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NEXT STEPS FOR K-12 EDUCATION: IMPLEMENTING THE PROMISE TO RESTORE STATE AND LOCAL CONTROL

HEARING

BEFORE THE

SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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NEXT STEPS FOR K-12 EDUCATION: IMPLEMENTING THE PROMISE TO RESTORE STATE AND LOCAL CONTROL

Wednesday, February 10, 2016
House of Representatives,
Subcommittee on Early Childhood, Elementary, and Secondary Education,
Committee on Education and the Workforce,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:01 a.m., in Room 2175, Rayburn House Office Building, Hon. Todd Rokita [chairman of the subcommittee] presiding.

Present: Representatives Rokita, Thompson, Carter, Grothman, Russell, Fudge, Davis, Bonamici, and Clark.

Also Present: Representatives Kline, Scott, and Polis.

Staff Present: Lauren Aronson, Press Secretary; Janelle Belland, Coalitions and Members Services Coordinator; Amy Raaf Jones, Director of Education and Human Resources Policy; Nancy Locke, Chief Clerk; Dominique McKay, Deputy Press Secretary; Brian Newell, Communications Director; Krisann Pearce, General Counsel; Mandy Schaumburg, Education Deputy Director and Senior Counsel; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Leslie Tatum, Professional Staff member; Brad Thomas, Senior Education Policy Advisor; Sheariah Yousefi, Legislative Assistant; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Austin Barbera, Minority Staff Assistant; Jacque Chevalier, Minority Senior Education Policy Advisor; Denise Forte, Minority Staff Director; Brian Kennedy, Minority General Counsel; Kiara Pesante, Minority Communications Director; Saloni Sharma, Minority Press Assistant; Michael Taylor, Minority Education Policy Fellow; and Arika Trim, Minority Press Secretary.

Chairman ROKITA. Good morning. A quorum being present, the Subcommittee on Early Childhood, Elementary, and Secondary Education will come to order.

I want to welcome everyone to the first subcommittee hearing of the new year. After replacing No Child Left Behind at the end of 2015, I think it's only fitting to kick off 2016 with a conversation about what happens next.

After years of flawed policies and Federal intrusions into the Nation's classrooms, Congress passed the Every Student Succeeds Act based on the principle that responsibility of K-12 education must be returned to State and local leaders. The new law repeals oner-

ous Federal requirements and ensures important decisions that affect education, like standards, accountability, school improvement, are made by State and local leaders, not Washington bureaucrats.

That's why the Wall Street Journal editorial board described the legislation as, quote, "the largest devolution of power to the States in a quarter-century," unquote, and why the National Governors Association lauded the new law as a, quote, "historic moment in ensuring children's future success in the Nation's schools," unquote.

There's no question that replacing No Child Left Behind was an important achievement, one that will improve K-12 education for students and families. But our work is far from finished; in fact, it's just beginning. Over the last several years, the administration has routinely taken a top-down approach to education, imposing on States and school districts a backdoor agenda that has sparked bipartisan opposition and harmed education reform efforts.

The passage of the Every Student Succeeds Act puts States and school districts back in charge of education and includes more than 50 pages of provisions to keep the Department of Education in check. For example, the law protects the right of State and local leaders to determine what standards, assessments, and curriculum are best for their students and ensures State and local leaders are responsible for accountability in school improvement.

Now, moving forward, it's going to be our collective responsibility to hold the Department of Education accountable for how it implements the law. This is what Congress does and is supposed to do. Congress promised to restore State and local control over K-12 education, and now it's our job to ensure that promise is kept.

Hearing from you, the very leaders we want to empower, is a critical part of that effort. What role do State and local leaders play in implementing the law is a question. What challenges do you anticipate State and school districts may face is another question. How can the Department provide the increased flexibility and autonomy State and local leaders were promised and now expect?

Today's conversation is one of many steps we plan to take to ensure the Department upholds the letter and spirit of the law that we passed and that the President signed, and answers to these questions will inform our efforts moving forward. It's my firm belief that when the Every Student Succeeds Act is implemented as Congress intended, parents, teachers, and State and local leaders will be empowered to deliver the excellent education, in fact, every child deserves.

With that, again, I welcome everybody and will yield to Ranking Member Fudge for her opening remarks.

[The statement of Chairman Rokita follows:]

Prepared Statement of Hon. Todd Rokita, Chairman, Subcommittee on Early Childhood, Elementary, and Secondary Education

Good morning, everyone, and welcome to our first subcommittee hearing of the New Year. After replacing No Child Left Behind at the end of 2015, it's only fitting to kick off 2016 with a conversation about what happens next.

After years of flawed policies and federal intrusions into the nation's classrooms, Congress passed the Every Student Succeeds Act based on the principle that responsibility of K–12 education must be returned to state and local leaders. The new law repeals onerous federal requirements and ensures important decisions affecting education—like standards, accountability, and school improvement—are made by state and local leaders, not Washington bureaucrats.

That's why the Wall Street Journal editorial board described the legislation as "the largest devolution of power to the states in a quarter century" and why the National Governors' Association lauded the new law as "an historic moment in ensuring children's future success in the nation's schools."

There is no question that replacing No Child Left Behind was an important achievement, one that will improve K–12 education for students and families. But our work is far from finished. In fact, it is just beginning.

Over the last several years, this administration has routinely taken a top-down approach to education, imposing on states and school districts a backdoor agenda that has sparked bipartisan opposition and harmed education reform efforts.

The passage of the Every Student Succeeds Act puts states and school districts back in charge of education, and includes more than 50 pages of provisions to keep the Department of Education in check. For example, the law protects the right of state and local leaders to determine what standards, assessments, and curriculum are best for their students, and ensures state and local leaders are responsible for accountability and school improvement.

Moving forward, it's our responsibility to hold the Department of Education accountable for how it implements the law. Congress promised to restore state and local control over K–12 education, and now it's our job to ensure that promise is kept. Hearing from you—the very leaders we want to empower—is a critical part of that effort. What do you expect from the new law? What role do state and local leaders play in implementing the law? What challenges do you anticipate states and school districts may face? How can the department provide the increased flexibility and autonomy state and local leaders were promised?

Today's conversation is one of many steps we plan to take to ensure the department upholds the letter and spirit of the law, and answers to these questions will inform our efforts moving forward. It is my firm belief that when the Every Student Succeeds Act is implemented as Congress intended, teachers and state and local leaders will be empowered to deliver the excellent education every child deserves.

With that, I will yield to Ranking Member Fudge for her opening remarks.

Ms. FUDGE. Thank you very much, Mr. Chairman.

And thank you all for being here this morning.

I'm pleased to be here to discuss the implementation of the Every Student Succeeds Act. I do believe that this bipartisan law will fulfill the Elementary and Secondary Education Act's promise to promote and protect the right to educational opportunity for all of the Nation's most vulnerable children.

We worked across the aisle to write this law over many months and years, and I am pleased with the role House Democrats played to strengthen the final conference report and secure the President's signature. I look forward to working with you, the administration, and with stakeholders to preserve the law's civil rights legacy during implementation.

The Every Student Succeeds Act provides the much-needed flexibility absent in No Child Left Behind's one-size-fits-all requirements but maintains critical Federal protections to ensure that every child has access to a quality education. This is particularly important for students of color, English language learners, students with disabilities, and low-income students, who disproportionately face barriers to a quality education that prepares them for college and a career.

Under ESSA, States and local school districts will have the flexibility to design multi-measure accountability systems, make important decisions about standards and assessments, and ensure that school intervention and support strategies are improving outcomes for students.

But with new flexibility comes responsibility. States and school districts will need to implement ESSA in a way that continues its focus on meeting the needs of our Nation's most at-risk students.

The work will not be easy. The voices of our communities will be vital in determining the parameters of implementation. Parents, teachers, and students will need to elevate their voices and experiences at school board meetings and State capitals across the country. State and local leaders will need to fight for strong, student-focused policies. And the U.S. Department of Education will need to ensure that States are putting children's needs first.

As ESSA is implemented, stakeholder input will continue to be important. I was pleased to see that 370 organizations and individuals provided recommendations to the U.S. Department of Education regarding the regulatory process. Many stakeholders asked for additional clarity through regulations on issues including, but not limited to, defining vague terms, setting parameters, and providing options to fulfill legal requirements in ESSA.

Many stakeholders also requested a timeline to help States and school districts plan for the transition. I believe such a timeline is a critical component of the process.

Federal agencies are required to faithfully implement the law. I am pleased that the U.S. Department of Education has started the process of issuing regulations and guidance to assist States and school districts with implementing the Every Student Succeeds Act.

States and school districts need clarity, rules, and oversight throughout the implementation process to ensure that the law fulfills ESSA's promise. While some things like annual assessments and disaggregated data will remain the same, there will be many new requirements, and the Federal guidance will empower States to hit the ground running.

I look forward to hearing about the panel's experiences and their recommendations for ensuring a smooth and successful transition in a way that preserves the critical Federal role in promoting educational equity.

I yield back.

[The statement of Ms. Fudge follows:]

Prepared Statement of Hon. Marcia L. Fudge, Ranking Member, Subcommittee on Early Childhood, Elementary, and Secondary Education

Mr. Chairman, I am pleased to be here today to discuss the implementation of the Every Student Succeeds Act. I believe this bipartisan law will fulfill the Elementary and Secondary Education Act's promise to promote and protect the right to educational opportunity for our nation's most vulnerable children.

We worked across the aisle to write this law over many months and years, and I am pleased with the role House Democrats played to strengthen the final conference report and secure the President's signature.

I look forward to working with you, the Administration, and with stakeholders to preserve the law's civil rights legacy during implementation.

The Every Student Succeeds Act provides the much needed flexibility absent in No Child Left Behind's one-size-fits-all requirements, but maintains critical federal protections to ensure that every child has access to a quality education. This is particularly important for students of color, English language learners, students with disabilities, and low-income students, who disproportionately face barriers to a quality education that prepares them for college and a career.

Under ESSA, states and local school districts will have new flexibility to design multi-measure accountability systems, make important decisions about standards and assessments, and ensure that school intervention and support strategies are improving outcomes for students. But with new flexibility comes responsibility. States and school districts will need to implement ESSA in a way that continues its focus on meeting the needs of our nation's most at-risk students.

The work will not be easy. The voices of our communities will be vital in determining the parameters of implementation. Parents, teachers, and students will need

to elevate their voices and experiences at school board meetings and state capitols across the country. State and local leaders will need to fight for strong student focused policies. And the US Department of Education will need to ensure that states are putting children's needs first.

As ESSA is implemented, stakeholder input will continue to be important. I was pleased to see that 370 organizations and individuals provided recommendations to the US Department of Education regarding the regulatory process. Many stakeholders asked for additional clarity through regulations, on issues including, but not limited to, defining vague terms, setting parameters, and providing options to fulfill legal requirements in ESSA. Many stakeholders also requested a timeline to help states and school districts plan for the transition. I believe such a timeline is a critical component of the process.

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I look forward to hearing about the panel's experiences and their recommendations for ensuring a smooth and successful transition in a way that preserves the critical federal role in promoting educational equity.

Chairman ROKITA. I thank the gentlelady.

Pursuant to committee rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record. And, without objection, the hearing record will remain open for the 14 days to allow such statements and other extraneous material in reference during the hearing to be submitted for the official hearing record.

I will now turn to the introduction of our distinguished witnesses. And I ask Mr. Russell of Oklahoma to introduce our first witness.

Mr. RUSSELL. Well, thank you, Mr. Chairman.

It's my honor this morning to welcome to the committee the State superintendent of public instruction for the great State of Oklahoma, Ms. Joy Hofmeister, a friend.

She comes with a wealth of experience and background not only as a public schoolteacher but also as a small-business owner. She served on the State Board of Education. She has worked tirelessly, getting out in the school districts to listen to what the standards concerns are, the importance of having State control for these standards.

And it is my honor to welcome her to this committee this morning.

Thank you, Mr. Chairman.

Chairman ROKITA. I thank the gentleman.

Welcome.

I'll continue with introductions.

Dr. Paul ″Vic″ Wilson serves as the superintendent for the Hartselle City Board of Education, in Hartselle, Alabama. Previous to serving as superintendent, Dr. Wilson was a high school principal at Mountain Brook High School.

Ms. Selene Almazan serves as legal director for the Council of Parent Attorneys and Advocates, COPAA, in Towson, Maryland. For the last 20 years, Ms. Almazan has represented parents in special education matters, with a primary focus on least restrictive en-

vironment issues, individualized education plan team meetings, State complaint proceedings, mediations, due process hearings, suspension and expulsion proceedings, and Federal court proceedings.

Welcome.

Mr. Kent Talbert serves as an attorney in Washington, D.C., where he provides advice on education law and policy, covering pre-K through postsecondary education issues. In addition, Mr. Talbert served as the general counsel for the U.S. Department of Education from 2006 to 2009 and also served with this committee.

Welcome, all.

I will now ask our witnesses to stand and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Chairman ROKITA. Let the record reflect witnesses answered in the affirmative.

And you may be seated.

Before I recognize you to provide your testimony, let me briefly explain our lighting system. You each have 5 minutes to present your testimony. When you begin, the light in front of you will be green. When 1 minute is left, the light will turn yellow. And when your time is expired, it will be red. At that point, I'll ask you to wrap up your remarks as best as you are able.

And, by the way, this is a reminder for us up here, as well, not just you all. Members then will each have 5 minutes to ask questions.

And, with that, Ms. Hofmeister, you're recognized for 5 minutes.

TESTIMONY OF JOY HOFMEISTER, SUPERINTENDENT OF PUBLIC INSTRUCTION, OKLAHOMA STATE DEPARTMENT OF EDUCATION, OKLAHOMA CITY, OKLAHOMA

Ms. HOFMEISTER. Well, thank you very much.

Chairman Kline, thank you. Thank you, Chairman Rokita, Ranking Member Fudge, as well as the introduction from my Congressman, Congressman Russell, and members of the committee, for the opportunity to testify today.

And congratulations on the successful passage of Every Student Succeeds Act. As Oklahoma State superintendent, I embrace the challenge to successfully implement this important new law. My goal is to ensure all Oklahoma's students have access to a high-quality education.

To do so, we have set out on an ambitious path to focus on early childhood foundations in literacy, to close achievement gaps and opportunity gaps, and to increase the number of high school graduates fully prepared for the challenges of a postsecondary education or the workforce. Passage of this new law could not have come at a better time to give us the flexibility and authority needed to achieve these goals.

Prior to the passage of the Every Student Succeeds Act, Oklahoma struggled to realize the full potential of every child. Why? While we set ambitious goals and created meaningful programs to meet those goals, we faced a prescriptive Federal law that offered neither the space nor the flexibility to do what we needed to do on behalf of kids.

Today, however, my fellow State chiefs and I look forward to both the flexibility and stability of this new law so we can create accountability systems, school-level interventions, and educator evaluation and support frameworks to achieve the goals we have set for all students in our States.

This law signals a new era of Federal policy in education, one that lets those at the State and local levels, those closest to the classrooms, focus their efforts on reaching the best outcomes for all students while still holding us accountable for results for kids.

States like Oklahoma will only be able to achieve the full promise of this new law if the Federal Government continues to hold true to the spirit of the law, if we truly are allowed to innovate, free from regulations and guidelines that change the intent of this body. Striking the balance between guidance to the States and ensuring that States are not overly prescribed is what State leaders need.

I realize that some regulation and guidance are necessary as States transition to the new law. For example, I know States will welcome clarification on such issues as the timeline for implementation.

And I want to recognize the U.S. Department of Education already, as they have taken steps to provide some clarity on key issues, such as the recent guidance on how States can transition away from highly qualified teacher regulations. I applaud these positive signs from the Department and appreciate their efforts to leave these necessary decisions up to States and local communities.

Under No Child Left Behind, States quickly realized that academic progress was stalling under an outdated law. We first noticed the lag in our accountability systems. Because these systems relied solely on the number of kids passing one test each year, we could not accurately identify all schools in need of improvement. Moreover, once schools were identified, we saw that what may work for school improvement in Oklahoma City or in Tulsa was not the same as what was needed or might work in Guymon or Muskogee.

Oklahoma has a new day, and we know that now, under the new Every Student Succeeds Act, Oklahoma plans to build on the progress we made through our ESEA flexibility waiver to create a better system for all kids—an accountability system that better identifies schools and what assistance they need; more targeted interventions that recognize not every student or community is the same; and complete authority to craft an evaluation and support system that truly evaluates and supports Oklahoma teachers amidst the reality of a historic teacher shortage.

Let me leave you with this final thought. States are not only ready but we are willing and able to lead under this new law. We have proven it time and time again, as we have raised academic standards for every child, created better assessments to meet individual needs, and sought additional flexibility to do what is best for all kids in our States.

What we need today is for Congress and the U.S. Department of Education to continue to recognize our leadership as we work with parents, teachers, and key stakeholders to transition to this new law. Future regulation should focus on providing States with guid-

ance, clarification, and support but not prescription and compliance.

I look forward to this opportunity to focus on what needs to be done to give every Oklahoma child a first-rate education. Under this new law, I now see the Federal Government as a partner in this effort, not a barrier. I hope we can work together to keep it that way.

Thank you, and I'm available for answering any questions you may have at the appropriate time.

[The statement of Ms. Hofmeister follows:]

"Next Steps for K-12 Education: Implementing the Promise to Restore State and Local Control"
House Education and the Workforce Committee
Subcommittee on Early Childhood, Elementary, and Secondary Education
February 10, 2016

Testimony of Joy Hofmeister, State Superintendent of Public Instruction, Oklahoma

Thank you Chairman Rokita, Ranking Member Fudge and members of the Subcommittee for the opportunity to testify today, and congratulations on the successful passage of the Every Student Succeeds Act.

As Oklahoma's State Superintendent of Public Instruction, I embrace the challenge of successfully implementing this important new law. I have first-hand experience in education at the local, state and now the national level. I am a former public schoolteacher. I served on Oklahoma's State Board of Education prior to becoming elected State Superintendent, and I bring 15 years of experience in the private sector, where I worked directly with parents and students at the local level to help kids reach higher academic achievement.

As State Superintendent in Oklahoma, my goal is to ensure all students have access to a high-quality education. To do so, we have set out on an ambitious path to focus on early childhood foundations and literacy; to close achievement and opportunity gaps; and to increase the number of high school graduates fully prepared for the challenges of a post-secondary education or the workforce.

Passage of this new law could not have come at a better time to give us the flexibility and authority needed to achieve these goals. Because of the additional flexibility provided by the Every Student Succeeds Act, we in Oklahoma can now develop programs and systems that align with our vision to meet the needs of our schools and every child in those schools.

Prior to the passage of the Every Student Succeeds Act, Oklahoma was struggling to realize the full potential of every child. Why? While we set ambitious goals and created meaningful programs to meet those goals, we were burdened with a prescriptive federal law that offered neither the space nor the flexibility to do what we needed to do on behalf of kids.

Today, however, my fellow state chiefs and I look forward to both the flexibility and the stability of this new law that gives us an opportunity to take the lead and create accountability systems, school-level interventions, and educator evaluation and support frameworks to achieve the goals we have set out for *all* students in our states.

State education leaders believe in being held accountable for results. Every one of us is committed to equitable results for every child, no matter their background or income level. Yet, before the passage of this law, we did not have access to the tools we needed to attack, without federal interference, the deep-seeded problems our children face. This law signals the

passage of a new era of federal policy in education, one that lets those at the state and local levels — those *closest* to the classroom — focus their efforts on reaching the best outcomes for all students.

States like Oklahoma will only be able to achieve the full promise of the ESSA if the federal government holds true to the spirit of the law. We will only be able to accomplish Oklahoma's goals if we truly are allowed to innovate free from regulations and guidelines that change the intent of this body.

