.A. (2006, September). *Restraint and seclusion: A risk management guide*. Retrieved from <http://www.power2u.org/downloads/R-S%20Risk%20Manag%20Guide%20Oct%2006.pdf>.

²American Nurses Association. (2012, March 2). *Reduction of patient restraint and seclusion in health care settings*. Retrieved from <http://www.nursingworld.org/MainMenuCategories/EthicsStandards/Ethics-Position-Statements/Reduction-of-Patient-Restraint-and-Seclusion-in-Health-Care-Settings.pdf>.

³Alliance to Prevent Restraint, Aversive Interventions, and Seclusion. (2008). *In the name of treatment: A parent’s guide to protecting your child from the use of restraint, aversive interventions, and seclusion* (2d ed.). Retrieved from <http://stophurtingkids.com/wp-content/uploads/2013/05/In-the-Name-of-Treatment-Second-Edition.pdf>.

⁴Westling et al. (2010). *Use of Restraints, Seclusion and Aversives on Students with Disabilities, Research & Practice for Persons with Severe Disabilities*. Vol. 35, No. 3Y4, 116–127.

⁵Alameda County Behavioral Healthcare Services. (2013). *Trauma informed care vs. trauma specific treatment*. Retrieved from <http://alamedacountytraumainformedcare.org/trauma-informed-care/trauma-informed-care-vs-trauma-specific-treatment-2/>.

⁶Cole, Susan. (2009). <http://traumasensitiveschools.org/tlpi-publications/>.

partment of Education Civil Rights Data Collection. While students receiving special education services represent just 12 percent of students nationally, they represent 25 percent of students receiving multiple out of school suspensions. We know from research that children who are suspended more than once by ninth grade are more likely to drop out of school or be retained in a grade. Schools with exclusionary practices have poor attendance rates, high drop-out rates, low graduation rates, and higher incidences of bullying. In addition, they have been shown to have lower achievement scores on State standardized tests. Children who are suspended more than once in high school are much more likely to be involved in the court system in early adulthood, thus creating a phenomenon known as the school to prison pipeline.⁷

COPAA is committed to working with stakeholders across the country to reinforce ESSA's new title I requirement [for which we helped advocate] that States show districts how they support their efforts to "reduce bullying, harassment, use of disciplinary practices and use of aversives." Regulations must make clear that ESSA provides the professional development resources for district and school staff to receive training, strategies, and guidance on interventions which create inclusive, trauma informed and culturally responsive environments for students and educators which take into account input from the parents and communities they serve. Regulations must also clarify that States must articulate in title I plans how they will provide resources and guidance, professional development, and technical assistance to reduce or remove the use of techniques, strategies, interventions, and policies that compromise the health and safety of students, such as seclusion and restraint.

Question 4. Yesterday, on the 62d anniversary of the *Brown v. Board* decision, the Government Accountability Office (GAO) released a report confirming what educators, families, students, and community stakeholders have been telling us anecdotally for some time—our public schools are becoming more segregated by both race and family income.

The number of schools that are doubly segregated by both race and income—where 75 percent or more of the kids at these schools come from low-income families and are black or Hispanic—has increased from 9 percent of all public schools in school year 2000–2001 to 16 percent of all public schools in school year 2013–14. Additionally, today, nearly one in five public students attend these doubly segregated public schools—more than double the amount of kids who attended these schools almost 15 years ago. Furthermore, Hispanic children are often triply segregated by race, family income, and native language. Shamefully, nearly two-thirds—61 percent—of all high-poverty schools are schools where over 75 percent or more of the children are black and Hispanic.

Segregation and isolation by race and income in our public school is an alarming phenomenon on its own. Even more troubling is that the fact that these doubly segregated schools are not offering students a comparable education to non-segregated schools and schools at the other end of the spectrum that are wealthy and predominately white. The GAO report uncovers that these doubly segregated schools have fewer resources, do not offer the full range of core courses like math and science, offer less advanced coursework, and have disproportionately more disciplinary actions than other public schools.