I recognize, of course, that some regulation and clarification are necessary as states transition to the new law. For example, I would welcome clarification on such issues as the implementation timeline. The Department has already moved to clarify some of these issues such as states being allowed to transition away from Highly Qualified Teacher regulations. State and local education agencies, working closely with educators and administrators, are in the best position to make decisions about the policies and practices that will benefit every child, especially those most in need. Striking the balance between guidance to the states and ensuring that states are not overly prescribed is what state leaders need. We are already seeing positive signs from the U.S. Department of Education that they will be leaving necessary decisions up to states and local communities. I appreciate their efforts to date, and encourage them to continue working with us to craft responsible regulations.

Continuing Progress

It is not new for state and local agencies to take a leadership role in developing and implementing education policy. Under No Child Left Behind, states and local communities were the primary drivers of new ideas for making our education system work more effectively for every child.

However, states soon realized that progress in raising academic achievement stalled, and the law was not reauthorized to meet our needs. We first noticed it in our accountability systems. Because they relied solely on proficiency on one test each year, systems failed to accurately identify all schools in need of improvement or additional assistance. Moreover, once schools *were* identified, we saw that what may work for school improvement in Oklahoma City or Tulsa is not the same as what might work in Guymon or Muskogee.

Oklahoma has seen this in our work to address an unprecedented teacher shortage. More than a thousand teacher positions remain vacant statewide, while more than a thousand other teaching jobs have been filled through emergency certification, meaning the school district has exhausted all other means of securing a trained classroom teacher.

To address this crisis, we need the flexibility and authority to innovate, and attract and retain great people in the teaching profession. No Child Left Behind has made this more difficult with prescriptive policies. Instead, we have increased flexibility to focus on recruiting and retaining

highly effective teachers for our areas of greatest need, which now include early childhood and elementary as much as STEM fields.

Subsequently, many states, including Oklahoma, turned to ESEA Flexibility Waivers when they became available. Oklahoma has operated under a Waiver since 2012. In so doing, we were able to implement a number of practices aimed at moving the needle. That has included strengthening accountability measures for schools and our professional educators.

Still, these Waivers could not get us over the finish line for every child. While providing some additional flexibility, Waivers remained prescriptive on the interventions that states could use in school improvement and how we should create an evaluation and support system for our teachers. To complicate matters further, they fueled uncertainty as our Waiver required annual approval.

That is why I applaud members of Congress for passing the Every Student Succeeds Act that allows states to move past the Waiver process and provide states and local districts with a long-term and stable federal policy.

In Oklahoma, we plan to build on the progress we made through our Waiver to create a better system for *all* kids — an accountability system that better identifies schools and what assistance they need, more flexible interventions that recognize not every student or community is the same, and complete authority to craft an evaluation and support system that truly evaluates and supports Oklahoma teachers. The U.S. Department of Education's regulations on this new law should continue to encourage and support this leadership from states.

Ensuring Accountability

Let me focus on accountability systems as an example. Under the Every Student Succeeds Act, states will have significantly more authority to design and implement our state-level accountability systems, from the indicators we will use to the appropriate interventions we will provide to schools. In Oklahoma, we are committed to ensuring *every* student is given the best possible chance to succeed. We have long pursued meaningful accountability in our state's education system, and we will continue to do so under ESSA. In fact, I believe we will be able to create an even *better* system given the additional flexibility of ESSA.

While the new law sets a high bar for what every state should achieve, it also gives us the latitude to design an accountability system that is reflective of, and responsive to, the needs of our students. This authority will help us ensure that our accountability system is not seen as punitive, but that we create a system in which we can help schools create meaningful, positive changes for every child.

In Oklahoma, this means not just measuring how many students pass a single test, but looking at the growth a student shows in a given year. Or recognizing that one assessment at the end of the year is not the only indicator of how a child is performing.

Conclusion

Thank you to the members of this Committee for allowing me to testify, and thank you for the opportunity we now have under this new law.

Let me leave you with this final thought. States are not only ready, but we are willing and able to lead. We have proven it time and time again as we have raised academic standards for every child, created better assessments to meet individual needs and sought additional flexibility to do what is best for all kids in our state. What we need today is for Congress and the U.S. Department of Education to recognize this leadership and trust us as we work with parents, teachers and key stakeholders to transition to this new law. Future regulations should focus on providing states with guidance, clarification and support, not prescription or compliance.

As a State Superintendent, I look forward to this exciting opportunity to focus on the work that needs to be done for every Oklahoma child to providing a first-rate education for all students in Oklahoma. Under the Every Student Succeeds Act, I finally see the federal government as a partner in this effort, rather than a barrier. I hope we can work together to keep it that way.

Chairman ROKITA. Thank you.
Dr. Wilson, you're recognized for 5 minutes.

TESTIMONY OF PAUL "VIC" WILSON, SUPERINTENDENT, HARTSELLE CITY SCHOOLS, HARTSELLE, ALABAMA

Mr. WILSON. Thank you. Good morning. Thank you for allowing me to speak to you about the reauthorization of the Elementary and Secondary Education Act, which resulted in the passage of the Every Student Succeeds Act.

My name is Vic Wilson, superintendent of Hartselle City Schools, and I come to you today representing AASA, The School Superintendents Association; Schools Superintendents of Alabama; and the Hartselle City Schools.

ESSA signifies a wonderful step in the right direction to return autonomy and decision-making to the State and local level. Just as former Speaker of the House Tip O'Neill observed all politics is local, I contend that all education is local, as well, and best delivered and administered at the local level by educational professionals and stakeholders who know and understand the intricacies of not only local politics but local education.

Certainly a role exists for the United States Education Department, a role focused on strengthening and supporting public schools by equitably applying broad flexibility to States and local districts in their efforts to meet the needs of the stakeholders under their purview. ESSA represents the first time in 15 years that State and local education agencies can demonstrate what they can do to support student learning without Federal overreach.

Throughout the United States, the Nation's 14,000 public school superintendents are charged with meeting and exceeding expectations of student achievement and learning for stakeholders at the local level. What works in Alabama might not work and might be slightly different from what works in Minnesota. Likewise, what works in Hartselle, Alabama, might differ slightly what from what works in Florence, Alabama, or Arley, Alabama. ESSA provides a new opportunity for each of those leaders who craft and implement customized education for learners in their district.

In Hartselle City Schools, we strive to meet the needs of students who want to be a rocket scientist, the student who wants to be a doctor, the student who wants to be a welder, the student who wants to work in public service, or the student who really doesn't know what he or she wants to be at that time, and perhaps even the student who wants to become a teacher.

Thanks to the flexibility given to us by the Alabama State Department of Education and now ESSA, we are able to do this by collaborating, as necessary, with local entities and other school systems across the State. We're even able to converse and collaborate with leaders across the Nation to see how these ideas are working in one region of the country and how they might be applied in our area. This works best on an organic level via networking conducted by local leaders instead of top-down mandates, and ESSA allows and encourages this type of collaborative dialogue.

Last week, Superintendent Bill Hopkins, Superintendent Ed Nichols, and I met in Montgomery with superintendents across our State at our legislative conference. While all of three of us reside

in Morgan County, we each have differences with which we must deal on a daily basis. Without the ability to implement guidelines that best fit the needs of our respective districts' students, we would be forced to work with round holes and square pegs far too often.

Every leader needs the flexibility to deal with those situations that are unique to their district in a manner that best meets the need. Superintendent Janet Womack will deal with issues in Florence City differently than Ed, Bill, or I will, and rightly so. ESSA is a huge step in this direction and will serve leaders as they strive to lead all learners up the stairs of success.

When it comes to Federal regulations and ESSA, less is more. I strongly encourage the USED to incorporate input and feedback from stakeholders before adding regulations that could hamper their State and local decision-making.

In Alabama, Dr. Bice implemented PLAN 2020 that has greatly increased local control and had resulted in great growth across our State. Our graduation rates are going up. Our dropout rates and recidivism rates are going down.

For example, by reexamining rules and regulations that tie seat time to credit-bearing courses or regulations that ignore competency-based accountability systems, the United States Education Department can empower school districts to think outside the box and implement procedures and policies that best meet the needs of schools and the students they serve.

Hartselle City Schools, the SSA and the AASA, and other agencies concur about the importance of implementing ESSA in a manner that reflects the expanded authority and flexibility now granted to the experts at the State and local level. ESSA makes it clear that Congress' intent is the State should be solely responsible for decisions regarding accountability, standards, teachers, and other factors. Essentially, ESSA is a codification of reality that one size does not fit all and there truly is not one best model that will serve all students and schools.

Thank you again for the opportunity to speak to you today and submit these comments. My goal today has been to highlight the importance of ensuring the State and local education agencies have local control when deciding among the myriad options available in delivering quality instruction and meeting the needs of all the students.

By allowing this broad flexibility to the States and local agencies, ESSA will go a long way in transforming public education at the local and State level and thereby propelling public education forward nationally.

Thank you.

[The statement of Mr. Wilson follows:]

February 10, 2016

Comments Prepared for Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515-6100

Good morning and thank you for allowing me to speak to you about the reauthorization of the Elementary and Secondary Education Act (ESEA) which resulted in the passage of the Every Student Succeeds Act (ESSA). My name is Vic Wilson, Superintendent of Hartselle City Schools in Hartselle, AL, and I come to you today representing AASA, The School Superintendents Association, School Superintendents of Alabama (SSA), and Hartselle City Schools.

ESSA signifies a wonderful step in the right direction to return autonomy and decision making to the state and local level. Just as former Speaker of the House, Tip O'Neill observed "all politics is local," I contend all education is local as well and best delivered and administered at the local level by education professionals and stakeholders who know and understand the intricacies of not only local politics but local education.

Certainly a role exists for USED, a role focused on strengthening and supporting public schools by equitably applying broad flexibility to states and local districts in their efforts to meet the needs of the stakeholders under their purview. ESSA represents the first time in 15 years that state and local education agencies can demonstrate what they can do to support student learning without federal overreach.

Throughout the United States, the nation's 14,000 public school superintendents are charged with meeting and exceeding expectations of student achievement and learning for stakeholders at the local level. What works in Alabama might differ slightly from what works in Minnesota. Likewise what works in Hartselle, AL might differ slightly from what works in Florence, AL or Arley, AL. ESSA provides a new opportunity for each of those leaders to craft and implement 'customized education' for learners in their district. In Hartselle City Schools, we strive to customize an education for each of our 3010 students. With local control, we are better able to meet the needs of the student who wants to be a rocket scientist; the student who wants to be a doctor; the student who wants to be a welder; the student who wants to work in public service; the student who wants to be a teacher; and the student who is not quite sure what he/she wants. Thanks to the flexibility given to us by the ALSDE and now ESSA, we are able to do this by collaborating as necessary with local entities and with other school systems across the state. We are even able to converse and collaborate with leaders across the nation to see how ideas that are working in one region of the country might be used in another area. This works best on an organic level via networking conducted by local leaders instead of top down mandates, and ESSA allows and encourages this type of collaborative dialogue.

Last week, Superintendent Bill Hopkins, Superintendent Ed Nichols and I met in Montgomery with all superintendents across the state at our Legislative Conference. While all three of us reside in Morgan County, we each have differences with which we must deal on a daily basis. Without the ability to implement guidelines that best fit the needs of our respective districts' students, we would be forced to work with round holes and square pegs too often. Every leader needs the flexibility to deal with those situations that are unique to their district in a manner that best meets the need. Superintendent Janet Womack will deal with issues in Florence City Schools differently than Ed, Bill, or I will, and rightly so. ESSA is a huge step in this direction, and will serve leaders as they strive to lead all learners up the stairs of success.

When it comes to federal regulations and ESSA, less is more. I strongly encourage the USED to incorporate input and feedback from stakeholders before adding regulations that could hamper state and local decision making. In Alabama, Dr. Bice implemented Plan 2020 that has greatly increased local control and has resulted in great growth across the state. Our graduation rates are going up and our dropouts and recidivism rates are going down. For example, by re-examining rules and regulations that tie seat time to credit bearing courses or regulations that ignore competency based accountability systems, the USED can empower school districts to think outside the box and implement procedures and policies that best meet the needs of schools and students they serve.

Hartselle City Schools, School Superintendents of Alabama, AASA, The School Superintendents Association and other agencies concur about the importance of implementing ESSA in a manner that reflects the expanded authority and flexibility now granted to the education experts at the state and local level. ESSA makes it clear that Congress' intent is that states should be solely responsible for decisions regarding accountability, standards, teachers, and other factors. Essentially, ESSA is codification of the reality that one size does NOT fit all, and there truly is not one 'best' model that will serve all students and all schools.

Thank you for the opportunity to speak to you today and submit these comments. My goal today has been to highlight the importance of ensuring that state and local education agencies have local control when deciding among the myriad options available in delivering quality instruction and meeting the needs of all students and stakeholders. By allowing broad flexibility to the states and local education agencies, ESSA will go a long way in transforming public education at the local and state level and as a result will help propel public education forward nationally.

Chairman ROKITA. Thank you, sir.

Ms. Almazan, you're recognized for 5 minutes.

TESTIMONY OF SELENE A. ALMAZAN, ESQ., LEGAL DIRECTOR, COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC., TOWSON, MARYLAND

Ms. ALMAZAN. Thank you.

Good morning, Chairman Kline, Chairman Rokita, Ranking Member Scott and Ranking Member Fudge, and members of the committee.

I am Selene Almazan, legal director of the Council of Parent Attorneys and Advocates, a national nonprofit whose mission is to protect the civil rights of 6.4 million children with disabilities attending our Nation's public schools. I am also a parent to three children. Two of my children have disabilities and attended Maryland public schools.

I understand the impact of high expectations for students with disabilities and students of color through the lives of my clients and know firsthand the impact of high expectations for my own children.

A client of mine, Georgia, now age 12, was placed in a segregated classroom with no access to high-quality instruction. She's African-American. Georgia has a rare genetic condition that impacts her in many ways but does not impact her desire to learn. We worked to have her moved to general education classrooms. With the right supports and access to trained teachers and high expectations, she flourished.

Georgia is not alone in her quest. The need to demand high expectations in order to have the opportunity to achieve has a profound impact on the lives of many students and their families, my own included.

Over the past several years, COPAA has worked with disabilities, civil rights, and business communities to ensure that ESEA, now known as the ESSA, fully supports black, Hispanic, low-income, English learners, and students with disabilities to succeed.

Key to our collective support has been that the Secretary of Education approves plans and ensures State implementation and that States take action when schools and districts fail to meet their obligations; includes annual statewide assessments; has a strict statewide participation cap at 1 percent of all students by subject on the use of alternate assessments; includes a requirement to assess at least 95 percent of all students; includes statewide accountability systems with achievement and graduation goals; and requires action when any group of students consistently underperforms.

My testimony today intends to accomplish two priorities.

Priority number one: The role of the Department of Education is vital in the implementation of ESSA. While section 1111(e) of ESSA includes specific limited restrictions on Federal prescription, COPAA and its civil rights coalition partners are confident that the provisions therein are specific and limited enough as to not erode the regulatory authority of the Secretary.

ESSA acknowledges that regulations will be promulgated, and, in so doing, the Secretary will use regulations that protect the rights of all children without exceeding the scope of and without being in-

consistent with the statute. It is clear that the U.S. Department of Education has the correct regulatory authority to develop recommendations for implementation. In its simplest form, regulation allocates responsibility to implement statutory law.

On priority two, COPAA takes seriously the impact Title I implementation has on students. 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 work to prevent efforts to water down expectations, avoid full transparency, diminish the importance of honest measures, or delay interventions when any group of students is struggling.

COPAA submitted comprehensive recommendations to the Secretary on ESSA Title I. We believe it is imperative that the Secretary exercise full legal authority to issue regulations on key Title I provisions, including: to clarify and define new statutory terms and provide parameters on the n-size to protect the integrity of accountability and assessment systems; specify that 95-percent participation requirement is included in accountability; establish the statutory State cap at 1 percent of all students for use in alternate assessments; recognize district flexibility and create strict criteria for any State waiver; assure State and district-led evidence-based interventions systems are focused on raising achievement and are initiated whenever any school is underperforming for all students or for any student group.

The ESSA is our Nation's most important civil rights law. While ESSA does include new flexibility, it also includes bright-line requirements that the civil rights and business community help support. The Department must now provide clarifying rules so States can implement the law in a way that honors the purpose of the bill but also holds States accountable for access to over 15 billion dollars in Federal funds. Federal funds are still conditional through compliance with the law, and there's agreement that the Secretary has the authority to define, monitor, and enforce the law.

Student rights and educational opportunity must not be compromised by politics that seek to ignore the foundational tenet of administrative law. We want to help States and districts create new opportunities to accelerate student progress for our most vulnerable groups of children.

I appreciate the opportunity to speak to you today and look forward to your questions. Thank you.

[The statement of Ms. Almazan follows:]

Testimony on:
Next Steps for K-12 Education: Implementing the Promise to Restore State and Local Control

Subcommittee on Early Childhood, Elementary and Secondary Education
U.S. House of Representatives

By:
Selene Almazan, Esq.
Council of Parent Attorneys and Advocates (COPAA)

Chairman Kline, Chairman Rokita, Ranking Member Scott, Ranking Member Fudge and members of the committee, I am Selene Almazan, legal director for the Council of Parent Attorneys and Advocates and I am also a parent. Two of my three children have disabilities and attended Maryland public schools. COPAA is a national a nonprofit organization 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 disabilities attending public school across the United States.

Over the past several years, COPAA has worked together with the disability, civil rights and business communities – across lines that often divide us on matters of public policy – to assure the Elementary and Secondary Education Act (ESEA), now known as the Every Student Succeeds Act (ESSA) included the provisions we all believed to be vitally important to our nation's future.

We know that the students our coalitions represent 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 Learners[i].

The effect of the law on these students is enormous and cannot be overstated.

Thanks to bipartisan leadership in both Chambers, the ESSA does provide more flexibility to states and school districts than its predecessor however; it gained COPAA's support because it also includes these essential provisions:

- Annual statewide assessment in reading and math of all students in grades 3-8 and once again in high school;

- A strict state cap at 1% *of all students by subject* on the use of alternate assessments aligned to alternate academic achievement standards for students with the most significant cognitive disabilities – which is appropriately reflective of current identification rates of students with intellectual and cognitive disabilities;

- Annual measurement of not less than 95 percent of all students and not less than 95 percent of all students in each subgroup;

- Transparent, accessible reporting of data — disaggregated by race, income, disability status, and English proficiency — at the state, district, and school levels;

- Statewide accountability systems that expect and include achievement and graduation goals for all groups of students, rate schools in large part on the academic performance of all groups of students, and require action when any group of students consistently underperforms;

- State support to districts in reducing bullying, harassment, overuse of disciplinary practices and use of aversives (e.g. seclusion and restraint);

- State and district engagement with all stakeholders, including parents and guardians as well as the requirement to communicate with parents in accessible formats and the parent right to ask a school for their child's teachers' qualifications;

- Responsible limits on the use of Pay For Success initiatives with federal funds; and,

- The Secretary of Education approves plans, ensures state implementation through oversight and enforcement, and assures states take action when schools and districts fail to meet their obligations to close achievement gaps and provide equal educational opportunity for all students.

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 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.

Currently, students with disabilities represent over 13 percent of the total student population and have benefited greatly from the ESEA's focus on student outcomes which since 2001 has included students with disabilities as one of the four student subgroups included in state assessment, reporting and

accountability systems. As a result of the alignment between ESEA and the Individual with Disabilities Education Act (IDEA), more students with disabilities have been afforded the opportunity to learn and master grade level academic content and graduate high school with a regular diploma.