I'd like to ask this entire panel—what can the Federal Government do to reverse this troubling trend of segregation by race and income, and ensure an equal and adequate education for all children? Please feel free to expound on reforms within education and greater system wide changes including housing, transportation, jobs, and more. Additionally, through the implementation of the Every Student Succeeds Act (ESSA) what can the Department of Education do to make States and school districts aware of opportunities within this new law to increase racial and socioeconomic diversity in our schools?

Answer 4. The ESEA is a civil rights law and implementation of ESSA should preserve that legacy. The law's purpose is in fact: "*To provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.*" COPAA and the entire civil rights community has long recognized equal educational opportunity as central to our struggle to achieve equality for all Americans. Without a robust and thoughtful implementation of ESSA over the next decade, we will have missed a crucial opportunity and the students we collectively represent will continue to be denied the full protections they

⁷ Losen et al. (2015). *Are We Closing the School Discipline Gap?* UCLA Center for Civil Rights Remedies. https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf.

need and are entitled to under Federal law. For today's students—whether a student with a disability, from a low-income family, a student who speaks English as a second language, Native American or a student of color—both the expectations and the stakes couldn't be higher. Their future is hugely dependent on the quality of the education they receive—there is no arguing this point.

The roots of ESSA are born out of *Brown v. Board* as it extends the Fourteenth Amendment to effectively impact the exclusion and limitations of instruction based on impermissible classifications. Further, it serves as a foundation for the disability rights movement in the 1970s, once *de jure* segregation based on race was resolved as a legal matter by legislation and court orders in 1970–71. COPAA has written extensively on the historical preeminence of *Brown* and other landmark cases to both preserve the legacy of the path carved toward equal access and the civil rights of children and their families,⁸ but to also document how each case can be used to support and reinforce what we know is true and that is education, regardless of race, income, disability, gender, religion or other is a civil right.

Question 5. Relatedly, Ms. Eskelsen García, Ms. Marshall, Ms. Murguía, and Ms. Weingarten, ESSA provides States and local school districts more autonomy to make key educational decisions. What are your organizations' plans to make States and local school districts aware of opportunities to increase diversity under this new law? Additionally, what other tools or resources do States and communities need to tackle the difficult task of diversifying our schools and providing equal and adequate education for all students?

Answer 5. COPAA is at the forefront of advocacy for students with disabilities and their families. COPAA works to increase the quality and quantity of representation available to students and their families and to ensure the rights of children with disabilities and their parents/guardians are protected. As an organization committed to civil rights, COPAA recognizes the relationship between discrimination and bias against people with disabilities and other forms or systems of oppression, domination, or discrimination based on race, national origin, ethnic and/or religious identity, sex/gender/gender identity/sexual orientation, and socioeconomic status.

COPAA is committed to considering fully, in all activities and programs, the intersectionality of race, national origin, ethnic, cultural and/or religious identity, sexual/gender identity/sexual orientation, socioeconomic status, in our efforts to protect and enforce the legal and civil rights of students with disabilities and their families.

It is critical that specific title I regulations assure States implement plans that fully support all students.

COPAA takes seriously the impact title I implementation has on the outcomes of students with disabilities and other disadvantaged students. As stated, we understand States will have more discretion in carrying out ESSA, however, COPAA, along with our partners in the business, civil rights and disability community have and will continue to work to prevent efforts to water down expectations, avoid full transparency, diminish the importance of honest measures of the academic progress of all children in school accountability systems, or delay interventions when any group of students is struggling academically.

Unfortunately, past history shows that States often set expectations for schools far too low which leads directly to low student achievement impacting our most disadvantaged students. States have set graduation goals as low as 60 percent, allowed as little as .1 percent of annual growth to count as progress against State goals and set reading and math proficiency standards so low that high school graduates, deemed eligible for the State's regular diploma required remediation upon entering college. Recently, we've also seen how easily States can allow the focus of accountability to shift away from student learning. This is unacceptable.

We advocate for ED to exercise its full legal authority to promulgate regulations that assure State title I plans must, in summary, provide:

- a. rigorous and consistent standards inclusive of all student groups;
- b. school differentiation or ratings that primarily reflect how all students are doing with prohibition on the use of aggregated subgroup data (e.g. super subgroups);
- c. strict State limit of 1 percent of all students, by subject, in the use of alternate assessments on alternate academic achievement standards for students with the

⁸Zimring, et al. (2013). The IDEA/EHA in Congress and the Supreme Court 1970–2012 What Lessons Can We Learn and What Can We Do Planning Litigation Strategies for the 21st Century. *file:///C:/Users/lkalo/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/77YHW6NP/2013Pres.pdf*.

most significant cognitive disabilities, with flexibility only at the district level and the application of strict criteria for any State waiver;

d. valid and reliable assessment of English language proficiency and the inclusion of English learners in content assessments, with appropriate accommodations;

e. clear requirements for identification, intervention and exit criteria for schools in each of the three categories identified in the law—the bottom 5 percent, schools with grad rates below 67 percent and schools with consistently low performing groups of students and assure State and district-led evidence-based intervention systems focused on raising achievement are initiated whenever any school is underperforming for *all* students or for *any* student group so that students don't languish year after year without help;

f. definitions and/or parameters set for new statutory terms—specifically for new terms: “*meaningful differentiation*,” “*substantial weight*” and “*much greater weight*”;

g. specifications that the 95 percent participation requirement is included in the accountability system so the performance of students matters, provide Federal guidance on options for doing so and define consequences for failure to meet the requirement;

h. recommendations for an acceptable range for statistically significant N sizes to measure subgroup performance so that as many students are included in school, district and State accountability metrics as possible;

i. assurances for support to districts to reduce bullying, harassment, use of disciplinary practices (e.g. suspension and expulsion) and use of aversives (e.g. seclusion and restraint), all of which disproportionately impact students with disabilities and students of color;

j. universal access in all data reporting; cross-tabulate data and expand on the availability of data disaggregated by Asian American and Pacific Islander categories; and,

k. clarity that supplement, not supplant provisions presume and ensure an equal base of actual per-pupil funding before any Federal funds are considered supplemental.

The test of regulations, guidance, technical assistance and other implementation activities must be *whether or not they advance educational equity and serve the interests of all students*. Low-income students, students of color, students with disabilities, English learners, and Native students deserve no less than robust and thorough regulation by this Department to close opportunity and achievement gaps. Throughout regulations, the Department should reinforce the non-discrimination responsibility of schools, districts and States under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act and Title II of the Americans with Disabilities Act of 1990.

As noted, the ESEA is our Nation's most important civil rights law for promoting educational achievement and protecting the rights and interests of students disadvantaged by discrimination, poverty, disability, race, language and other conditions that may limit their educational opportunity. With its reauthorization, the responsibility continues to rest with the U.S. Department of Education to provide comprehensive, detailed and clarifying rules to ensure that States and school districts implement the new law in a way that not only honors the purpose of the law but also holds States accountable for access over \$15 Billion in Federal funds. Despite claims to the contrary, Federal funds are still conditional thorough compliance with the law. ESSA is a new law that includes new flexibility as well as requirements—the bright-line provisions the civil rights community helped support—and the Secretary has the authority to define, monitor, and enforce the law.

SENATOR WHITEHOUSE

Question 1. ESSA is a relief to many, especially in Rhode Island. Everyone who I've talked to is very excited about this bipartisan bill and the opportunities it presents.

I am concerned about the supplement, not supplant issue. Many of you have said that ED's proposed regulations on “supplement, not supplant” are an overreach. But I am also aware of many inequities that exist in local and State funding for education.

Absolutely no one wants to see Federal money come in and provide an excuse to send other funding into wealthier, well-connected school districts and have title I fill the gap.