While the performance of all student groups has risen dramatically between 2000 and 2012,[ii] 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. For instance, only:

- 37 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;[iii]
- 63% of students with disabilities graduate from high school as compared to 82 percent of students without disabilities;[iv] and,
- 19.1% of people with disabilities are participating in the U.S. Labor force as compared to 68.2% of people without disabilities.[v]

Also, as shared in testimony before this Committee in 2011 by a parent, we wish to remind you that:

> Prior to the passage of No Child Left Behind [in 2001], most parents of children with disabilities had no idea where their child's performance stood in reading and math as compared to their child's peers. Most states had ignored a 1997 requirement in IDEA law "to develop guidelines for the participation of children in alternate assessments for those children who cannot participate in State and district-wide assessments..." which was intended for students with the most significant cognitive disabilities. Therefore, most students with disabilities were not included in state assessment systems. Unfortunately, once NCLB was passed, pervasive low expectations for students with disabilities led some schools and districts to react negatively to the new requirements of NCLB – the thought that students with disabilities should be expected to achieve meaningful academic progress seemed completely unattainable by some school professionals. Mainly, this was due to the fact that until NCLB's passage in 2002, schools had not provided curriculum to these students that focused on state standards. It was the rare parent that had been able to ensure that their student with a [learning] disability was included in the core work and making progress with the additional support that special education is intended to provide. (Kaloi, 2011, Testimony, U.S. House Subcommittee on Education and the Workforce)

With this sobering information in mind, my testimony today intends to accomplish two priorities:

1. Explain why federal regulations are essential to the full implementation of the ESSA; and
2. Advocate for specific Title I regulations that will assure states implement plans that fully support all students.

Priority 1: Explain why federal regulations are essential to the full implementation of the ESSA

The Administrative Procedures Act, from 1946, is the federal statute that governs the way that administrative agencies of the federal government may propose and establish regulations. The role of the US Department of Education is vital in the implementation of the ESSA and its provisions. The Supreme Court addressed the issue of whether to grant deference to a government agency's interpretation of a statute that it administers. In this case the ESSA. *Chevron v. Natural Resources Defense Council* states:

> First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute. Rather, if the statute is silent or ambiguous with respect to the specific issue, question for the court is whether the agency's answer is based on a permissible construction of the statute. — *Chevron U.S.A. v. NRDC, 467 U.S. 837 (1984), 842–843.*

The Secretary has the full authority to define, monitor, and enforce the law. The U.S. Department of Education (ED) has the authority to interpret statutory law and promulgate regulations as an integral part of the Constitutional design for the separation of powers. ED has the regulatory authority to make regulations which would be entitled to *Chevron* deference as they are a proper exercise of ED's regulatory authority, and they cannot be "arbitrary, capricious, or manifestly contrary to the statute."[vi]

In turning back to *Chevron*, a court first looks to whether Congress has "directly spoken to the precise question at issue. *Chevron.*, 467 U.S. at 842-43. If it is silent or ambiguous, "the question ... is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. "[A] court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron* at 844. A court "'need not conclude that the agency construction was the only one it permissibly could have adopted' or even that we would have interpreted the statute the same way the agency did." It seems beyond cavil that this is within the agency's reasonable implementation of the ESSA provisions. The next arm of *Chevron* is whether this is a reasonable choice. *Id.*, at 843. This includes a review of the consistency of approach and interpretation. *United States v. Baxter Int. Inc.*, 345 F.3d 866, 887 (11th Cir. 2003).

While Section 1111(e) of ESSA includes specific limited restrictions on federal prescription, COPAA and its civil rights and business coalition partners are confident that the provisions therein 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). 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 504's 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.

Priority 2: Advocate for specific Title I regulations that will 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 have 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.

To reinforce our belief – that when trained and qualified teachers provide well-designed instruction, appropriate services, accommodations and interventions *every* student can achieve high standards – COPAA submitted comprehensive formal recommendations to the U.S. Department of Education (ED) on ESSA Title I implementation. Our full comments are attached.

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% of all students, by subject, in the use of alternate assessments on alternate academic achievement standards for students with the 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 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;

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. promote universal access in all data reporting; cross-tabulate data and expand on the availability of data disaggregated by Asian American and Pacific Islander categories;

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 ED to close opportunity and achievement gaps. Throughout regulations, ED 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.

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 ED 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.

COPAA expects ED to exercise full authority to interpret the statute and promulgate regulations because this is an integral part of the Constitutional design for the separation of powers. We, and our civil rights partners have said throughout the entire reauthorization process, that federal authority is the essential element to protect the rights and needs of students. Student rights and educational opportunity must not be compromised by politics that seek to ignore the foundational tenant of administrative law.

We want to help states and districts create new evidence-based opportunities to accelerate student progress, especially among the most vulnerable groups of children such as students with disabilities. We also want to help ensure that the voices of families, advocates and the business communities are heard throughout the implementation process. The future of our economy, the stability of families; and, the achievement of the American dream for millions of students rests upon us all. We must work together to assure every student graduates high school ready for post-secondary education, career training and the ability to live an independent and meaningful life.

I appreciate the opportunity to speak to you today and look forward to your questions.

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[i] National Center on Education Statistics retrieved at: http://nces.ed.gov/fastfacts/#

[ii] National Center on Education Statistics, National Assessment of Educational Progress (NAEP), 2015, retrieved at http://nces.ed.gov/nationsreportcard/pubs/main2013/2014451.aspx

[iii] Ibid.

[iv] National Center on Education Statistics, 2013-2014, retrieved at http://nces.ed.gov/ecd/tables/ACGR_RE_and_characteristics_2013-14.asp

[v] U.S. Department of Labor, 2015 retrieved at www.dol.gov

[vi] *See Morgan Stanley Capital Grp., Inc. v. Public Util. Dist. No. 1*, 554 U.S. 447, 558 (2008); *Chevron USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843-44 (1984); *E.M. v. Pajaro Valley Unified Sch. Dist. Office of Admin. Hearings*, 758 F.3d 1162, 1174-75 (9th Cir. 2014).

Chairman ROKITA. Thank you.
Mr. Talbert, you're recognized for 5 minutes.

TESTIMONY OF KENT D. TALBERT, ATTORNEY AT LAW, LAW OFFICE OF KENT D. TALBERT, PLLC, WASHINGTON, D.C.

Mr. TALBERT. Chairman Rokita, Ranking Member Fudge, Chairman Kline, Ranking Member Scott, members of the committee, it's a pleasure to be here to present testimony on implementation of the Every Student Succeeds Act.

In my past role as general counsel, one of my tasks was to advise the Secretary of Education on the contours of newly enacted laws—in other words, what are the boundaries or the scope of the text. This is a lot like a football field. The field has boundaries within which the game is played. And so, too, any new law must be interpreted within the confines of the text.

The process of advising the Secretary necessarily involves making judgments about whether proposed regulatory actions or guidance or other implementation decisions are within the scope of the words of the statute. This generally involves taking a close look at the particular text as well as looking at the text in light of the whole.

One question that sometimes arises is what happens if a regulation is drafted in a manner that's outside the scope of the text. The answer is a department or agency may risk a potential lawsuit, and so there's potential that the regulation could be set aside by a court. Or, in the case of guidance, there's a risk that it could be declared legislative rule—in effect, a regulation. And in this latter case, a court may require a department or agency to go back and do notice-and-comment rulemaking.

And so it's within this context that I present my testimony. I have three things that I'll focus on. The first is the law's broad shift in authority to States and school districts. Secondly, I'll share a few thoughts on implementation. And, third, I'll conclude with a brief discussion of some of the prohibitions in Title VIII of the law.

With respect to the shift in authority to States and school districts, without question, the new law provides States with the authority to design accountability systems from the ground up. In effect, the States become the design engineers operating within broad Federal guidelines, and then they proceed to build these systems.

In addition, the law's shift in authority can be seen in the multiple affirmations of the State-level direction over standards and assessments and in the prohibitions that are placed upon the Federal Government's involvement in standards, assessments, and curriculum.

I'll talk about some of those prohibitions in a little more detail in a few minutes, but for now I would note that the new law does prohibit the Federal Government from mandating, directing, or requiring Common Core State standards as well as any other assessments aligned to such standards.

Similarly, no funds may be used for developing, incentivizing, administering, and so forth of any federally sponsored national test unless it's expressly authorized in the law. For example, NAEP would be one of those that's expressly authorized in the law.

A third aspect of the shift to States and school districts can be found in the waiver authority. New language was added to section 8401 to make clear that the Federal Government may not disapprove a waiver request based on conditions that are outside the scope of the waiver that's requested, nor may the Secretary require as a condition of waiver approval an applicant to use Common Core standards or use specific assessments, such as those aligned to the Common Core, nor include in or delete from a waiver request specific elements of State academic standards assessments, accountability systems, or teacher evaluation systems.

Turning now to implementation, were I providing advice to those charged with implementation, I would note the primary importance of the text in any interpretive challenge. Ultimately, fidelity to the text will prove critical in any legal dispute. And so, in reading the text of the Every Student Succeeds Act, one should be aware of and distinguish between things such as purpose statements, express program requirements, rules of construction, findings, as well as sense of the Congress provisions.

Likewise, in thinking through implementation, I want you to be apprised of the various cannons of construction. Three examples of rules of construction are the plain meaning rule, the rule of nonretroactivity, and the harmonization of disparate text to the extent you can harmonize different provisions. One should also give attention to the words that are used, "shall" versus "may," and then such things as grammar and punctuation.

Separate and apart from consideration of the text is the legislative history that's involved. In order to provide as complete a picture as possible to senior officers and so forth, I would recommend that they carefully review, prior to implementation and rulemaking, all the relevant parts of committee reports, floor debates, conference reports, and the like. They are particularly helpful in understanding the broader background and context of the law.

With respect to Title VIII's general provisions, and to conclude, I would advise careful attention to these. They often deal with discrete, sometimes controversial topics. They include prohibitions, limitations, and commentary on a host of issues. Some have been in the law for years, others are new, others are modified. Most are generally straightforward and unequivocal.

For example, officers or employees of the Federal Government, whether through grant, contract, or cooperative agreement, are prohibited from mandating, directing, and controlling, so forth, the school district or schools' programs of instructions, standards, assessments, and the like. This also includes prohibitions relating to the Common Core standards. And States cannot be penalized for withdrawing from the Common Core.

Chairman ROKITA. Mr. Talbert, I need to cut you off. Five minutes is up, but I'm sure we'll come back to your testimony in the questions. So thank you very much.

Mr. TALBERT. Thank you very much.

[The statement of Mr. Talbert follows:]

Statement of Kent D. Talbert

Before the Subcommittee on Early Childhood, Elementary and Secondary Education

Committee on Education and the Workforce

United States House of Representatives

Hearing on **"Next Steps for K-12 Education: Implementing the Promise to Restore State and Local Control"**

February 10, 2016

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Chairman Rokita, Ranking Member Fudge, and other distinguished members of the subcommittee, it is a privilege to present testimony on the implementation of the Every Student Succeeds Act ("ESSA" or the "Act"). Thank you for the opportunity.

By way of background, in my past role as General Counsel one of my tasks was to advise the Secretary of Education on the contours of newly-enacted laws. In other words-- what are the boundaries or scope of the text? Boundaries in a given law are somewhat analogous to boundaries on athletic fields and basketball courts.

The process of advising the Secretary necessarily involves making judgments about whether proposed regulatory actions or other implementation decisions are within the scope of the words of the statute. This generally involves a close look at the particular text, as well as looking at the text in light of the whole.

One question that arises is what happens if a regulation is drafted in a manner that is outside the scope of the text. The answer is a department or agency risks a potential lawsuit and having the regulation set aside by a court. With this as context, I offer my comments on implementation.

My testimony will focus upon three things. First, the new law's broad shift of authority to states and school districts. Second, I will share a few thoughts on implementation, and third, I will conclude with a brief discussion of some of the prohibitions found in Title VIII's General Provisions.

With respect to the shift of authority to states and school districts, the new law provides states with authority to design accountability systems from the ground up. In effect, the states become design engineers operating within broad federal guidelines.

In addition to accountability, the law's shift of authority can be seen in the multiple affirmations of state-level direction over standards and assessments, and in the prohibitions placed upon federal involvement in standards, assessments, and curriculum. Though I will talk about prohibitions in a little more detail in a few minutes, I would note here that the new law prohibits the federal government from mandating, directing, or requiring Common Core State Standards, as well as any assessments aligned to such standards. Similarly, no funds may be used for developing, incentivizing, pilot testing, field testing, implementing, administering, or otherwise distributing any federally-sponsored national test, unless expressly authorized in law.

A third aspect of the shift to states and school districts can be found in the waiver authority. New language was added to section 8401 to make clear that the federal government may not disapprove a waiver request based on "conditions outside the scope of the waiver requested." Nor may the Secretary require, as a condition of waiver approval, an applicant to use Common Core standards, or use specific assessments such as those aligned to the Common Core, nor include in or delete from a waiver request specific elements of state academic standards, assessments, accountability systems, or teacher evaluation systems.

Turning now to implementation--were I providing advice to those charged with implementation--I would note the primary importance of the text in any interpretive challenge. Ultimately, fidelity to the text will prove critical in any dispute. Thus, in reading the text of the Every Student Succeeds Act, one should be aware of and distinguish between purpose statements, express program requirements, rules of construction, findings, and Sense of Congress provisions. Likewise, in thinking through implementation, one should be apprised of the various canons of construction. The "plain meaning" rule, the rule of non-retroactivity, and the

harmonization of disparate texts (where possible) are but three examples. One should also give attention to the use of "shall" versus "may," and such basic things as grammar and punctuation.

Separate and apart from consideration of the text is the legislative history. In order to provide as-complete-a-picture as possible to those implementing the law, I would recommend a careful review--prior to implementation and rulemaking--of relevant parts of committee reports, floor debates, and conference reports. They are particularly helpful in understanding the background and larger context.

Finally and to conclude, I would advise careful attention to Title VIII's General Provisions, understanding they deal with discrete, and sometimes controversial topics. They include prohibitions, limitations, and commentary on a host of issues. Some have been in the law for years. Others are new, or variations of current law. Most are straightforward and unequivocal.

For example, officers or employees of the federal government—whether through grant, contract, or cooperative agreement—are prohibited from mandating, directing, or controlling a state, school district, or school's instructional content, curricula, programs of instruction, or standards or assessments. This prohibition includes any requirement, direction, or mandate to adopt the Common Core Standards, or any other standards common to a significant number of states, as well as tests or curricula aligned to such standards. Nor can a state be penalized by the federal government for withdrawing from the Common Core.

In a similar vein, Department dollars may not be used for any purpose relating to a mandatory nationwide test or certification of teachers, principals, or other school leaders.

One last example is the prohibition on getting standards approved or certified by the federal government. No state is required to do so.

The unifying theme—at least for many of these provisions--is a concern about the appropriate role(s) of the federal government, states, and school districts. The same was true in 1979, the year of enactment of the Department of Education Organization Act. One of the key findings of that enabling statute stated "[I]n our Federal system, the primary public responsibility for education is reserved respectively to the States and the local school systems and other instrumentalities of the States." In like manner, Congress reaffirmed one of its purposes for creating the Department, which was "to supplement and complement the efforts of States, the local school systems and other instrumentalities of the States, the private sector, public and private educational institutions, public and private nonprofit educational research institutions, community-based organizations, parents, and students to improve the quality of education."

Thank you. I would be pleased to respond to any questions.

Chairman ROKITA. I thank all the witnesses.

As I often do, I'm going to defer my questions to the end and recognize other members of the committee first, first and foremost being the chairman of the full committee, Mr. Kline from Minnesota, for 5 minutes.

Mr. KLINE. Thank you, Mr. Chairman.

Thanks to the witnesses for being here.

We're very excited and interested to follow the implementation of ESSA. As all of you know, it was years in the making. There was bipartisan agreement that we wanted to have a devolution of power from the Federal Government back to States and local governments.

Our concern has been, my concern has been, as we go into implementation, that there may be misinterpretations Mr. Talbert was just talking about. It is possible that some States will end up with No Child Left Behind light. I certainly hope that doesn't happen. But it was my belief, and I think in a bipartisan way, that those were choices that these States and local governments would be making.

One of the things that we have been hearing some about, besides the assertion of the former Secretary of Education that he has better lawyers than we do—I'm not sure that I agree with that. In fact, I would disagree with that.

But there has been a lot of noise that the new law, ESSA, in requiring that standards be aligned to college entrance requirements, that there is some noise that the Federal Department of Education has implied that this will mean college- and career-ready as defined in the Race to the Top grant program. And around the country, many people see that—and I've already heard this many times—that that's sort of code for Common Core State standards. That's certainly not my intent nor, I think, our intent in a bipartisan way.

But I want to go to Ms. Hofmeister, if I could, because I'm looking at some notes here in front of me. We understand that Oklahoma has recently gone through a rewrite of its academic standards, in consultation with its higher education system, that has not resulted in Oklahoma adopting the Common Core.

Can you walk us through what you did and how that works and how it might apply elsewhere?

Ms. HOFMEISTER. Yes, sir. Thank you, Chairman.

We certainly started out with a process where we wanted to make certain that our students would be competitive and that they would be ready for their next steps in learning, whether that's at the end of the grade level or at the end of their high school career, ready to take those next steps. And we do believe that there is need for that.

What we did in Oklahoma was we partnered together at each grade band level, starting with early childhood because we have pre-K. This is a first time we have vertically aligned pre-K through 12th-grade standards, and we partnered with counterpart in higher education, using subject matter experts as well as those familiar with pedagogy of teaching that subject. And we're working together, a combined effort on the writing teams. So we had co-chairs

in math and English language arts that reflected both the common education system as well as higher education.

And that partnership was one that has been successful. Just earlier, on the first day of this month, we submitted those standards that included the input of hundreds of Oklahoma teachers and those members in higher ed, as well.

Mr. KLINE. So just to underscore this, because I'm afraid we're going to be hearing this again and again and again, you have gone through the rewrite of your academic standards in the collaborative way you've just described, and you ended up with standards that are not the Common Core. Is that correct?

Ms. HOFMEISTER. Absolutely, they are not Common Core. We --

Mr. KLINE. Nor—excuse me—nor did you feel compelled to make them Common Core.

Ms. HOFMEISTER. That is correct. And we are a State who lost our waiver because we repealed Common Core and had to go through efforts to demonstrate that we had rigorous standards. And that was certified by our higher ed board of regents. Then we got to work writing the standards that Oklahoma needs for Oklahoma students.

Mr. KLINE. Perfect. Thank you very much.

I yield back.

Chairman ROKITA. The gentleman yields back.

Ranking Member Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Ms. Hofmeister, it's my understanding that Oklahoma now has only three subgroups for performance and two for graduation. The subgroups that we expect to be evaluating would include ethnicity, English as a second language, disability, and low-income. Will you be assessing students on all four subgroups, in compliance with the law?

Ms. HOFMEISTER. Yes. And thank you, Congressman.

We do believe—and I have been in office for a year and have been critical of the particular accountability system that we have. It is actually one that was granted to us under a waiver. But it does mask the performance of our subgroup population. This is an area of concern for me.

It's also an area that I think needs to have a greater exposure at the local level so that they can make the kinds of strategic plans to address the needs of those who are not performing to their full promise and potential in those subgroups. So, yes, sir.

Mr. SCOTT. Thank you.

And back to the question that the chairman asked about Common Core, you set the standards, but are the standards—if a student achieves the standards, will they be eligible for entrance in a State college?

Ms. HOFMEISTER. That is very important. Thank you, Congressman.

We want to be certain that students finish graduation and a diploma has great value and meaning, and a meaning that means they are able to begin with the credit-bearing coursework in a university or college or community college or that they are ready to start work or continue work with credentialing in the industry and workforce area.

So this is something that we have great work to do in working to really eliminate and shrink the remediation gap that exists right now. And I do believe that we are on our way.

Mr. SCOTT. Thank you.

Ms. Almazan, what authority does the Federal Government have under the bill if a State and local education system fails to graduate the requisite percentage of students or they fail to achieve? What authority does the Federal Government have to come in and do something?