I've heard from many about the problems with ED's draft proposal. My question is not what are the problems, but what should ED do instead? That is, what would

you affirmatively propose to ensure that title I funds are supplemental and not supplanting State and local funds?

Answer 1. Regulations are the first step. And, as you acknowledge, unless title I schools are receiving an equitable base of funds from non-Federal sources to ensure that the Federal funds are truly supplemental, then title I funds are being used to supplant by filling in gaps of funds the schools should be receiving. This is a violation of the law.

COPAA supports the Leadership Conference on Civil and Human Rights position and has advocated that:

“... a comparison of spending between each title I and the average of non-title I schools allows for considerable variability among both title I and non-title I schools in State and local expenditures, therefore not running afoul of the law’s prohibition against requiring the equalization of spending.”

Compliance with an “actual expenditures test” also recognizes the reality that equitable means fair, not equal—underscoring the law’s aim to ensure that students impacted by concentrated poverty have the unique supports and services that will address their needs. This also preserves flexibility for districts to use weighted student funding, formulas for staffing and materials, or any other methodology for allocating State and local funds to schools. The integrity of title I funds must be preserved to fully realize the aim of ensuring equity and equal access to quality educational opportunities.

Question 2. Under NCLB and the Obama administration’s waivers, I consistently heard from Rhode Island teachers and principals that they could achieve better results if not for the layers of bureaucracy stifling innovation at multiple levels.

I am very pleased that ESSA is a step away from that one-size-fits-all, overly prescriptive posture. You have all heard me talk about the provisions I fought for in ESSA—requiring States to describe how they will encourage opportunities for increased autonomy and flexibility.

I am concerned because I do not want to see ED use the regulatory process to grab back the control that ESSA intended to push down to the State and local level. What could ED do on the supplement, not supplant issue that would support greater innovation at the local level?

Answer 2. Regulations should require an “actual expenditures test” because it also recognizes the reality that equitable means fair, not equal—underscoring the law’s aim to ensure that students impacted by concentrated poverty have the unique supports and services that will address their needs. This also preserves flexibility for districts to use weighted student funding, formulas for staffing and materials, or any other methodology for allocating State and local funds to schools. The integrity of title I funds must be preserved to fully realize the aim of ensuring equity and equal access to quality educational opportunities.

RESPONSE BY JANET MURGUÍA, J.D., TO QUESTIONS OF SENATOR COLLINS, SENATOR SANDERS, AND SENATOR WHITEHOUSE

SENATOR COLLINS

Question. During Secretary King’s confirmation hearing, I asked for his assurance that the Department would engage rural communities in its ESSA implementation processes. For example, I was alarmed that the Department held its initial public listening sessions in DC and Los Angeles. Rural districts also seem to have been underrepresented on the committee of negotiators selected for the negotiated rule-making.

It’s vital that rural communities and rural educators have a seat at the table. What should the Department be doing to ensure rural communities are represented in its rulemaking?

In your States, what are you doing, as stakeholders, to ensure rural voices are heard in your State and local planning efforts?

Answer. As I stated in my testimony, ESEA was enacted in 1965 to ensure all children, regardless of where they grow up, receive a high-quality education. NCLR relies on our diverse Affiliate network—serving urban and rural communities—to create a multi-stakeholder strategy to ensure the implementation of this law addresses the broad and diverse concerns of the students in our schools, including those of native students. We also recognize that this task is not always easy, particularly in remote and hard-to-reach areas. We have seen as Latino communities have expanded in the Southeastern United States, that service providers must be on hand to help these communities advocate at all levels of government.

SENATOR SANDERS

Question 1. We must do everything that we can to ensure that every child—regardless of her or his circumstances—has access to a high-quality education. We know that a high-quality education is a resource-intensive endeavor. We also know that disadvantaged children need additional resources to combat the ravages of poverty and discrimination. The Elementary and Secondary Education Act (ESEA) of 1965 marked the beginning of a strong role for the Federal Government in combating inequities on both fronts. Clearly, there is much more work that must be done.