Ms. ALMAZAN. Well, we believe that the Federal authority is there in section 1111(e) of the ESSA. And it is well-established under administrative law that the executive branch does have the authority to come in and help implement and interpret statutes and laws that have been promulgated. They have the authority to clarify as well as interpret and help to implement, because the executive branch does have the expertise in implementation.

Mr. SCOTT. Thank you.

And, Ms. Hofmeister, what should be done if a school fails to achieve, say, on graduation rates? What kind of response should there be on a State and local basis for a school that's not achieving on graduation rates?

Ms. HOFMEISTER. Thank you, Congressman.

We need to have very good information so people can make good decisions. And some of those decisions are on how to address needs, but you don't have an opportunity to do that if you don't have that good information.

So, in our current situation, we had an accountability system that really masks that. That was approved by the Department of Education. And what we found was you could earn a letter grade of an A or a B and still have a graduation rate in your school of less than 67 percent. That's unacceptable. That's a problem. So we want to address that, and we now have a new way.

Mr. SCOTT. What kind of initiatives would take place once you've unmasked the problem? One of the things that we want to do, both to assess but then do something? What kinds of things can be done to improve the graduation rate?

Ms. HOFMEISTER. Well, one example would be, first of all, I believe you have to start by building capacity within leaders. We can't all do it at the classroom level from the State. I believe that those closest to the problem have the best hope of solving it, and it involves bringing in strong leadership and building that.

I can give you an example of a school district or school, McLain High School, that was part of turnaround models of coming in and starting over with new people and in a 25-year period had 18 new principals. That is a very drastic approach that is not working when you have 25 years later you're in the same boat.

We've got to plug stakeholders in to solving things. And they've got to be a part of it. It's about building capacity.

And, truly, the State has authority, but our authority needs to be in equipping and supporting. And then we will do whatever it takes to make certain that students are not left behind and that they have an opportunity—all kids must have, really, access to that high-quality education. But it starts with building capacity at the local level.

Chairman ROKITA. The gentleman's time has expired. I thank the gentleman.

The gentleman from Georgia is recognized for 5 minutes, Mr. Carter.

Mr. CARTER. Thank you, Mr. Chairman.

And thank each of you for being here today. We appreciate what you're doing. What you're doing for our students is extremely important.

Ms. Hofmeister, let me start with you. You have the title of superintendent of public instruction for the Oklahoma State Department of Education. So I'm assuming that you've seen different frameworks and different styles across the State.

I could not help but sense in your opening statement that you question somewhat the devolution of power that we feel like we've done here at the Federal level. I don't know if that was just my sense or if that's what you were trying to portray. Do you have some doubts?

Because I just want to assure you, as someone who voted in favor of this bill, it's our intention that the power go back to the local governments.

Ms. HOFMEISTER. Please don't mistake those comments in any way for not appreciating the return of the decisions that belong at the State level, where we embrace that.

What I want you to hear very clearly is, number one, hold us accountable for results for kids, but don't tell us how we achieve that. We know at the State level, as leaders, what works best in our own States. And we share the goal of having every one of our children ready for their next steps in learning and truly having the full potential realized for them.

And that's going to take a very strong partnership at local levels with stakeholders. So that is something that is very, very important to me, and it's actually something I ran on.

Mr. CARTER. Well, let me ask you this, then. Having said that, now that you do have this opportunity, what are you going to be recommending to help develop the freedom and the flexibility in the curriculum? Can you give me just a couple of examples of what you're going to be recommending to the public schools?

Ms. HOFMEISTER. Absolutely. Thank you for the opportunity.

First of all, what we did, because I was not happy with an accountability system that masked the performance of our subgroups, one where we do not have truly a light shown on how students are performing beyond a label, a collective label.

We need to have, I think, the use of best practices, the latest of research science. So we commissioned work to be done with research scientists in our two research universities this year. I've been in office for 1 year, so we have completed that. We are working also with—they have national reviewers look at that, as well.

We've got to look at what is it that are good measurements for outcomes for kids, successful outcomes for kids, and then we need to make sure we're measuring that.

And that's something that should have flexibility over time to respond and react to new data and new information. When we have a system in place where our hands are bound and we have to wait for permission—

Mr. CARTER. Okay.

Ms. HOFMEISTER.—then we are unable to accomplish.

Mr. CARTER. Great. Great.

Dr. Wilson, you being from Alabama and me being from Georgia, we are very strongly independent, and we want control. What are you going to be implementing? What are you going to be suggesting to your school systems, in your particular schools? You're the boots on the ground there in the superintendent's office.

Mr. WILSON. We've already begun to do that. We are trying to customize our education. We have eight different academies. We have children who are leaving our campus. We have kids who are going to graduate with a welding degree. We have kids that are going to be dually enrolled.

What we're trying to do is not only provide, you know, college- and career-ready, but we're trying to provide the right college for students. We have conversations with children along the way, and if they tell us they want to do this, this, and this, but they want to go to a school that doesn't meet that, we want to help them get in there. Everything we do along the way helps gets kids where they want to go and need to go.

We are partnering. In fact, tomorrow we'll be mentioning something, that we're partnering with Morgan County Schools that have a wonderful auto tech. We have none. I don't have a million dollars to spend on auto tech—

Mr. CARTER. I'm very encouraged to hear that.

Mr. WILSON. We're sending kids to Morgan County. They don't have some of the AP offerings we have. They're going to send them to us.

Mr. CARTER. Great. Great.

Mr. WILSON. So we're working together.

Mr. CARTER. We appreciate what you're doing.

Mr. Talbert, I just want to ask you, from your perspective, any words of wisdom to them as they implement this, as they go forward now?

Mr. TALBERT. Well, they are the boots on the ground. And so look to the text of the statute, watch what happens in negotiated rulemaking, watch what proposed regulations are put out there, and then read it, understand it, and then apply it.

Mr. CARTER. Great.

Mr. Chairman, I yield back.

Thank you all.

Chairman ROKITA. I want to thank the gentleman.

Ranking Member Fudge, you're recognized for 5 minutes.

Ms. FUDGE. Thank you very much, Mr. Chairman.

Thank you all for your testimony today.

Mr. Wilson, in your testimony, you state that, like politics, all education is local. I'm just curious, do you see civil rights as a local issue?

Mr. WILSON. Certainly—I'm sorry.

Ms. FUDGE. Should a child's right to educational opportunity be left to local discretion, or is there a Federal role in protecting the civil rights of every child?

Mr. WILSON.

Mr. WILSON. Thank you.

It's actually both. It's all of us. The Civil rights is a local issue, it's a State issue, it's a national issue. So that is something that we're going to meet the kids where they are, find out what their needs are, help devise a plan to get them where they need to be, and help matriculate them through the process.

Ms. FUDGE. Thank you. But you agree it is a Federal issue?

Mr. WILSON. It's all of us, yes, ma'am.

Ms. FUDGE. That's not my question.

Mr. WILSON. Okay.

Ms. FUDGE. Is it a Federal issue?

Mr. WILSON. It's a Federal issue.

Ms. FUDGE. Thank you very much.

Mr. Talbert, in 2008, during your tenure as general counsel, the Bush administration issued new regulations requiring States to use a uniform graduation rate calculation for the purpose of accountability, as required by No Child Left Behind.

Why did you believe that it was necessary and appropriate for ED to use regulatory authority to define a term like "graduation rate" when the term wasn't fully defined in statute? Do you believe that the enactment of ESSA now makes similar clarification of statutory terms unnecessary?

Mr. TALBERT. Well, no. I mean, certainly, ESSA sets forth definitions in the text of "graduation rate," and so that's what should be adhered to. If it's not clear, then there may need to be clarity that's included in regulations, but it's in the text.

Ms. FUDGE. Ms. Hofmeister, ESSA aims to ensure that all students have the opportunity to attend a high-quality school. According to the Alliance for Excellent Education, if Oklahoma's graduation rate were to reach 90 percent, the new graduates would bring an additional $69 million into the economy in earnings, leading to the creation of 500 jobs. And that's just for a single class.

In Oklahoma, there are 24 high schools with an enrollment of at least 100 students where one-third or more of the students do not graduate. Under ESSA, these schools are required to implement comprehensive, evidence-based interventions. Can you describe how your State would implement this provision and reap those benefits?

Ms. HOFMEISTER. Sure. Thank you very much, Congressman.

And it starts with essential elements that we know are evidence-based that will work with local school leaders. And for some of them, it is a school principal that is serving in a dependent school district as a superintendent, as well. So they are the instructional leader as well as dealing with regulation that befalls a superintendent on top of that. So it's about capacity again.

The boots on the ground have to understand how to read the kind of information to guide smart decision-making. And that is where the Department must be able to provide that kind of support.

We have not seen the kind of success we would have expected to see in the years under No Child Left Behind. Under the particular guidance that has been given federally, we have seen these schools not improving. So we have to ask the question of why. And I believe that the answer comes when we're able to make decisions that fit the community, the challenges specific to that community, with the expertise and support at the State level.

We are changing school turnaround in our office because that is something in the agency that has not been successful and has to be done differently, and we now have that flexibility to use best practices and evidence.

Ms. FUDGE. Thank you.

Another question for you. You said that your current accountability system masks subgroup achievement and that is unacceptable, and I agree with that.

Ms. HOFMEISTER. Absolutely.

Ms. FUDGE. My question is, is there not a Federal role in ensuring that other States don't have the same problem?

Ms. HOFMEISTER. I think that this is something that every State leader bears that responsibility. It is not the responsibility of the Federal Government. It is the responsibility of our State to care and to provide the kind of resources—

Ms. FUDGE. What happens if it doesn't?

Ms. HOFMEISTER. Well, I think that there's certainly a responsibility at the State level, and that's where—

Ms. FUDGE. What happens if they don't is my question.

Ms. HOFMEISTER. Well, we have seen under No Child Left Behind that whatever did happen did not work and what is going to be—

Ms. FUDGE. I'm talking about ESSA.

Ms. HOFMEISTER. On ESSA, we now have the freedom to do what we perhaps at some States—and I can't speak for all States—but weren't able to do because their hands were tied.

Ms. FUDGE. So who can speak for all States?

Ms. HOFMEISTER. So I'll tell you what we'll do in Oklahoma.

Ms. FUDGE. Okay.

Ms. HOFMEISTER. In Oklahoma, what we want to do is, first, you've got to have face-to-face meetings with people. You can't just provide some kind of centralized power that is going to actually make changes. And this may sound very simple, but it starts with relationships and trying to understand what people are facing and help educate those in local school districts to be able to really see a vision for where students can go, that oftentimes it may be lacking because of inexperience, maybe because of a lack of appreciation for best practices, the newest work and research.

And it is a part of the State's obligation to provide that kind of professional development and support. But it takes a specific plan.

Chairman ROKITA. The gentlewoman's time has expired.

We'll now hear from the gentleman—excuse me, the gentleman from Oklahoma is recognized for 5 minutes. I'm sure we'll hear from him.

Mr. RUSSELL. Thank you, Mr. Chairman.

There's a lot of discussion about whether or not States are able to truly provide the level of detail and the quality of education for those with disabilities, lower income, those by ethnicity. And we hear this debate back and forth.

I really have just brief questions.

Ms. Hofmeister, are you aware that Oklahoma has a higher overall graduation rate than, say, the State of Virginia?

Ms. HOFMEISTER. Well, we certainly have a graduation rate above the national average, including our Native American population, which is the largest in the country.

Mr. RUSSELL. Were you also aware that Oklahoma has a higher lower-income graduation rate than, say, the State of Virginia?

Ms. HOFMEISTER. I'm not familiar with—

Mr. RUSSELL. Were you also aware that our disability graduation rate in Oklahoma ranks at 78.5 percent as opposed to 51.5 percent in, say, the State of Virginia?

What I'm trying to make the point on here is that just because there are perceptions of flyover country or, you know, different types of notions of what a quality education might be, you know, we've shown that when States are empowered with the choices, not only are graduation rates higher but we also see that in the areas of concern, where we think that the Federal Government should have a stronger Federal role—it's assumed that the States don't care about these populations, which is, I believe, absurd. Of course the States care about them.

And I think Oklahoma, particularly when you look at disability graduation rates, I think, leads the country in a lot of its outreach and the type of things that it's trying to do, you know, for these subgroups.

It might also be interesting to ask, were you aware that the unemployment rate in Oklahoma—meaning to translate from graduates to, like, the workforce, which is the stated goal of almost all of us—are you aware that Oklahoma's unemployment rate is also higher than, say, the State of Virginia?

Ms. HOFMEISTER. Yes.

Mr. RUSSELL. Okay. Thank you, Ms. Hofmeister. It's great having you here today.

And thank you, Mr. Chairman. I yield back my time.

Chairman ROKITA. I thank the gentleman.

Ms. Bonamici of Oregon is recognized for 5 minutes.

Ms. BONAMICI. Thank you, Mr. Chairman and Ranking Member Fudge.

I'm really glad that part of our discussion here today is how we uphold that civil rights legacy that was the original intent of the Elementary and Secondary Education Act. And, certainly, from all the work that we've done in this committee and the conference committee, there should be no question that the Every Student Succeeds Act is intended to carry on that legacy so that all students have access to high-quality education.

ESSA advances this promise by continuing to target resources to underserved public schools; by committing Federal funds to supplement, not supplant, local investments; by requiring States to measure the progress of every student and hold each to high standards; by expecting States to identify when some students are lagging behind their peers; and also by requiring States to take meaningful steps to close opportunity and achievement gaps when they're identified.

Now, without question, No Child Left Behind largely missed the mark. It identified too many schools for intervention and prescribed interventions that were too rigid. But we shouldn't forget why Congress passed No Child Left Behind. Before that law, some groups

of students, like students with disabilities, could effectively disappear in some States' school systems. So setting parameters to guarantee each child's right to opportunities in public education is fundamentally a Federal responsibility.

So I respectfully disagree when some people say, as I believe is in Dr. Wilson's testimony, that Every Student Succeeds Act intends for States to be solely responsible for decisions regarding accountability. I don't see that as accurate.

The law establishes a lot of conditions to make sure accountability systems reflect the intent of Congress to identify and require action in schools where students are being underserved. That's how Congress advances equity in education. And the Department of Education does have a clear role to play in interpreting statutory language and establishing parameters, consistent with the law and within the scope of the law, of course, as has always been the case.

I want to begin by dispelling a rumor that the Every Student Succeeds Act somehow nullifies the Department of Education's enforcement authority under the General Education Provisions Act, GEPA.

So I'm going to ask Mr. Talbert and Ms. Almazan, can you point to any provision in the Every Student Succeeds Act that would alter, limit, or erode the U.S. Department of Education's authority, as granted under GEPA, to enforce compliance with Federal education law?

Mr. TALBERT. The General Education Provisions Act certainly provides authority to the Department, you know, to take enforcement actions if necessary. And so that remains even with ESSA.

Ms. BOMANICI. Do you agree, Ms. Almazan?

Ms. ALMAZAN. I do agree. And going all the way back to the Administrative Procedures Act of 1946, absolutely.

Ms. BOMANICI. All right.

Now, in too many schools in my home State of Oregon and across the country, students don't have access to the resources they need, whether that's advanced coursework, adequate technology, classes in career and technical education, arts, STEM, et. cetera. So the ESSA aims to close these gaps by not only providing extra Federal resources but also promoting more equitable allocation of State and local resources to low-performing schools that do need additional support to improve.

So is the statutory language in the ESSA clear enough to ensure that equitable resources reach the schools that need the most support? And what can the Department do in the regulations to ensure that those States and districts are addressing persistent resource inequities, as intended by Congress?

I'll ask Ms. Almazan that question.

Ms. ALMAZAN. Well, I do think the 1,062 pages—it is clear that the Department of Education retains the authority to regulate.

I would have to get back to you on those specific items, but we did enumerate in our written testimony those items that we do want to see strengthened in Title I of the ESSA. And I also do want to draw your attention to that, it is on page 5, beginning on page 5 of our comments, our written testimony. And I touched on some of them in the oral testimony.

But we are really looking for rigorous and consistent standards. We're looking for the strict State limit of 1 percent of all students. We are looking for definitions and parameters for those new statutory terms, such as "meaningful differentiation," "substantial weight," "much greater weight." I think that the Department has—we would need the guidance from the Department on those areas.

And looking at the history of going back to 1994 and No Child Left Behind and—

Ms. BOMANICI. I'm sorry, Ms. Almazan. I'm going to try to get one quick question in, and I'm going to ask Dr. Wilson.

Probably have to submit your response for the record, but you've named the many benefits of local control, but that has some risks, too. Whether when you look at expectations for students in Hartselle—I hope I said that right—with under 10 percent of students of color and 30 percent low-income students, that might be different for districts where there are large concentrations of low-income students.

So how can we make sure that States and districts will not take advantage of flexibility to lower expectations for some groups of students, especially in vulnerable communities?

And because my time has expired, I'm going to ask you to submit the response.

[The information follows:]

The Council of Parent Attorneys and Advocates, Inc.
Protecting the Legal and Civil Rights of Students with Disabilities

February 25, 2016

The Honorable Todd Rokita
2176 Rayburn House Office Building
Washington DC 20515

The Honorable Marcia Fudge
2101 Rayburn House Office Building
Washington, DC 20151

Dear Chairman Rokita and Ranking Member Fudge:

Thank you for the invitation to participate as a witness on February 10, 2016 in the subcommittee hearing *Next Steps for K-12 Education: Implementing the Promise to Restore State and Local Control.* I'm writing to submit comments to the record in response to three specific questions posed during the hearing discussion. The questions posed that I wish to more fully address are:

Question 1: Rep. Bonamici: In your opinion, is the statutory language in the ESSA clear enough to ensure that equitable resources reach schools that most need the support? What can the Department do in regulations to ensure that states and districts are addressing persistent resource inequities, as intended by Congress?

Question 2: Rep. Clark: I am concerned with use of aversive behavior punishments that we see including, seclusion and restraint, suspension and expulsion which disproportionately impact students with disabilities and students of color. Can you speak to COPAA's regulatory recommendations in this area?

Question 3: Rep. Polis: With regard to Title I regulations around alternative achievement standards and alternative assessments, what's at stake to assure we continue the proper accountability for students with disabilities and assure we maintain the cap in the new law?

Before I address the above questions, I'd like to remind the subcommittee of the important perspective and expertise I bring to discussions related to the implementation of the Every Student Succeeds Act (ESSA). I am the parent to three children, two of which have disabilities; I'm a practicing attorney in Maryland where I strive to help protect the rights of children with disabilities in our public school system; and, I currently serve as the legal director for the Council of Parent Attorneys and Advocates (COPAA) which advocates for the rights of 6.5 million students with disabilities. COPAA also has established important partnerships with the business, civil rights and disability communities in its work to support the ESSA and to assure every child, especially those most at-risk and for whom the law was historically intended, do in fact have access to a high quality education.

My responses to the questions are below.

Question 1: Rep. Bonamici: In your opinion, is the statutory language in the ESSA clear enough to ensure that equitable resources reach schools that most need the support? What can the Department do in regulations to ensure that states and districts are addressing persistent resource inequities, as intended by Congress?

Answer:
Resource Equity: *ED must provide clarifying regulations that address persistent resource inequities as specified in statute. ED must also reinforce the importance of ensuring students from disadvantaged backgrounds are not disproportionately taught by ineffective, inexperienced, out-of-field educators.*

ESSA includes several clear and explicit requirements that will help to make progress towards resource equity, such as the reporting of: actual school level per-pupil expenditures, access to higher level courses, school discipline data and access to quality teachers.

Specifically, regulations must:

1. *Address persistent resource inequities as intended by Congress are needed when allowing for additional flexibility in compliance with the supplement not supplant provision in Title I and in helping define and clarify terms.*
2. *Define "overuse of discipline" and clarify that "remove from the classroom" is counter to the purpose of ESSA, and may be in violation of a school districts' obligations under the IDEA to provide FAPE to students with emotional disturbance or other disabilities affecting behavior.*

Some specific examples of what regulation could address relative to overuse of discipline and removal from the classroom include:

1. *Clarify that removal from the classroom should only be done for the period of time necessary to help the student gain control and is use of such strategy is not a free pass from IDEA compliance, including the obligation to provide related services, such as positive behavior interventions, needed to enable the student to meet the school's behavioral rules and to progress academically;*
2. *Require state plans to address how they will ensure enforcement and compliance of Title VI, Title IX, the ADA, Section 504, and IDEA;*
3. *In order to better assess the extent to which practices that "push out" or disengage students are being used, LEAs should track and publicly report, in the aggregate and disaggregated by the subgroups and also including students who are current wards of the state or county): 1) student grade retention rates, 2) the percentage of students transferred within the district, including the reason for transfer and the type of educational setting to which they were transferred. Such transfer data shall include students transferred out of charter schools and those transferred into alternative schools as a result of their behavior or academic performance. This data should be cross tabulated so that it can be compared accurately;*
4. *Assure reported data is used to guide school improvement plans and to highlight disparities (i.e. resources, discipline disparities). This data analysis should be used ensure that schools and districts are taking actions to remedy disparities and, where they are not, DOE should ensure enforcement by the U.S. Department of Education Office for Civil Rights.*
5. *LEA level data analysis should include data broken down by grade span of the school (elementary, middle and high schools).*

COPAA makes the following specific recommendations on teacher equity:

1. *Define "inexperienced teachers" as teachers with less than two years of teaching, which is consistent with the Department's Office for Civil Rights Data Collection.*

2. *Define "out-of-field teacher" as any teacher who is not fully certified by the state to teach the subject area, grade level, or student population for which they are assigned.*

3. *The Parent Right-to-Know provision, clarify that parents need to be notified if a student is not taught by a fully-certified teacher in order to ensure effective and consistent implementation of the provision.*

4. *Clarify that the term "certification" as applied to teachers, principals and other leaders means having met "full-certification requirements," as defined by the state to allow for meaningful differentiation regarding certification status.*

5. *Promote state consideration of the distribution of beginning teachers who have not completed their preparation before becoming the teacher of record and the distribution of teachers who are fully state certified.* While the Title I LEA Plans outline this student population as students from low-income and minority backgrounds, COPAA believes ED must take this opportunity to recognize that students with disabilities also come from low income and minority backgrounds and analyze their access to well-prepared educators. Expanding teacher shortages in special education must not result in lower entry standards for special education teachers.

Question 2: Rep. Clark: I am concerned with use of aversive behavior punishments that we see including, seclusion and restraint, suspension and expulsion which disproportionately impact students with disabilities and students of color. Can you speak to COPAA's regulatory recommendations in this area?

Answer:
The ESSA requires that Title I plans include how they will *support districts in reducing bullying, overuse of disciplinary practices and use of aversives* (e.g. seclusion and restraint). The new ESSA requirement will help assure that schools and districts have access to state support. We know all too well that students deserve protection from these harmful practices. COPAA supported including this new requirement for states and would urge the U.S. Department of Education (ED) to encourage the following:

Disciplinary practices (e.g. suspension and expulsion): *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.*

COPAA applauds the requirements in the ESSA that school districts collect disaggregated discipline data and identify local schools with high rates of discipline. While students receiving special education services represent just 12% of students nationally, they represent 25% of students receiving multiple out of school suspensions. It is important to ensure that all schools receiving federal funds with high rates of discipline are identified and provided with assistance and training to reduce exclusionary practices, including both in school and out of school suspensions that remove students from the general education classroom. Such schools, particularly those with zero tolerance discipline polices, may have a tendency to

unfairly target students with disabilities. Therefore, we believe it is critical that any regulations 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, culturally responsive environments for students and educators which take into account input from the parents and communities they serve.

Seclusion and Restraint: *Regulations must 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.*

COPAA is concerned about the use of restraints, seclusion and aversive interventions as part of educational programs for children with disabilities. Restraints, seclusion and aversive interventions are neither educational nor effective. Instead, their harms and dangers are well-documented. Inappropriately used, they amount to child abuse.

Children should receive effective positive behavior supports developed within a comprehensive, professionally-developed plan of behavioral accommodations, supports, and interventions that address the underlying causes of dangerous behavior and prevent the use of restraint or seclusion. But, too often school personnel who have not been thoroughly trained in research-validated methods for promoting positive behavior change and crisis de-escalation resort to inappropriate abusive methods. Abusive methods not only place the student at risk of serious physical and psychological harm, but also violate his or her dignity and right to be free from abusive treatment.

Every child is entitled to be treated with dignity and respect. No child with a disability should be subjected to abusive treatment under the guise of providing educational services. Civilized nations protect the human rights of all of their citizens and residents, particularly those who are unable to advocate for themselves, including children.

The ESSA can help assure that states establish standards and regulations regarding restraints, seclusion and aversive interventions that provide protection for all children and support the adults in schools and districts responsible for their care.

Regulations must set parameters around the following language to clarify that the improper and overuse of restraint and the use of seclusion in schools meets the criteria articulated in the statute in Section 1111 (g) (1) (C) how the State educational agency will support local educational agencies receiving assistance under this part to improve school conditions for student learning, including through reducing—

"(i) incidences of bullying and harassment;

"(ii) the overuse of discipline practices that remove students from the classroom; and

"(iii) the use of aversive behavioral interventions that compromise student health and safety;

The regulations should specify that States are expected to follow the identified 15 principles that the Department of Education outlined in it resource document calling on all States, local school districts, preschool, elementary, and secondary schools, parents, and other stakeholders to consider as the framework for when States, localities, and districts develop and implement policies and procedures, which should be in writing related to restraint and seclusion to ensure that any use of restraint or seclusion in schools does not occur, except when there is a threat of imminent danger of serious bodily harm to the student or others, and occurs in a manner that protects the safety of all children and adults at school.[1]

There are two recommendations we make that exceed the current Department Principles:

1. *"Serious bodily injury" should be the standard as it is a well-defined and understood legal term.* Serious physical harm is not. Serious bodily injury refers to bodily injury which involves substantial risk of death, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ or mental faculty. Serious bodily injury is more than a minor or superficial injury. The definition found in the IDEA at 34 CFR Sec. 300.530 (i)(3), 20 USC Sec. 1415 (k)(G)(iii), incorporates by reference 18 USC Sec. 1365 (h) definition of serious bodily injury. The federal definition is found at 18 USC 1365 (h).

   18 USC 1365 (h)
   (3) the term "serious bodily injury" means bodily injury which involves -
   (A) a substantial risk of death;
   (B) extreme physical pain;
   (C) protracted and obvious disfigurement; or
   (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and
   (4) the term "bodily injury" means -
   (A) a cut, abrasion, bruise, burn, or disfigurement;
   (B) physical pain;
   (C) illness;
   (D) impairment of the function of a bodily member, organ, or mental faculty; or
   (E) any other injury to the body, no matter how temporary.

2. *Seclusion has no place in our nation's schools.* On January 25, 2016 President Obama issued an executive order banning solitary confinement for juveniles in the federal prison system, based on the recognition of the extreme harm and potential for "devastating, lasting psychological consequences" from the imposition of this kind of tactic. Seclusion, as defined, is solitary confinement of a different name, and has no evidence of effectiveness, and ample evidence of harm.

At minimum the ESSA regulations must be clear that:

1. Every effort should be made to prevent the need for the use of restraint.
2. No child should be locked alone in a room in school (seclusion).

[1] U.S. Department of Education, Restraint and Seclusion: Resource Document, Washington, D.C., 2012 http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf

3. Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
4. School personnel, including school resource officers must use the least amount of force necessary to protect the student or others from the threatened injury.
5. The use of physical restraint shall end when—
   (i) a medical condition occurs putting the student at risk of harm;
   (ii) the student's behavior no longer poses immediate danger of serious bodily harm to the student or others; or
   (iii) less restrictive interventions would be effective in stopping such immediate danger of serious physical harm.
6. Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.

We believe ESSA makes available the professional development resources that would help assure district and school staff have access to evidence-based training and resources such as:

- Trauma informed care and practices
- Positive behavior interventions and supports (PBIS)
- Multi-tier systems of support, which can include PBIS

Towards that end the regulations should require states to articulate State Approved Training Programs—
The term "State-approved training program" means a training program approved by a State that, at a minimum, provides—

(A) training in evidence-based techniques shown to be effective in the prevention of seclusion and physical restraint;

(B) training in evidence-based techniques shown to be effective in keeping both school personnel and students safe when imposing physical restraint or seclusion;

(C) evidence-based skills training that is related to positive behavioral interventions and supports, trauma informed care, conflict prevention, functional behavior assessments, de-escalation, and conflict management;

(D) training in first aid and cardiopulmonary resuscitation;

(E) information describing State policies and procedures that meet the minimum standards established by regulations promulgated pursuant to section 102(a); and

(F) certification for school personnel in the techniques and skills described in subparagraphs (A) through (D), which shall be required to be renewed on a periodic basis.

To avoid any confusion, the regulations must include definitions that are consistent with the Office for Civil Rights who began collecting data on the use of restraint and seclusion in schools as part of the Department's 2009-2010 Civil Rights Data Collection and defined key terms related to restraint and seclusion.

Question 3: Rep. Polis: With regard to Title I regulations around alternative achievement standards and alternative assessments, what's at stake to assure we continue the proper accountability for students with disabilities and assure we maintain the cap in the new law?

Answer:

COPAA made the following recommendations to ED with regard to ESSA and provisions allowing alternate academic achievement standards (AAAS) and the alternate assessment aligned to such standards.

Standards and Assessment: *ED must issue regulations, guidance and technical assistance on "alternate academic achievement standards" and "alternate assessments aligned to alternate academic achievement standards" (AAAS) to ensure stakeholders fully understand the requirements as set forth in ESSA.*

AAAS: ED must further clarify through regulations the following regarding the AAAS:

1. Establish and implement a 'documented and validated standards-setting process;
2. Reinforce that the AAAS are designed only for students with the most significant cognitive disabilities;
3. Ensure the AAAS are aligned to the challenging state academic content standards;
4. Ensure the AAAS promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act;
5. Clarify that the term "challenging state academic standards," which is defined in ESSA to refer to both content and achievement standards, must be interpreted as referring only to achievement standards in the provision about using accommodations to increase the number of students with significant cognitive disabilities who are taking the general assessments based on "challenging state academic standards" for the grade level in which the student is enrolled (this is necessary to avoid the common misconception that alternate assessments are not based on grade-level content standards); and,
6. Ensure that any student who meets the AAAS is on track to pursue postsecondary education and employment, consistent with the purposes of Workforce Innovation and Opportunity Act of 2014.

Alternate Assessments aligned to Alternate Achievement Standards (AA-AAS): ED must clarify and reinforce, through regulation, the following requirements related to the AA-AAS:

1. Reinforce the statutory requirement of a state level cap not to exceed 1% of the total number of students in grades assessed;
2. Clarify the consequences for exceeding the 1% cap;
3. Establish criteria for requesting a Secretarial waiver to exceed the 1% cap which should match the prior requirements in the Department's 2003 regulation on this issue[2] which states:
   "An SEA may request from the Secretary an exception permitting it to exceed the 1.0 percent cap. The Secretary will consider granting, for a specified period of time, an exception to a State if the following conditions are met:
   (i) The SEA documents that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the grades assessed.
   (ii) The SEA explains why the incidence of such student exceeds 1.0 percent of all students in the combined grades assessed, such as school, community; or health programs in the State that have

[2] **Federal Register: December 9, 2003 http://www2.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html:**

drawn large numbers of families of students with the most significant cognitive disabilities, or such a small overall student population that it would take only a very few students with such disabilities to exceed the 1.0 percent cap.

(iii) The SEA documents that it is fully and effectively addressing the requirements of § 200.6(a)(2)(iii)."

4. Clarify that any student that is assessed via the AA-AAS in excess of the 1% cap shall be counted as non-proficient for purposes of accountability, unless a State has an approved waiver to exceed this cap;
5. Reaffirm that all students will participate in a state assessment based on the state content standards for their enrolled grade level. The AA-AAS should measure proficiency on the grade level content standards by using alternate academic achievement standards, while the general assessment measures proficiency using grade-level academic achievement standards;
6. Emphasize that parents will be informed, through the development of an individualized education program, the impact of having their child participate in the AA-AAS;
7. Ensure participation in the AA-AAS will not preclude a child from attempting to complete the requirements for a regular high school diploma and clarify that this means more than saying they can stay on diploma track; the students must receive instruction designed to help them meet this goal;
8. Reinforce that students participating in the AA-AAS will be included in and make progress in the general education curriculum for the grade in which they are enrolled;
9. Recommend the use of Universal Design for Learning in the assessment process;
10. Reinforce the need to build the expertise of both general and special educators in determining when and how to administer the alternate assessment and promoting the highest expectations of students at all times; and
11. Clarify that provisions in the law about students participating in the AA-AAS, or their parents, apply when a student participated in an AA-AAS in the most recent assessment period and/or will participate in the next AA-AAS, in either or both subjects.

Assessments: We appreciate that the ESSA continues the requirement for annual, statewide assessments. Having high quality, statewide, annual assessments is a vital part of our public education system, ensuring the existence of an objective tool to determine student success and progress. In addition, the law provides some flexibility for innovation in state assessment systems, including an option for states and local educational agencies to select different nationally-recognized high school assessments, allowance of portfolios, projects and performance tasks as part of a state assessment system, allowance of computer-adaptive assessments and an innovative assessment system pilot program. While innovation is important, it cannot come at the price of rigor and comparability – the two features of statewide annual assessments that are most critical for equity. Therefore, ED must issue regulations to provide states and stakeholders with clarity in the following areas:

1. **High-Quality Assessments:** *Regulations must continue to reinforce the importance of states developing and using high quality assessments that are fully accessible to all students – no matter the format of the assessment or its form of delivery.*

2. **Grade-Level Assessments:** *ED must assure states uphold the requirement that students with disabilities are to be assessed using the assessments for their enrolled grade.* Regulations should explicitly state that practices such as "out-of-level," "below-level," and/or "instructional level" assessments do not satisfy the accountability provisions of the Act. Students not assessed at their enrolled grade level must be counted as non-participants.

3. **Computer-adaptive assessments (CAT):** *Regulations must clarify provisions about measuring the student's level of academic proficiency and growth using items above or below the student's grade level, and the limitation on the use of out-of-grade-level scores within a State's accountability system, as indicated by the statute.* For students with the most significant cognitive disabilities, the CAT provisions state that the requirement to measure proficiency on the challenging state academic standards for the student's grade-level does not apply; however the term "challenging state academic standards," which is defined in ESSA to refer to both the content and achievement standards, must be clarified as only referring to achievement standards for the student's grade level in this section (an alternate CAT must not be exempt from alignment with the state content standards for the student's grade level.

4. **Locally selected assessments:** *ED must notify States that any district choosing to use a nationally-recognized high school assessment in lieu of the State-designed academic assessment must assure that in addition to meeting the requirements of the statute relative to rigor and comparability, any and all assessments chosen must also be fully accessible to students with disabilities.*

5. **Setting standards for quality and comparability for portfolios, projects and extended performance tasks**: *Regulations must require states that choose to use portfolios, projects, or extended performance tasks as a part of their statewide annual assessment system to demonstrate that the assessment is evidence based, and how they have ensured the integrity and comparability of the results. At a minimum, the states should have to ensure that a) the tasks are always scored by an external evaluator (someone not employed by the student's school); b) the state has developed common scoring rubrics for these tasks; c) all external evaluators undergo rigorous training on scoring tasks using these rubrics; and d) following training, evaluators are able to demonstrate inter-rater reliability. Additionally, states must explain how the tasks contribute to the summative score for a student, including the weight of such tasks in the system and the content areas being measured through those tasks.* Student portfolios can be powerful instruments for assessment for learning, having the potential to allow learners (of all ages and kind) to show the breadth and depth of their learning. Research indicates that involving students in every part of the portfolio process and embedding portfolio skills into instruction are critical to its success as a learning and assessment tool. Since there are different ways for students to show what they know, the assessment information collected can legitimately differ from student to student. In addition, evidence also shows that strict quality controls must be in place to ensure rigor and comparability. Without these quality controls, these measures could threaten the objectivity and credibility of the assessment system and lower expectations for students.

6. **Alternate formats and interoperability:** *ED must recognize and reinforce to states that students with disabilities are allowed to use other alternative formats and the assistive technology they regularly rely on when accessing the general education curriculum to take assessments and that States must assure such access so students have effective and meaningful accessibility to assessments.* The availability of alternative formats and the interoperability of assessment design is necessary to permit students who require the use of alternative formats and/or assistive technology, to demonstrate

their content knowledge. Such policy includes students with the most significant cognitive disabilities so they too may demonstrate their academic achievement relative to the challenging State academic content standards or alternate academic content standards. Lack of availability of alternative formats and assessment interoperability results in students either not being able to access the assessment or not being able to demonstrate content knowledge accurately during the assessment due to the undue burden of needing to test while using unfamiliar technology. ED must encourage states to avoid the valid and known barriers created for students with disabilities when assessments are designed without consideration for alternative formats and interoperability, as well as to take this opportunity to update regulations in order to have assessments comport with IDEA and Department of Justice guidance on this issue.

I appreciate this opportunity to submit comments to the record. Please let me know if I can provide additional information.

Sincerely,

Selene Almazan

Selene Almazan, Esq.,
Legal Director

cc: Chairman John Kline
Ranking Member Bobby Scott

COPAA's mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares him or her for meaningful employment, higher education and lifelong learning.

Ms. BONAMICI. I thank the chair.

Chairman ROKITA. The gentlelady's time has expired.

The gentleman from Pennsylvania is now recognized for 5 minutes.

Mr. THOMPSON. Thank you, Chairman.

Thanks to all the members of the panel for being here.

It's an exciting time, with what we've done with repealing No Child Left Behind, now with ESSA. We need to be working hard. And I appreciate the chairman doing this, because our job is oversight. Because without oversight, we will not achieve some of our intent that we had with ESSA that I find people are universally, whether it's parents, kids, teachers, administrators, school board members, are very, very excited about.

Clearly, we're all accountable for our children and for all aspects, including education. And I appreciate the trust that we have shown in this body and in Congress and with the President signing the legislation in really pushing the authority, the flexibility, and the control to the State levels.

My request of all of our friends who work in State capitals: have that same trust. Push that to the local level because they know—it's their children. They don't want their children to fail. They want their children to thrive. They want their children to get the type of education to where they can get great jobs, find those jobs in their home communities, and raise our grandchildren.

I've always believed that there's many different pathways to success in life, not just a 4-year institution. I'll do my best to work to try to make that affordable and accessible, but career and technical education. I've got a son and a daughter-in-law who have done great things in their education, earned it in the military. Many different paths. Enter right into the workforce.

Dr. Wilson, in your testimony, you mentioned the importance of meeting the needs of students who are looking to embark on all different types of career pathways. And as co-chair of the Career and Technical Education Caucus, I believe that the preparation of our students for the 21st-century workforce and 21st-century jobs is vastly important.

Now, how will local flexibility give educators the tools to empower students to develop more well-rounded leadership, academic, and technical skills?

Mr. WILSON. Thank you, Mr. Congressman.

We live in the Huntsville area. Huntsville was just recently named one of the top three metro areas of its size in the United States. It has a wonderful economy, growing very quickly. We're in workforce region development 2 in the State of Alabama. Part of my job is to understand the types of jobs that my students, when they graduate, will be receiving and going into those places. It's my job to do that.