A key component of the Federal Government's role in education is ensuring that our schools have the additional resources needed to ensure that every child can reach her or his full potential. Today, over half of all public school children come from low-income families. Examining the most recent data available, there is clearly an increased need, as well as a lack of sufficient Federal resources to meet this need (figure 1). Between school year 2004–5 and school year 2013–14 we have seen a 32 percent increase in children eligible for free or reduced lunch—an increase of over 6 million children.

Yet the main source of Federal funding for public schools serving low-income children—Title I-A of ESEA—has not only not failed to keep pace with the reality that our public schools are serving more low-income children than a decade ago, funding has not even kept up with inflation. Real title I-A funding is down 6 percent since fiscal year 2005 while the percentage of low-income kids in public schools has increased by 32 percent over the same time period. If at a bare minimum title-I-A funding had kept pace with inflation since fiscal year 2005, appropriations for title-I-A would have been \$15.2 billion in fiscal year 2014 instead of \$14.4 billion—a difference of nearly a billion dollars. Furthermore, if title I-A funding had kept pace with both inflation and the growing number of children coming from low-income families since fiscal year 2005, title-I-A funding would have hit \$20.2 billion in fiscal year 2014, a gap of over \$5.5 billion when considering reality versus actual funding (figure 2).

Ms. Murguía, can you please speak to the importance of Federal education funding meeting the increased needs of our public schools? Beyond a dramatic increase to title-I-A funding, what other funding streams within ESEA and in other Federal programs require an increase to meet the realities of today's public schools?

Answer 1. At its core, ESEA was enacted in 1965 as a civil rights law to correct resource inequities in low-income communities and communities of color. ESEA's original intent recognized that a high-quality education was fundamentally linked to adequate resources. Yet, 50 years later, resource inequities and gaps in student achievement remain. As a result, the Every Student Succeeds Act (ESSA) must increase funding and other support for low-income children and students of color to ensure the law's promise for all students. In particular, lawmakers should increase funding for title I-A, title III, and title IV.

In addition to increased appropriations, the Department of Education must move forward with a robust rulemaking on resource-related regulations on supplementing funds. As highlighted in my written testimony, a recent analysis by the Education Trust showed that across the Nation, the highest-poverty districts receive nearly \$1,200 (10 percent) less in State and local funds per student than the lowest-poverty districts.¹ The differences are even larger—nearly \$2,000 (15 percent)—when comparing districts with the highest and lowest populations of students of color.²

It is also clear that resources are closely correlated with educational attainment. Title III funding for English learners averaged roughly \$162³ in per-pupil expenditures in 2014 and \$164⁴ in 2015. The recent 2013–2014 Civil Rights Data Collection showed that while English learners are 11 percent of students in schools offering gifted and talented education programs (GATE), only 3 percent of GATE students are English learners. These students are more likely to be retained in high school,

¹Natasha Ushomirsky and David Williams, "Funding Gaps 2015: Too Many States Still Spend Less on Educating Students Who Need the Most," *The Education Trust*, 2015, http://edtrust.org/wpcontent/uploads/2014/09/FundingGaps2015_TheEducationTrust1.pdf.

²Ibid.

³NCLR calculation using U.S. Department of Education, "Digest of Education Statistics 2014," Table 204.20, https://nces.ed.gov/programs/digest/d15/tables/dt15_204.20.asp?current=yes (accessed June 9, 2016) and U.S. Department of Education, "Fiscal Year 2015 Budget Summary and Background Information," www2.ed.gov/about/overview/budget/budget15/summary/15summary.pdf.

⁴Ibid.

along with students of color and students with disabilities.⁵ Unequal and inadequate educational resources for students of color and English learners undermine the goals of our foundational civil rights and K–12 law. It is imperative that Federal education funding equitably serve students regardless of race, ZIP code, income, or national origin.