I work closely with Dr. Philip Cleveland, who is over workforce development and career tech at the State department, and he is boots on the ground. He comes out, makes sure that we know what's going on in our areas. Our seven county areas, we're competing to get our kids ready for those jobs. I don't want those jobs to have to be outsourced. So it's part of my job to do whatever I need to do within my curriculum to make sure, if we need some

pipefitters on the Tennessee River area, we've got a way to get a pipefitter teacher. We've got welding teachers that do the very same thing.

We want every one of our children, when they graduate, if they want to graduate and not go to college but go into the workforce, to be able to graduate with a certification of some sort. We have EMT on our campus beginning next year. We're looking at putting in CNA, Certified Nursing Assistant. If someone wants to go into the nursing, we have a wonderful health occupational academy that puts the kids out into the nursing field. They can graduate and already be a CNA and be working as they go to college at the same time.

So that's some of the flexibility that's provided to us. But going back to what was said earlier, it's about leaders and leadership capacity within the district to take that flexibility and go with it. You have to be willing to do that. And ESSA is providing us that opportunity to do that.

Mr. THOMPSON. Have you—and my gut instinct is I don't think that a lot of our school districts have done this yet, but there's a couple of great resources out there. I was wondering if you have partnered with them yet.

First of all, the workforce investment boards who—that was in 2014. This brought put some great leadership into the Workforce Innovation and Opportunity Act. And we put a real emphasis on those aged 16 to 29 for the first time, the barriers they have to entering the workforce. I'd like to see our school districts partner more in a more robust way.

And just recently something I discovered, despite being the chairman of our Agriculture Subcommittee, is our office of rural economic development with USDA has monies and programs designed around training and retraining of workforce as well as, basically, workforce needs. And I think both those maybe would be great resources and be a great collaboration.

So I guess I'll ask if you're familiar with that. And if you're not, I would just encourage all school districts to check those out.

Mr. WILSON. We work closely with workforce development opportunities in Decatur-Morgan County area and with Huntsville. And I will look up that and make sure that we're working with those, as well.

Mr. THOMPSON. Yeah. USDA was brand-new to me as of last week, with a forum I hosted. We had about 80 folks come out, and it was pretty exciting to find out what opportunities are there that most people don't know about.

Thank you, Mr. Chairman.

Chairman ROKITA. I thank the gentleman.

The gentlelady from Massachusetts, Ms. Clark, is recognized for 5 minutes.

Ms. CLARK. Thank you, Mr. Chairman.

And thanks to all the panelists for being with us today.

My question first is for you, Ms. Almazan. I am very concerned with some of the aversive behavior punishments that we see, including seclusion, restraint, expulsion, suspensions, which disproportionately affect students of color and students with disabil-

ities. In Massachusetts, just in the last school year, we had 603 preschoolers suspended from their programs.

I'm very grateful; we fought hard to have many of the trauma-informed practices included in the ESSA. And can you speak to COPAA's regulatory recommendations in this area?

Ms. ALMAZAN. Sure.

COPAA has had a statement of principles for quite some time on restraint and seclusion, and it is something that COPAA has been integrally involved in for quite some time, particularly working with Congressman Van Hollen in the introduction of the Keeping All Students Safe Act. That has been introduced, I think, every session since 2009.

The statistics, if you just look at the GAO study back from 2008 or 2009, are horrific, and the effect on children of being restrained or secluded in the manner that they're being restrained and secluded are very alarming.

I looked at that data recently from your home State and was really shocked to see how many students had been suspended and expelled for behavior that is just typical, particularly for children of color. I have been a practicing attorney for nearly 30 years and primarily represent families of color, families who live in poverty, and it is always stunned me that they are disproportionately affected by these practices.

We know all of the horrific things that can happen to children when they are restrained or when they are secluded. We know that schools at times are not equipped to manage behavior in a way that is authentic and that looks at the circumstances that the students come from. I think that looking at the trauma-informed practices is very important, something that, frankly, we are all just learning about.

I think that, very importantly, we have now raised to a national discussion the student resource officers in our school buildings with the effect of cellphone cameras, and we can see what those of us who have been on the ground representing families for many years have seen always in police reports and in expulsion proceedings and in discipline proceedings. Those cellphone videos expose for the world what those of us who have been in the trenches in civil rights have seen for many, many years.

Ms. CLARK. And you said in your testimony that, often, the effect of no regulations means that the courts are left to be the experts. How do you see that particularly working if there weren't any further regulations in this area for families?

Ms. ALMAZAN. Well, we have a whole rich history in the Rehabilitation Act of 1973, when there was a statute, a civil rights statute, for people of disabilities that talked about people who are otherwise qualified, talked about people with disabilities, talked about reasonable accommodations, and we had no regulations, and people were forced to go to court, and courts were trying to interpret the statute. There were no regulations interpreting it.

And the disability community took a page from the civil rights community and staged a takeover of a Federal building for 28 days in San Francisco until they could get their regulations from HEW. And as a matter of fact—

Ms. CLARK. Thank you so much. I want to get one question in—

Ms. ALMAZAN. Thanks.

Ms. CLARK.—for Mr. Talbert.

During your tenure as general counsel, regulations were promulgated that gave States more flexibility to exempt recently arrived English learners from State assessments. This was an allowance that was clearly not defined in statute.

Would it be fair to limit the Secretary's authority to issue regulations that actually provide more flexibility in key areas? And how is this any different from the Secretary's authority to issue other clarifications or interpretations of existing statute?

And you may have to respond in writing, since I'm about to expire.

Mr. TALBERT. Sure. I'll be happy to supplement my response in writing. But, again, in essence, you see what the text says, and then if it needs clarifying, if there's some ambiguity, then there may be a need to write a regulation to deal with that.

With respect to guidance, if the Department sought to issue guidance, they, again, would need to make sure that is within the contours of the text of the statute and that it doesn't stray beyond into making new law, so to speak.

But I'd be happy to supplement.

[The information follows:]

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March 11, 2016

Hon. Todd Rokita, Chairman
Hon. Marcia L. Fudge, Ranking Member
Subcommittee on Early Childhood, Elementary, and Secondary Education
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Rokita and Ranking Member Fudge:

In follow-up to the Subcommittee hearing of February 10, 2016 on "Next Steps for K-12 Education: Implementing the Promise to Restore State and Local Control," I have enclosed my supplemental response for the record.

Please let me know should you have any questions.

Very truly yours,

Kent D. Talbert

Enclosure

CC: Hon. John Kline, Chairman, Committee on Education and the Workforce
Hon. Robert C. "Bobby" Scott, Ranking Member, Committee on Education and the Workforce

Hearing of Subcommittee on Early Childhood, Elementary, and Secondary Education

House Committee on Education and the Workforce

"Next Steps for K-12 Education: Implementing the Promise to Restore State and Local Control"

February 10, 2016

Supplemental Response for the Record from Kent D. Talbert

Question [paraphrase] from Rep. Katherine M. Clark (D-MA) and Supplemental Response of Kent D. Talbert:

Q. During the Bush Administration, regulations were issued by the Department which gave states more flexibility to exempt recently-arrived English Language Learners from a state's annual assessments. This allowance was not defined in statute [Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act].

Would it be fair to limit the authority of the Secretary to issue regulations that provide more flexibility in key areas of the law, and how different is that from the Secretary's authority to issue other clarifications or interpretations of the existing statute [Every Student Succeeds Act]?

A. Section 1111(e) of the Every Student Succeeds Act (ESSA) already limits the authority and flexibility of the Secretary. Section 1111(e) (rule of construction) limits the authority and flexibility of the Secretary to issue any regulations "on the development or implementation of the statewide accountability system . . . that would . . . add new requirements that are inconsistent with or outside the scope of this part [Part A]," that would "add new criteria that are inconsistent with or outside the scope of this part," or that would "be in excess of statutory authority granted to the Secretary." 20 U.S.C. § 6311(e)(1)(A).

Similarly, the Secretary may not condition approval of a state plan or waiver upon additional requirements that are "inconsistent with or outside the scope of this part," nor may the Secretary prescribe such things as numeric long-term goals, specific assessments, the weight to be given to any indicators that differentiate schools, specific methodologies to differentiate schools, and related. 20 U.S.C. § 6311(e)(1)(B).

Finally, certain limitations apply to the issuance of non-regulatory guidance. Specifically, ESSA shall not be construed to authorize the Secretary to issue guidance that "in seeking to provide explanation of requirements under this section for State or local educational agencies, either in response to requests for information or in anticipation of such requests, provides a strictly limited

or exhaustive list to illustrate successful implementation of provisions under this section . . .or . . . purports to be legally binding." 20 U.S.C. § 6311(e)(1)(C).

Any grant of flexibility by the Secretary must be within the scope of the given statutory text in question. In general, the waiver authority at 20 U.S.C. § 7861 is the primary means for the Secretary to grant flexibility, and then, upon receipt of an application.

Ms. CLARK. All right. Thank you.

Chairman ROKITA. The gentlelady's time has expired. I thank the gentlelady.

The gentlelady from California, Mrs. Davis, is recognized for 5 minutes.

Mrs. DAVIS. Thank you. Thank you very much, Mr. Chairman. I appreciate that. I'm doing a ranking over in the other committee, and so I appreciate being able to come in and have a chance to hear from all of you.

Mr. Wilson, if I might just ask you more about this, because I know on the Web site in your school district it states that the student population is a tremendous representation of diversity in ethnicity and socioeconomic levels, having approximately about 7 percent minority and 30 percent qualifying for free and reduced lunch programs, and, also, school districts across your State enroll more than about 40 percent minority students and 50 percent low-income students. So I really wanted to ask you more about that.

And from San Diego Unified School District—that's the largest city that I represent. I actually served on that board for 9 years quite a few years ago. And nearly about 60 percent of the students there are low-income. More than a quarter of the district's enrollment is limited English proficient.

We know that history has really told us strong Federal guardrails to hold systems accountable for improving outcomes for all students – low-income, students of color—are sometimes ignored. And even from my own experience a number of years ago, I know that sometimes we're—we want to make sure that we're giving to all groups, whether or not they are the ones who are most vulnerable at any particular time.

So you have testified that the role of the Federal Government is to simply support public schools by equally applying broad flexibility. And in that, as I understand it, there was no mention of the Federal Government's role in promoting educational equity.

So part of my question is whether you feel that, at least from what your experience has been, that equity has been achieved, and that we don't really need to focus like a laser, I guess, on this issue. And I'm wondering whether we can learn from communities that are more homogeneous and well-resourced, whether or not they are really representative of our Nation's public schools today.

Mr. WILSON. Thank you.

Schools are microcosms of the communities they represent. The diversity we have in Hartselle is the diversity we have in Hartselle because it is the footprint of Hartselle.

I was a principal at Homewood High School, and Homewood High School is a suburban area just contiguous to Birmingham and had diversity—one would look at that diversity, and be very clear from the traditional sense of what is diversity—60 percent, 25 percent, 10 percent, so forth and so on. When one looks at our diversity and sees 90 percent and then 10 percent of everything else, that is putting diversity back in the box over traditional diversity.

We have a lot of transients, as well, that's not spoken and not seen in that diversity. That's the biggest issue we face. The biggest issue we face is the child who comes to us 1 month and then 3

months later goes somewhere else and then 3 months later comes back to us. We deal with those kids on a regular basis.

Mrs. DAVIS. And, of course, in many of these districts that are so heterogeneous, they have that issue, as well.

Mr. WILSON. That's exactly right.

Mrs. DAVIS. That's a basic part of it.

Mr. WILSON. And to answer your question, it's an answer that you've got to pinpoint the places where it's not working. And that's where extra care and concern has to go from either the local group, the State group. And if that doesn't work, that's when the Federal steps in.

Mrs. DAVIS. Uh-huh. So you do see a Federal role in that.

Mr. WILSON. As I stated, there certainly is a role for the Federal. But the boots on the ground at the local level and the State level is where, I believe, having been in my situation—

Mrs. DAVIS. Well, what would you like to see the State doing then?

Mr. WILSON. I would like what the State's doing, essentially what the ESSA's doing: saying to local leaders, go out there and meet the needs and exceed the needs of the students in your area. Meet those needs. That's what you want to see.

You want to see the ability to go out there and let that leadership capacity—don't hold me back, don't grab me, okay, because I'm wanting to move forward because everybody else isn't moving forward. At the same time, we're going to have to figure out a way to prod those who won't move forward.

Mrs. DAVIS. Yeah. And do you see that sometimes that means really difficult challenges or decisions that have be made to—

Mr. WILSON. It's the most difficult—

Mrs. DAVIS.—remove—

Mr. WILSON. It's the most difficult challenge.

Mrs. DAVIS.—services in some cases—

Mr. TALBERT. It really is.

Mrs. DAVIS.—from other students?

Mr. WILSON. Yes, ma'am.

Mrs. DAVIS. Okay. Thank you very much, sir.

Chairman ROKITA. I thank the gentlelady.

The gentleman from Colorado, Mr. Polis, is recognized for 5 minutes.

Mr. POLIS. Thank you so much, Mr. Chairman.

My first question is for Mr. Talbert.

In your judgment, did the Department under the previous authorizing law, No Child Left Behind, promulgate any regulations that resulted in new requirements that were inconsistent with or outside the scope of No Child Left Behind?

Mr. TALBERT. Yeah, it's a hard question to answer, to think back to everything we did—

Mr. POLIS. That you're aware of.

Mr. TALBERT.—you know, during that period. I mean, I can't say with certainly, but that—you know, that I'm aware of.

Mr. POLIS. And, again, I think you touted in your testimony some of the provisions around ensuring that the Federal Government is prohibited from being involved with any requirement, direction, or mandate to adopt the Common Core standards.

Where that prohibition didn't exist under the previous authorizing law, do you agree, also, that there was no specific authority given for the Department to interfere with those decisions under the previous authorizing law either?

Mr. TALBERT. Correct. But they did have conditional waivers wherein certain conditions were added to waiver requests. And so there were certain things where—

Mr. POLIS. And, reclaiming my time, of course, the waiver authority wound up being what we used because of the failures in the underlying accountability metrics of the law. It essentially all became a waiver law. I don't think that was the original intent of Congress. That's why we're all grateful that we're here replacing it.

I'd be happy to yield if you wanted to address that.

Mr. TALBERT. Sure. Sure. But, again, I mean, the waiver authority, it exists to waive provisions. It does not exist to affirmatively add new conditions or requirements. And that was what was taking place.

Mr. POLIS. And my next question is for Superintendent Hofmeister.

I'm sure you're aware of research from the University of Oklahoma and Oklahoma State that showed that Oklahoma's waiver accountability system, "hid low test performance of poor and minority students".

In your argument, you testify with an argument for flexibility granted by waivers that allows you to strengthen accountability measures and that you need more flexibility under ESSA.

How can we be sure that Oklahoma and also, more generally, any State is using the flexibility for the right reasons rather than the wrong reasons? How can we ensure that you and other superintendents at the State level don't take advantage of the flexibility to sweep low performance of some subgroups of students under the rug?

Ms. HOFMEISTER. Well, thank you very much, Congressman. And I think what you must look at is what we have done. I commissioned that study.

Mr. POLIS. And I'm not asking—I don't mean this in an accusatory way. I mean, at the Federal level, how can we make sure that States are not using the flexibility for the wrong reasons?

Ms. HOFMEISTER. I think the way you examine whether that is working is to hold States accountable for results for students. And that includes students in our protected groups. That is where we need to have a greater flashlight.

And we've got to be able to keep up with the, you know, ways to view that and then respond with the most research-based, new, if that is needed, intervention. But it's got to be acting on evidence, not anecdotal information or not perception. And I believe that we will do that. We are eager to do that. These are our kids. These are our—the future of our State.

Mr. POLIS. And, again, I mean, at the State level—and, obviously, many of your district superintendents would say, "we at the district level"; at the building level, they'd say, "we at the building level." But we, obviously, here on this panel at the Federal level, how do we, in dealing with the States, make sure that a State superintendent, a State commissioner is not using the flexibility for

the wrong reasons to kind of mask low performance of minority students?

Ms. HOFMEISTER. Well, I think that we have to accept the fact that at the State level I am held accountable to the people of the State of Oklahoma. And that is the way this works at the State level for each different State.

Mr. POLIS. Well, reclaiming my time, the fundamental problem with that, and getting back to the question of whether civil rights is a local, State, or Federal concern, is, yes, you're accountable to the voters in our State—we have a State board that are – um but you're not elected by a minority of the voters, you're elected by a majority of the voters, and yet you're accountable for the public education system that serves all students, including traditionally disenfranchised minorities and others, who may or may not have voted for you, may or may not have voted for other people that run in the race.

So there's more to it than just politics. There's a civil rights aspect that transcends politics. And that, of course, is our Federal interest, as Dr. Wilson mentioned, as well.

I want to go to Ms. Almazan for the last 15 or 20 seconds you'll have to answer this. But I wanted to ask about Title I regulations revolving alternative assessments and alternative achievement standards. Both Democratic and Republican administrations have found that allowing States some flexibility for students with disabilities has done this.

What's at stake to make sure that we continue the proper accountability for students with disabilities? I think you'll have to submit that to me in writing, Ms. Almazan, but if we can talk about, in writing, that whole area of alternative assessments. And, of course, we maintain that cap in this new law.

[The information follows:]

Question 3: Rep. Polis: With regard to Title I regulations around alternative achievement standards and alternative assessments, what's at stake to assure we continue the proper accountability for students with disabilities and assure we maintain the cap in the new law?

Answer:

COPAA made the following recommendations to ED with regard to ESSA and provisions allowing alternate academic achievement standards (AAAS) and the alternate assessment aligned to such standards.

Standards and Assessment: *ED must issue regulations, guidance and technical assistance on "alternate academic achievement standards" and "alternate assessments aligned to alternate academic achievement standards" (AAAS) to ensure stakeholders fully understand the requirements as set forth in ESSA.*

AAAS: ED must further clarify through regulations the following regarding the AAAS:

1. Establish and implement a 'documented and validated standards-setting process;
2. Reinforce that the AAAS are designed only for students with the most significant cognitive disabilities;
3. Ensure the AAAS are aligned to the challenging state academic content standards;
4. Ensure the AAAS promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act;
5. Clarify that the term "challenging state academic standards," which is defined in ESSA to refer to both content and achievement standards, must be interpreted as referring only to achievement standards in the provision about using accommodations to increase the number of students with significant cognitive disabilities who are taking the general assessments based on "challenging state academic standards" for the grade level in which the student is enrolled (this is necessary to avoid the common misconception that alternate assessments are not based on grade-level content standards); and,
6. Ensure that any student who meets the AAAS is on track to pursue postsecondary education and employment, consistent with the purposes of Workforce Innovation and Opportunity Act of 2014.

Alternate Assessments aligned to Alternate Achievement Standards (AA-AAS): ED must clarify and reinforce, through regulation, the following requirements related to the AA-AAS:

1. Reinforce the statutory requirement of a state level cap not to exceed 1% of the total number of students in grades assessed;
2. Clarify the consequences for exceeding the 1% cap;
3. Establish criteria for requesting a Secretarial waiver to exceed the 1% cap which should match the prior requirements in the Department's 2003 regulation on this issue[2] which states:
   "An SEA may request from the Secretary an exception permitting it to exceed the 1.0 percent cap. The Secretary will consider granting, for a specified period of time, an exception to a State if the following conditions are met:
   (i) The SEA documents that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the grades assessed.
   (ii) The SEA explains why the incidence of such student exceeds 1.0 percent of all students in the combined grades assessed, such as school, community; or health programs in the State that have

[2] **Federal Register: December 9, 2003 http://www2.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html:**

drawn large numbers of families of students with the most significant cognitive disabilities, or such a small overall student population that it would take only a very few students with such disabilities to exceed the 1.0 percent cap.

(iii) The SEA documents that it is fully and effectively addressing the requirements of § 200.6(a)(2)(iii)."