Question 2. It is abundantly clear that low-income and disadvantaged children need additional support in order to succeed. That is why, title-I-A education funding is supposed to be in addition to and not in-lieu of local and State education funding. Since 1970, Congress has included supplement, not supplant (SNS) provisions in ESEA to codify this fundamental principle.

As you know, the Negotiated Rulemaking Committee for Title I, Part A of ESEA as amended by the Every Student Succeeds Act was unable to meet consensus on SNS regulations. It is now up to the U.S. Department of Education to draft regulations on SNS that ensure that Federal funding is on top of State and local funding and not used as backfill to compensate for unfair State and local spending practices on education.

Ms. Murguía, can you speak to the importance of the Department of Education crafting strong regulations for SNS? Ms. Murguía, what would a strong SNS regulation mean for children of color including Latino girls and boys who represent a majority of the children in our public schools, and what would it mean for English Language Learners? Finally, what progress can be made for all students if title-I-A funding is truly supplemental?

Answer 2. As I highlighted in my testimony, our Federal education system works best when policies are designed to be responsive to the communities they serve. Our school funding system is simply not adequate to support low-income students and students of color; they are not afforded the same resources as their wealthier counterparts—a paradox given ESEA’s original intent. The SNS provision is designed to ensure that Federal funds are supplemental to local and State funding rather than in lieu of this funding. My testimony points to research from the Education Trust that shows low-income students are being short-changed and this has real academic consequences. A strong SNS regulation will promote greater resource equity by requiring that title I schools receive just as much funding for students as non-title I schools. If title I funding were to be truly supplemental, students in high-poverty schools would receive the additional support they need to succeed in a competitive 21st-century workplace.

Question 3. I am very concerned that our schools and communities are dealing with a surge of students exposed to multiple adverse experiences and are not equipped with the resources, training, and support to accommodate this crisis.

According to the national Adverse Childhood Experience Study, over half of those surveyed reported at least one form of childhood adversity. Shockingly, two in three children in our Nation—46 million children—are exposed to violence, crime, abuse, or psychological trauma a year. In Vermont, over 20 percent of children have had two or more adverse experiences, which include traumatic events like living in chronic poverty, living with someone with a substance abuse problem, experiencing community or family violence, and more. Even more alarming is the fact that our youngest citizens and their parents are at the forefront of this crisis. Since 2014, the Department for Children and Families in Vermont has seen a 33 percent increase of children in State custody with children under the age of six making up more than two-thirds of this increase. Further, similar to nationwide trends, over 40 percent of children come from low-income families in my home State, with young children the most likely of any age group to be poor.

Ms. Murguía, what can the Department of Education do to help schools, educators, and communities be prepared to deliver trauma-informed approaches to education when implementing the Every Student Succeeds Act (ESSA)? Additionally, what can the Department of Education do to ensure that educators teaching in environments where a large percentage of students have had adverse childhood experiences (ACEs) have the support and the self-care they need to succeed? Furthermore, what policies should Congress enact to help communities combat these challenges and attack the root causes—like poverty, exposure to violence and substance abuse—driving these adverse experiences? How would increased Federal investments in child care, preschool, maternal and child home visiting, before-school, afterschool, and summer programming, nutritional supports, wrap-around services for schools and more help to fight this crisis? Likewise, how would raising the Fed-

⁵U.S. Department of Education Office of Civil Rights. “2013–2014 Civil Right Data Collection,” *U.S. Department of Education*, 2016 (accessed June 8, 2016).

eral minimum wage, addressing under-employment and unemployment, implementing paid family leave, and enacting universal health care coverage help attack the root causes of these adverse experiences?

As national education leaders, what plans are your organizations making to work with States to ensure that their schools and practitioners have trauma-informed approaches to education? How will you make States and school districts aware of opportunities under ESSA to create trauma-informed environments?

Answer 3. As the Department of Education moves forward with the implementation of ESSA, it must consider ACEs through trauma-informed practices. NCLR has over 250 Affiliates across the country on the forefront of providing services that assure safe, stable, nurturing relationships and environments for children with adverse childhood experiences. This is all too common in immigrant communities: family separation caused by immigration enforcement and experiences with violence in Central America leave long-term impressions on young people. Research supports what our Affiliates see frequently; a recent study by Child Trends found ACEs have negative lasting effects on health and well-being for students. The same study found that economic hardship is the most common ACE nationally, a troubling finding for low-income students nationwide.⁶ In response, States and districts should learn from community-based organizations and examine ways to incorporate wraparound services to support low-income and other vulnerable students. In addition, Federal policymakers should examine solutions to the root causes of ACEs, such as addressing poverty by raising the minimum wage, enhancing the social safety net, creating opportunities for economic mobility, and fixing our immigration system.

Question 4. Yesterday, on the 62d anniversary of the *Brown v. Board* decision, the Government Accountability Office (GAO) released a report confirming what educators, families, students, and community stakeholders have been telling us anecdotally for some time—our public schools are becoming more segregated by both race and family income.

The number of schools that are doubly segregated by both race and income—where 75 percent or more of the kids at these schools come from low-income families and are black or Hispanic—has increased from 9 percent of all public schools in school year 2000–2001 to 16 percent of all public schools in school year 2013–14. Additionally, today, nearly one in five public students attend these doubly segregated public schools—more than double the amount of kids who attended these schools almost 15 years ago. Furthermore, Hispanic children are often triply segregated by race, family income, and native language. Shamefully, nearly two-thirds—61 percent—of all high-poverty schools are schools where over 75 percent or more of the children are black and Hispanic.

Segregation and isolation by race and income in our public school is an alarming phenomenon on its own. Even more troubling is that the fact that these doubly segregated schools are not offering students a comparable education to non-segregated schools and schools at the other end of the spectrum that are wealthy and predominately white. The GAO report uncovers that these doubly segregated schools have fewer resources, do not offer the full range of core courses like math and science, offer less advanced coursework, and have disproportionately more disciplinary actions than other public schools.

I'd like to ask this entire panel—what can the Federal Government do to reverse this troubling trend of segregation by race and income, and ensure an equal and adequate education for all children? Please feel free to expound on reforms within education and greater system wide changes including housing, transportation, jobs, and more. Additionally, through the implementation of the Every Student Succeeds Act (ESSA) what can the Department of Education do to make States and school districts aware of opportunities within this new law to increase racial and socioeconomic diversity in our schools?

Relatedly, Ms. Eskelsen García, Ms. Marshall, Ms. Murguía, and Ms. Weingarten, ESSA provides States and local school districts more autonomy to make key educational decisions. What are your organizations' plans to make States and local school districts aware of opportunities to increase diversity under this new law? Additionally, what other tools or resources do States and communities need to tackle the difficult task of diversify our schools are providing equal and adequate education for all students?

Answer 4. Thank you for your excellent question and remarks on the multiple levels of segregation facing low-income students and students of color in our schools

⁶Vanessa Sacks, David Murphey, and Kristin Moore. "Adverse Childhood Experiences: National and State-Level Prevalence," July 2014, http://www.childtrends.org/wp-content/uploads/2014/07/Brief-adverse-childhood-experiences_FINAL.pdf.

today. Currently, one in every four children in schools across the country is Latino. The recent report by GAO you mentioned makes clear that segregation has increased over the past decade for low-income students in high-poverty schools. Addressing this issue will necessarily require a multi-stakeholder, cross-agency strategy to examine systemic inequities our students face every day. Through this type of collaboration, stakeholders can identify barriers to socioeconomic mobility and integration, and work to provide tools and best practices to communities to promote equal access to opportunities.

Furthermore, it is critical to use the new requirements under ESSA to make sure community voices are involved in the implementation of the law. NCLR has over 250 Affiliates across the country, including a network of charter schools, after-school services, and early education providers who are ready and eager to provide guidance and technical assistance to States and districts on ESSA's implementation. Through partnerships with local nonprofit organizations, NCLR at the national level can share best practices and help communities understand their power in increasing diversity in schools and their communities. All understand that Latino success in schools is paramount for their communities and the Nation, and as such must strive to end segregation once and for all.