4. Clarify that any student that is assessed via the AA-AAS in excess of the 1% cap shall be counted as non-proficient for purposes of accountability, unless a State has an approved waiver to exceed this cap;
5. Reaffirm that all students will participate in a state assessment based on the state content standards for their enrolled grade level. The AA-AAS should measure proficiency on the grade level content standards by using alternate academic achievement standards, while the general assessment measures proficiency using grade-level academic achievement standards;
6. Emphasize that parents will be informed, through the development of an individualized education program, the impact of having their child participate in the AA-AAS;
7. Ensure participation in the AA-AAS will not preclude a child from attempting to complete the requirements for a regular high school diploma and clarify that this means more than saying they can stay on diploma track; the students must receive instruction designed to help them meet this goal;
8. Reinforce that students participating in the AA-AAS will be included in and make progress in the general education curriculum for the grade in which they are enrolled;
9. Recommend the use of Universal Design for Learning in the assessment process;
10. Reinforce the need to build the expertise of both general and special educators in determining when and how to administer the alternate assessment and promoting the highest expectations of students at all times; and
11. Clarify that provisions in the law about students participating in the AA-AAS, or their parents, apply when a student participated in an AA-AAS in the most recent assessment period and/or will participate in the next AA-AAS, in either or both subjects.

Assessments: We appreciate that the ESSA continues the requirement for annual, statewide assessments. Having high quality, statewide, annual assessments is a vital part of our public education system, ensuring the existence of an objective tool to determine student success and progress. In addition, the law provides some flexibility for innovation in state assessment systems, including an option for states and local educational agencies to select different nationally-recognized high school assessments, allowance of portfolios, projects and performance tasks as part of a state assessment system, allowance of computer-adaptive assessments and an innovative assessment system pilot program. While innovation is important, it cannot come at the price of rigor and comparability – the two features of statewide annual assessments that are most critical for equity. Therefore, ED must issue regulations to provide states and stakeholders with clarity in the following areas:

1. **High-Quality Assessments:** *Regulations must continue to reinforce the importance of states developing and using high quality assessments that are fully accessible to all students – no matter the format of the assessment or its form of delivery.*

2. **Grade-Level Assessments:** *ED must assure states uphold the requirement that students with disabilities are to be assessed using the assessments for their enrolled grade.* Regulations should explicitly state that practices such as "out-of-level," "below-level," and/or "instructional level" assessments do not satisfy the accountability provisions of the Act. Students not assessed at their enrolled grade level must be counted as non-participants.

3. **Computer-adaptive assessments (CAT):** *Regulations must clarify provisions about measuring the student's level of academic proficiency and growth using items above or below the student's grade level, and the limitation on the use of out-of-grade-level scores within a State's accountability system, as indicated by the statute.* For students with the most significant cognitive disabilities, the CAT provisions state that the requirement to measure proficiency on the challenging state academic standards for the student's grade-level does not apply; however the term "challenging state academic standards," which is defined in ESSA to refer to both the content and achievement standards, must be clarified as only referring to achievement standards for the student's grade level in this section (an alternate CAT must not be exempt from alignment with the state content standards for the student's grade level.

4. **Locally selected assessments:** *ED must notify States that any district choosing to use a nationally-recognized high school assessment in lieu of the State-designed academic assessment must assure that in addition to meeting the requirements of the statute relative to rigor and comparability, any and all assessments chosen must also be fully accessible to students with disabilities.*

5. **Setting standards for quality and comparability for portfolios, projects and extended performance tasks**: *Regulations must require states that choose to use portfolios, projects, or extended performance tasks as a part of their statewide annual assessment system to demonstrate that the assessment is evidence based, and how they have ensured the integrity and comparability of the results. At a minimum, the states should have to ensure that a) the tasks are always scored by an external evaluator (someone not employed by the student's school); b) the state has developed common scoring rubrics for these tasks; c) all external evaluators undergo rigorous training on scoring tasks using these rubrics; and d) following training, evaluators are able to demonstrate inter-rater reliability. Additionally, states must explain how the tasks contribute to the summative score for a student, including the weight of such tasks in the system and the content areas being measured through those tasks.* Student portfolios can be powerful instruments for assessment for learning, having the potential to allow learners (of all ages and kind) to show the breadth and depth of their learning. Research indicates that involving students in every part of the portfolio process and embedding portfolio skills into instruction are critical to its success as a learning and assessment tool. Since there are different ways for students to show what they know, the assessment information collected can legitimately differ from student to student. In addition, evidence also shows that strict quality controls must be in place to ensure rigor and comparability. Without these quality controls, these measures could threaten the objectivity and credibility of the assessment system and lower expectations for students.

6. **Alternate formats and interoperability:** *ED must recognize and reinforce to states that students with disabilities are allowed to use other alternative formats and the assistive technology they regularly rely on when accessing the general education curriculum to take assessments and that States must assure such access so students have effective and meaningful accessibility to assessments.* The availability of alternative formats and the interoperability of assessment design is necessary to permit students who require the use of alternative formats and/or assistive technology, to demonstrate

their content knowledge. Such policy includes students with the most significant cognitive disabilities so they too may demonstrate their academic achievement relative to the challenging State academic content standards or alternate academic content standards. Lack of availability of alternative formats and assessment interoperability results in students either not being able to access the assessment or not being able to demonstrate content knowledge accurately during the assessment due to the undue burden of needing to test while using unfamiliar technology. ED must encourage states to avoid the valid and known barriers created for students with disabilities when assessments are designed without consideration for alternative formats and interoperability, as well as to take this opportunity to update regulations in order to have assessments comport with IDEA and Department of Justice guidance on this issue.

I appreciate this opportunity to submit comments to the record. Please let me know if I can provide additional information.

Sincerely,

Selene Almazan

Selene Almazan, Esq.,
Legal Director

cc: Chairman John Kline
Ranking Member Bobby Scott

COPAA's mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares him or her for meaningful employment, higher education and lifelong learning.

Mr. POLIS. I'm very grateful for the time, Mr. Chairman, and I yield back.

Chairman ROKITA. I thank the gentleman. The gentleman's time has expired.

I'll recognize myself now for 5 minutes.

It's been a very interesting discussion. I want to thank each and every one of our witnesses again for their testimony.

I want to focus on Dr. Wilson's testimony and the exchange with Mrs. Davis from California. I want you to recognize that at the last few seconds she said: The only way sometimes that you can serve those that need it is by taking services away from others. And I want to make sure that it's recognized that was her opinion and not necessarily your testimony, unless it was, and then say so.

Mr. WILSON. That was not my testimony.

Chairman ROKITA. Right.

I also find it amazing that only here in Washington can a man put on his Web site that he wants to treat everyone equally and that somehow be a bad thing. It's ridiculous, in fact. And that's my opinion.

Mr. Talbert, there was some discussion going on about the General Education Provision Act, and you were asked about that and how that did not, in fact, limit the Secretary's authority.

I want to rehabilitate that discussion a little bit, because isn't it true that act is basically the jurisdictional provision for the Department? That is to say, the Department will focus on education issues. In no way does the GEPA somehow nullify or limit a more specific statute, if you want to talk about rules of construction, like ESSA that certainly, regarding specific areas, does limit the Secretary's authority just as Congress intended.

Sir?

Mr. TALBERT. Correct. It doesn't nullify those very specific provisions that deal more directly with the issues you mentioned.

Chairman ROKITA. All right.

And, by the way, while I have you, I had to cut you off because you were way too long, but is there anything in your written remarks that you want to take a minute right now to go and focus on?

Mr. TALBERT. Nothing, other than just to reinforce the whole theme of the law, which is more State and local control. That, indeed, when the Department was first set up in 1979-1980, that was some of the—the findings and the purpose statements of that law specifically provided that, that State and locals have primary responsibility for education and that the Feds supplement that.

Chairman ROKITA. Uh-huh. Thank you.

And since you have experience in the Department—and I've been listening to this exchange about clarifying things. In your experience at the Department, when you were there, was there ever a culture where you all took a perfectly defined part of the law, something that was specifically defined, and reinterpreted it, ignored it, or did something other than simply clarify ambiguous parts of the law?

Mr. TALBERT. No. You take the law as you have it, and then you seek to implement it to the best of your ability. And if it's necessary to clarify, you clarify it as well.

Chairman ROKITA. Right. When it's necessary to clarify, not when it doesn't suit your political ideology?

Mr. TALBERT. Correct.

Chairman ROKITA. Okay. And it's your opinion that the culture has changed at the Department in that regard or not?

Mr. TALBERT. I'm not quite—

Chairman ROKITA. And you've got clients before the Department, so I understand the sensitivity there, but I'd appreciate an honest answer.

Mr. TALBERT. Sorry. Can you rephrase the question?

Chairman ROKITA. I'm known to be pretty direct, so I'm not sure I can do that.

Let me go here. You mentioned negotiated rulemaking.

Mr. TALBERT. Right.

Chairman ROKITA. Is that a change from No Child Left Behind? And if so, what might we expect differently?

Mr. TALBERT. Well, sure, there are some changes in the statute as to negotiated rulemaking and the requirement that, once they come up with a rule, they need to submit it to the committees so that they can see it and look at it before it then goes public in the Federal Register. That's certainly one change.

Chairman ROKITA. Okay. And that's different around here how, specifically? How is it usually done?

Mr. TALBERT. Well, there was no previous provision. I mean, they could go straight from negotiated rulemaking—once they get a consensus, they could go straight and publish it in the Federal Register with an NPRM without having to first check in—

Chairman ROKITA. Notice of proposed rulemaking, for those watching at home. Right? NPRM.

Mr. TALBERT. Yes, notice of proposed rulemaking.

Chairman ROKITA. All right. And so this was a good change and reform and improvement, or not?

Mr. TALBERT. Well, it gives a role for Congress, actually, in making sure that it follows the intent of the law.

Chairman ROKITA. Right. Thank you.

In the time I have left, I will ask if Ms. Hofmeister from Oklahoma would like to add anything to the discussion she's heard.

Ms. HOFMEISTER. Thank you very much, Chairman.

This is about equity. It's about an equity issue for all kids to close achievement gaps, to close an opportunity gap that exists. And we at the State level stand ready to lead in that effort.

Chairman ROKITA. I thank you.

I'll yield the balance of my time and recognize the ranking member for any closing remarks.

Ms. FUDGE. Thank you very much, Mr. Chairman. I'd like to yield to the ranking member, Mr. Scott.

Mr. SCOTT. Thank you.

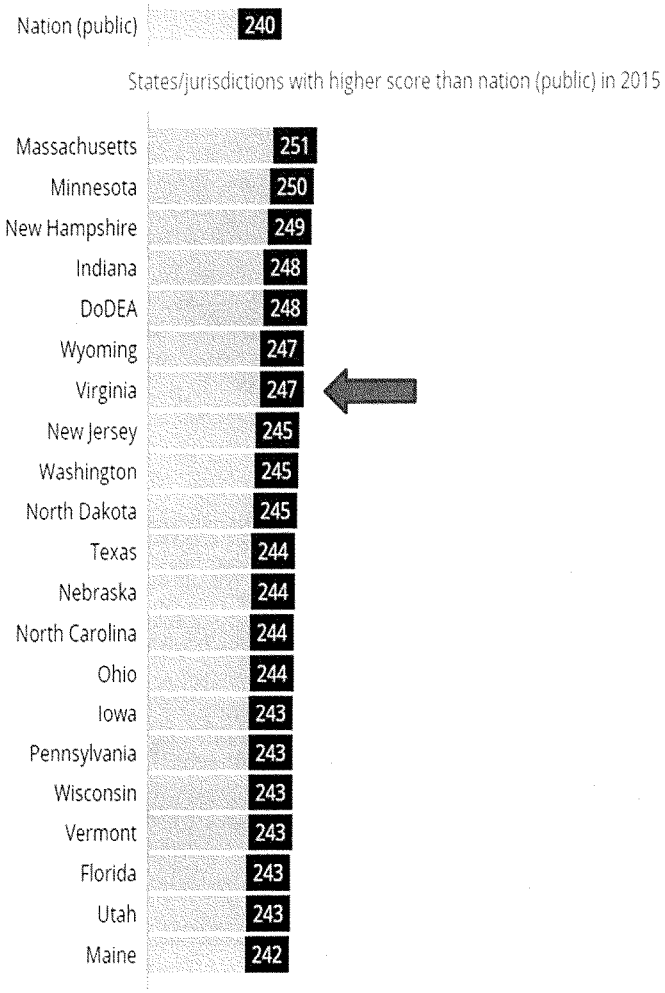
Mr. Chairman, previously in the hearing, the gentleman from Oklahoma made some disparaging remarks about what he called the State of Virginia. I'd just like to indicate that the Commonwealth of Virginia did extremely well and, actually, better than Oklahoma on the NAEP test, which is the standard for comparing jurisdictions across the country.

And I'd like to enter into the record the scores of each of the States. Virginia actually did better on each of the standards that he mentioned during his testimony.

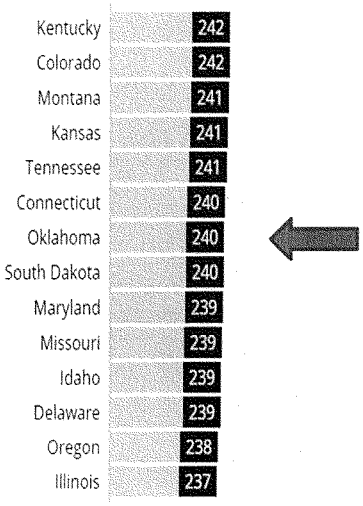
[The information follows:]

FOURTH GRADE NAEP MATHEMATICS (2015) COMPARISONS:

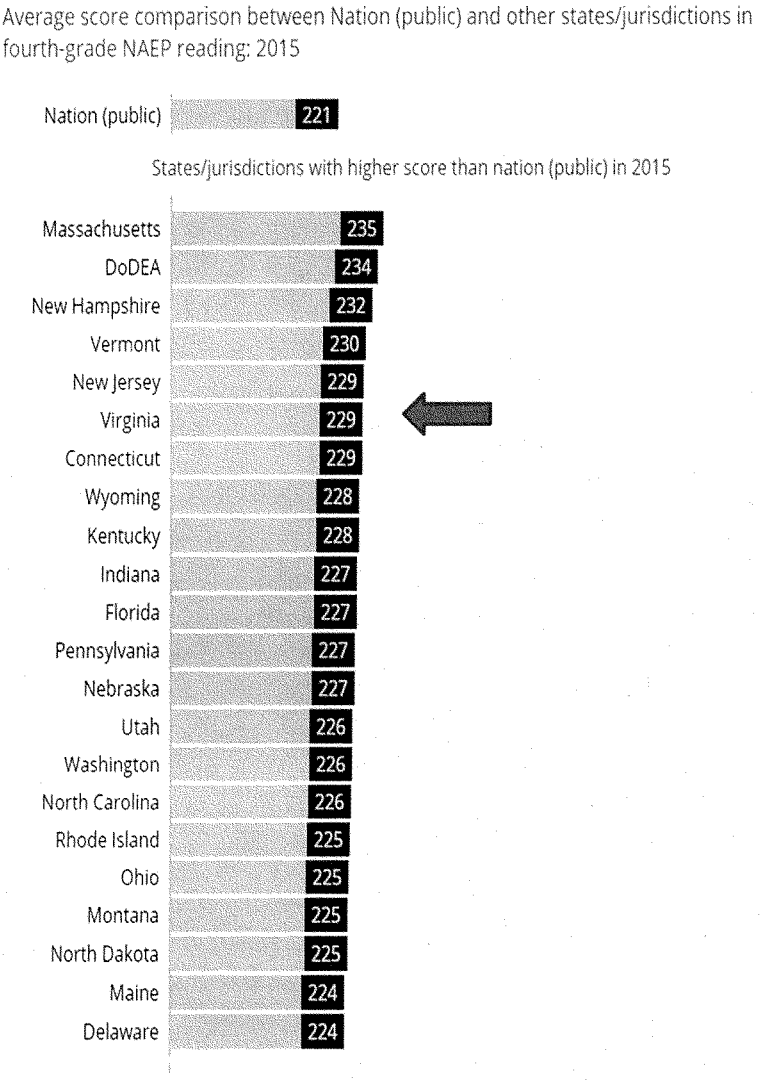
Average score comparison between Nation (public) and other states/jurisdictions in fourth-grade NAEP mathematics: 2015



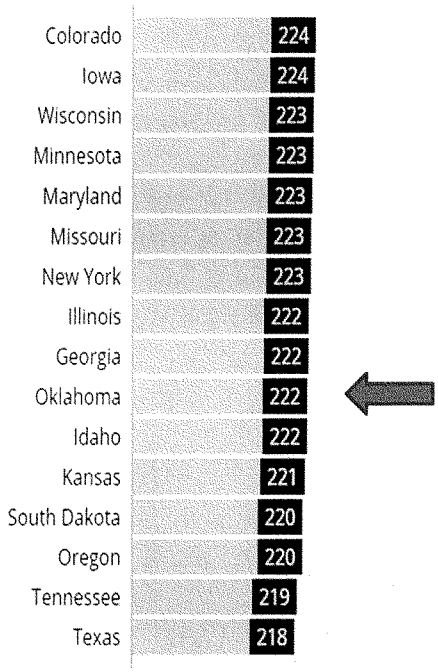
States/jurisdictions with no difference in score from nation (public) in 2015



FOURTH GRADE NAEP READING (2015) COMPARISONS:

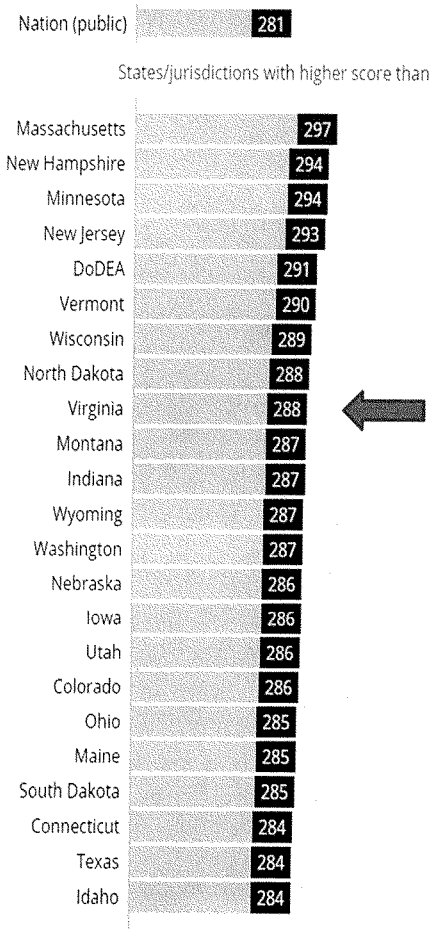


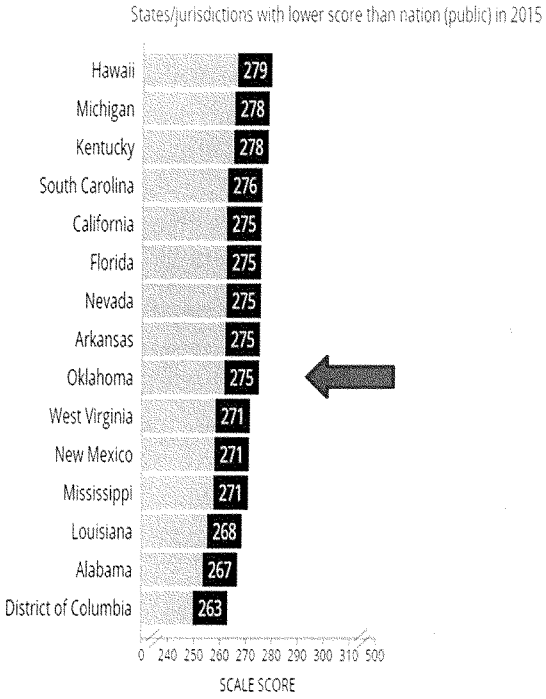
States/jurisdictions with no difference in score from nation (public) in 2015