SENATOR WHITEHOUSE

Question 1. ESSA is a relief to many, especially in Rhode Island. Everyone who I've talked to is very excited about this bipartisan bill and the opportunities it presents.

I am concerned about the supplement, not supplant issue. Many of you have said that ED's proposed regulations on "supplement, not supplant" are an overreach. But I am also aware of many inequities that exist in local and State funding for education.

Absolutely no one wants to see Federal money come in and provide an excuse to send other funding into wealthier, well-connected school districts and have title I fill the gap.

I've heard from many about the problems with ED's draft proposal. My question is not what are the problems, but what should ED do instead? That is, what would you affirmatively propose to ensure that title I funds are supplemental and not supplanting State and local funds?

Answer 1. As I stated in my testimony, ESSA grants the Department of Education the authority to promulgate strong regulations on fiscal equity, including the supplement, not supplant provision. The Department must use this authority. Districts need to demonstrate that they spend just as much in title I schools as they spend in non-title I schools. Based on a recent analysis by the Education Trust, we know that funding is not equitable and this has consequences for low-income students and students of color. High-poverty schools receive nearly \$1,000 less in local funds than schools in wealthier districts. Furthermore, districts that serve students of color receive nearly \$2,000 less in local funds than their less diverse counterparts.⁷ It is paramount that the Department ensures each title I school is receiving comparable services as a non-title I school. ESSA strikes an important balance, however, with its update to supplement, not supplant: allowing States and districts flexibility to innovate within parameters set by the Federal Government. While the States have been given some latitude to innovate, the Federal Government must still play a role in setting guardrails to make sure all students are meeting challenging academic goals.

Question 2. Under NCLB and the Obama administration's waivers, I consistently heard from Rhode Island teachers and principals that they could achieve better results if not for the layers of bureaucracy stifling innovation at multiple levels.

I am very pleased that ESSA is a step away from that one-size-fits-all, overly prescriptive posture. You have all heard me talk about the provisions I fought for in ESSA—requiring States to describe how they will encourage opportunities for increased autonomy and flexibility.

I am concerned because I do not want to see ED use the regulatory process to grab back the control that ESSA intended to push down to the State and local level. What could ED do on the supplement, not supplant issue that would support greater innovation at the local level?

Answer 2. Education has been lauded as a pathway to the American Dream, particularly for low-income students and students of color. As I noted previously, we

⁷Natasha Ushomirsky and David Williams, "Funding Gaps 2015: Too Many States Still Spend Less on Educating Students Who Need the Most," *The Education Trust*, 2015, http://edtrust.org/wpcontent/uploads/2014/09/FundingGaps2015_TheEducationTrust1.pdf.

are not seeing these results in the data. Furthermore, the Civil Rights Data Collection's latest report shows a pattern of unequal access to educational resources for students of color and English learners:

- English learners represent 5 percent of high school students, but only 2 percent of Advanced Placement course enrollment.⁸
- Latino students represent 21 percent of high school enrollments, but only 12 percent of students enrolled in calculus.⁹
- Black and Latino students are 1.5 times more likely to be taught by novice teachers compared to schools with lower Black and Latino enrollments.¹⁰

The supplement, not supplant regulation grants States adequate flexibility to pilot new and innovative programs or scale effective programs. It also provides guardrails to ensure low-income students, students of color, and English learners have the resources they need for academic success. Opportunities should not be defined by race, ethnicity, national origin, or ZIP code. We can and must do more for these students.

[Whereupon, at 12:07 p.m., the hearing was adjourned.]



⁸ U.S. Department of Education Office of Civil Rights. 2013–2014 Civil Right Data Collection. Washington: U.S. Department of Education. 2016. Accessed June 8, 2016.

⁹ *Ibid.*

¹⁰ *Ibid.*