EIGHTH GRADE NAEP MATHEMATICS (2015) COMPARISONS:

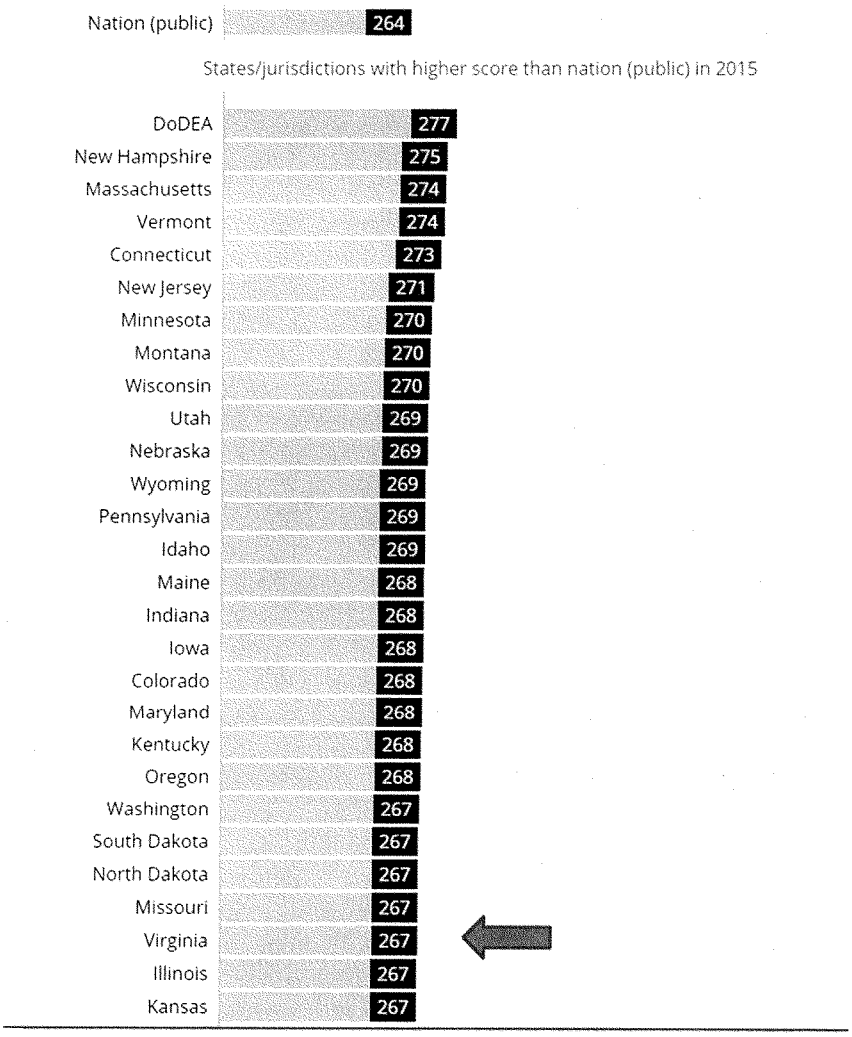
Average score comparison between Nation (public) and other states/jurisdictions in eighth-grade NAEP mathematics: 2015



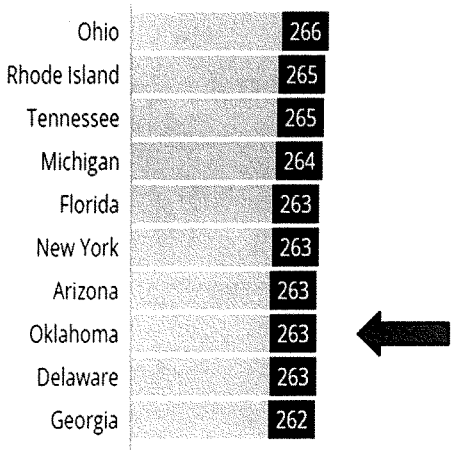

States/jurisdictions with lower score than nation (public) in 2015
Hawaii 279
Michigan 278
Kentucky 278
South Carolina 276
California 275
Florida 275
Nevada 275
Arkansas 275
Oklahoma 275
West Virginia 271
New Mexico 271
Mississippi 271
Louisiana 268
Alabama 267
District of Columbia 263
0 240 250 260 270 280 290 300 310 500
SCALE SCORE

EIGHTH GRADE NAEP READING (2015) COMPARISONS:

Average score comparison between Nation (public) and other states/jurisdictions in eighth-grade NAEP reading: 2015



States/jurisdictions with no difference in score from nation (public) in 2015



Mr. SCOTT.I yield back.

Ms. FUDGE. Thank you very much.

Reclaiming my time, Mr. Chairman.

Let me first thank you all for being here.

Certainly, I do agree that States need to be held accountable, which does, in fact, require an oversight role. But let me also say that there are a lot of problems in our States that have nothing to do with flexibility, absolutely nothing. We put kids in crumbling buildings. We have class sizes that are too large. States continue to cut funding for K-12 education. A lot of what is wrong with our schools has nothing to do with flexibility.

But I do agree that there is a role. Now, hopefully that role is limited, but it is clearly authorized and it is clearly necessary that the Federal Government ensures that every child has a right to a quality education.

I yield back, Mr. Chairman.

Chairman ROKITA. I thank the gentlelady.

Let me thank our witnesses again. I appreciate your passion. I appreciate your expertise, each one of you, in what you've brought to the table so far in your careers and what's going to be expected of you going forward.

We will be here. We will be here as partners, perhaps. Maybe that's not the right word; maybe it is. But we will be doing our congressional oversight function.

I think this law, as one of the authors of it, moved the ball down field a significant amount, in terms of having Congress, Mr. Talbert, write its laws with more specificity so that there's less for the agency to do—let's put it that way—or less that they should do.

I think the ball has moved down the field in the fact that, yes, accountability, we agree, as parents, as taxpayers, as voters, as leaders, elected or not, accountability is a good thing in life.

But, Ms. Hofmeister, it's going to be up to you now to decide what success is and what it looks like. And you'll be held accountable to your voters and taxpayers.

And you, too, Dr. Wilson.

And that's the goal here. And we expect it to work well, we want it to work well, because we're all in this together for the very same reasons: to have the next generation better off in every respect than we were so that they can fight and serve in a 21st-century world and win. And, again, that's what brings us here today.

I'd ask unanimous consent to insert in the record a letter sent this morning from a coalition of groups, the State and Local ESSA Implementation Network, to Acting Secretary John King, urging him to honor that congressional intent that I just spoke of and that we talked about it here this morning.

The letter is signed by the National Governors Association; the National Conference of State Legislatures; the National Association of State Boards of Education; the National School Boards Association; AASA, The School Superintendents Association; the National Association of Elementary School Principals; the National Association of Secondary School Principals; the American Federation of Teachers; the National Education Association; and the National PTA.

The letter states, quote, "ESSA is clear: Education decision-making now rests with the States and districts, and the Federal role is to support and form those decisions."

So, with no objection, I'll enter this into the record.

Hearing no objection, the letter is inserted.

[The information follows:]

EMBARGOED UNTIL 6 A.M. FEBRUARY 10, 2016

February 10, 2016

John B. King, Jr.
Acting Secretary
U.S. Department of Education
400 Maryland Avenue
Washington, D.C. 20202

Dear Acting Secretary King:

On behalf of states, school districts, educators and parents, we write to express our strong, shared commitment to making the Every Student Succeeds Act (ESSA) a law that puts students first. We invite you to work with us to ensure that communities determine the best methods of educating our nation's children.

Although our organizations do not always agree, we are unified in our belief that ESSA is a historic opportunity to make a world-class 21st century education system. We are dedicated to working together at the national level to facilitate partnership among our members in states and districts to guarantee the success of this new law.

ESSA replaces a top-down accountability and testing regime with an inclusive system based on collaborative state and local innovation. For this vision to become a reality, we must work together to closely honor congressional intent. ESSA is clear: Education decision making now rests with states and districts, and the federal role is to support and inform those decisions.

In the coming months, our coalition – the State and Local ESSA Implementation Network – will:

- Work together to ensure a timely, fair transition to ESSA;
- Coordinate ESSA implementation by governors, state superintendents, school boards, state legislators, local superintendents, educators and parents;
- Promote state, local and school decision-making during implementation; and
- Collaborate with a broader group of education stakeholders to provide guidance to the federal government on key implementation issues.

In ESSA, Congress recognizes states and schools as well-suited to provide a high-quality education to every child, regardless of their background. We have long prioritized lifting up those students who need help the most and our members stand ready to continue this work.

Our organizations look forward to a cooperative, collaborative and productive relationship with you and your staff throughout the implementation process.

Sincerely,

Scott D. Pattison, Executive Director/CEO
National Governors Association

William T. Pound, Executive Director
National Conference of State Legislatures

National Governors Association

National Conference of State Legislatures
The Forum for America's Ideas

NASBE
National Association of State Boards of Education

nsba
National School Boards Association

AASA
The School Superintendents Association

naesp National Association of Elementary School Principals

NASSP
National Association of Secondary School Principals

aft

nea National Education Association
Great Public Schools for Every Student

National PTA
everychild. onevoice.

Kristen J. Amundson, Executive Director
National Association of State Boards of Education

Thomas J. Gentzel, Executive Director
National School Boards Association

Daniel A. Domenech, Executive Director
AASA: The School Superintendents Association

Gail Connelly, Executive Director
National Association of Elementary School Principals

JoAnn D. Bartoletti, Executive Director
National Association of Secondary School Principals

Randi Weingarten, President
American Federation of Teachers

Lily Eskelsen Garcia, President
National Education Association

Laura M. Bay, President
National PTA

Chairman ROKITA. And, with that, I have no further business before the committee, and we are adjourned.

[Additional submission by Ms. Fudge follow:]

COPAA **The Council of Parent Attorneys and Advocates, Inc.**
A national voice for special education rights and advocacy

January 21, 2016

Ms. Deborah Spitz
U.S. Department of Education
400 Maryland Ave. SW
Washington DC 20202

RE: Docket ID ED-2015-OESE-0130: Implementing Programs Under Title I of the Elementary and Secondary Education Act

Dear Ms. Spitz:

COPAA is a nonprofit organization 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 disabilities attending public school across the United States. Throughout the past several years, COPAA has worked extensively with the disability, civil rights and business communities on preK-12 education policy and appreciates the opportunity to provide comments to the U.S. Department of Education (ED) in support of federal regulations to implement Title I of the Every Student Succeeds Act (ESSA) which reauthorizes the Elementary and Secondary Education Act of 1965 (ESEA).

As you know, students with disabilities have benefited greatly from the ESEA's focus on student outcomes which since 2001 has included students with disabilities as one of the four student groups included in state assessment and accountability. As a result, more students with disabilities have been afforded the opportunity to learn and master grade level academic content and graduate high school with a regular diploma. Expectations and outcomes for students with disabilities have never been higher.

COPAA makes two overarching recommendations to ED which are to:

1. **Assure states and districts develop Title I plans that promote the alignment of ESEA with the Individuals with Disabilities Education Act (IDEA) and other civil rights statutes** so they may:
   - target every available resource on closing achievement gaps;
   - assure school systems are inclusive of *every* child; and,
   - firmly uphold the use of critical academic, school climate including disciplinary data to rigorously monitor student progress, scaffold instruction, provide training and target intervention so that all students – including students with disabilities can meet challenging state standards and achieve postsecondary success; and
2. **Exercise and use ALL of your legal authority to regulate per our recommendations below.**

Accountability: We applaud the ESSA requirements that states put in place school accountability systems that are based on the performance of all groups of students and that require action whenever a school consistently underperforms for any student group. 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. 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. Recent experience also shows how easily states can allow the focus of accountability to shift away from student learning. So, our recommendations are aimed at ensuring that 1) expectations for all student groups are rigorous; 2) 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. Therefore, we recommend the following:

State Accountability Systems:

1. ***Require states to explain their methodology for setting ambitious goals that require significant progress toward closing achievement gaps and clarify the evidence states will need to provide to demonstrate that their goals meet these criteria.*** Because performance against these goals underlies two of the five required indicators in the school accountability system, getting them right is critical for ensuring that the system sets rigorous expectations for all student groups. The terms "ambitious" and "significant progress" clearly communicate the goal of dramatically improving student outcomes for all groups—especially those who are starting behind— and regulation should reinforce this goal to ensure that states are tracking schools' performance against these goals on a regular basis, we also recommend that ED clarify that the "measures of interim progress" required in the law include, at minimum, annual performance targets aligned to long-term goals. States should also be required to make their goals, the evidence used to demonstrate that they meet the "ambitious" and "significant progress" requirements, and the interim annual progress targets aligned to these goals publicly available. In addition to these requirements, we recommend providing guidance on what goals could look like, with specific examples that states could choose to draw upon.

2. ***Define "meaningful differentiation" in the context of the other academic indicator and the additional school quality indicator and require states to demonstrate their method for determining meaningful differentiation and provide guidance on using statistically valid measures of variation to show that an indicator allows the state to meaningfully differentiate between schools.*** The statute requires that the indicators states select for the other academic indicator and the additional school quality indicator in their accountability systems allow for meaningful differentiation between schools. This provision is critical to ensure that states don't select indicators for their accountability system that obscure differences in performance between schools.

3. ***Clarify that every school quality indicator must be disaggregated by student group within each school in a statistically valid manner.*** State accountability systems have to measure all indicators (except English proficiency) for all students and for each group of students. This means that all indicators – including the other indicator of school quality – must be disaggregated by student group.

4. ***Provide guidance on the kinds of indicators that states could consider as the other measure of school quality.*** ESSA requires an additional measure of school quality in school accountability systems. This is a change from prior law and may pose challenges for some states. To support states in selecting meaningful measures of school quality that are related to student learning outcomes, we recommend providing guidance to states on the types of indicators they should consider.

5. ***Set parameters around the terms "substantial weight" and "much greater weight."*** The law requires that in school accountability systems, the student achievement indicator, the additional academic indicator and the measure of progress toward English proficiency each carry "substantial weight" and that together, these indicators carry "much greater weight" than the other indicator of school quality. These requirements are necessary to ensure that these systems maintain a strong focus on student achievement and attainment. ED must clarify that in order to meet this requirement, 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 it would have been identified as such based on the academic indicators also required.

6. ***Require states to base the definition of "consistently undeforming" on their statewide goals and interim performance targets for each individual group of students. Clarify that this definition must be more rigorous (i.e. identify more schools) than the criteria for schools that require additional targeted support and interventions. States should also publicly report their definition of "consistently underperforming," including both the level and duration of underperformance and describe how this definition fits the above-mentioned criteria.*** ESSA requires state 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 these terms are 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.

7. ***Require states to specify how they will include the 95 percent participation requirement into their accountability systems, provide guidance on options for doing so and define consequences for failure to meet the requirement.*** States' school accountability systems must annually measure the achievement of 95 percent of students, overall and in each student group, on state assessments. This 95 percent participation requirement is necessary to prevent schools from exempting struggling students from state assessments in order to boost their scores.

8. ***Clarify that states cannot measure the performance of a supergroup 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 supergroup 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. Moreover, schools that are doing fairly well on average, but are performing poorly for, for example, their African American students, or their students with disabilities, are allowed to ignore this underperformance. ED must explicitly clarify that states cannot use supergroup performance as a substitute for the performance of individual student groups in accountability ratings.

9. ***Clarify that school accountability rating, or combination of ratings (be they letter grades, other labels, index values or rankings) 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. Also, such ratings must specify students from each major racial and ethnic group. In other words, states should not be able to combine students from different racial groups (e.g. African American, Latino and Native) into a single group. States that did not include subgroup performance in their school ratings that results for individual groups of students were receiving little to no attention. This is why faithful implementation of the ESSA requirement that ratings be based on disaggregated results for each group of students, and that they differentiate schools that consistently underperform for any group, is critical.

10. ***Provide guidance on, and share best practices for, the quality of improvement plans, including the expectation that the improvement process begin with a needs assessment that identifies school-based root causes of underperformance and specific strategies for improvement. States should also have to explain how they will support their local educational agencies in determining what interventions and supports each school should receive***. Schools identified as requiring comprehensive support and improvement, targeted support and improvement and additional targeted support and improvement must work with their local educational agencies and community stakeholders (including parents) to develop and implement improvement plans. In order for this process to lead to improvement and gap-closing, it will need to both identify and meaningfully implement the right interventions and supports for each school.

11. ***Require that 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) necessitate 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 should be public and states should have to describe how they meet the above-mentioned criteria***. Exit criteria will determine whether schools have improved sufficiently to no longer require the specific level of support, or, conversely, whether that support and intervention needs to be escalated. Exit criteria both set clear expectations for the results of the improvement process and help ensure that schools are firmly on the path to improvement before supports and interventions are taken away.

12. ***Require states to 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, to describe how they will ensure that their local educational agencies take action 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 four years). The law also requires states to identify additional targeted support and improvement schools that do not meet exit criteria within a state-determined number of years as comprehensive support and improvement schools. Targeted support and improvement schools that fail to successfully implement their improvement plans within a local educational agency-determined timeframe are subject to additional action from their local educational agency. To ensure that students

are not left to languish in low-performing schools, it is important that these timelines be both rigorous and transparent.

13. ***Require states to 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 exit criteria. In addition, states should be required to describe how they will ensure that their local educational agencies will take similarly meaningful action in targeted support and improvement schools that do not make necessary improvements.*** When schools fail to improve, their states or local educational agencies (depending on the level of underperformance) do require them to take additional action. Ensuring that these escalated interventions are based in the needs of the school, and that they are substantial enough to lead to substantial gains is important both for protecting the students in these schools and for incentivizing action earlier in the improvement process.

Minimum Subgroup (N) Size: 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 No Child Left Behind resulted in seriously limiting accountability for students with disabilities. A 2013 report of subgroup sizes used in States, *The Inclusion of Students with Disabilities in School Accountability Systems* (http://ies.ed.gov/ncee/pubs/20134017/), found that across 40 states with relevant data for the 2008–09 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*. 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. ED must:

1. ***Recommend an acceptable range for statistically significant N sizes a State may consider as the basis for calculating and reporting student subgroup performance as part of the state accountability system. Such N sizes must ensure statistical reliability while continuing to protect student privacy and ED must also provide technical assistance as needed and strictly enforce the consistent use of a statistically reliable N size that is comparable across subgroups.***

2. ***Issue the required study on "best practices for determining valid, reliable, and statistically significant minimum numbers of students for each of the subgroups of students for the purposes of inclusion as subgroups of students in an accountability system" within 90 days of ESSA enactment, as required by the statute.*** While the required study must not recommend a specific subgroup number, it should include recommendations regarding the maximum number and percentage of students and student subgroups that could be excluded from school-level accountability determinations due to N size.

3. ***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).

Standards and Assessment: ED must issue regulations, guidance and technical assistance on "alternate academic achievement standards" and "alternate assessments aligned to alternate academic achievement standards" (AAAS) to ensure stakeholders fully understand the requirements as set forth in ESSA.

AAAS: ED must further clarify through regulations the following regarding the AAAS:

1. ***Establish and implement a 'documented and validated standards-setting process;'***
2. ***Reinforce that the AAAS are designed only for students with the most significant cognitive disabilities;***
3. ***Ensure the AAAS are aligned to the challenging state academic content standards;***
4. ***Ensure the AAAS promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act;***
5. ***Clarify that the term "challenging state academic standards," which is defined in ESSA to refer to both content and achievement standards, must be interpreted as referring only to achievement standards in the provision about using accommodations to increase the number of students with significant cognitive disabilities who are taking the general assessments based on "challenging state academic standards" for the grade level in which the student is enrolled (this is necessary to avoid the common misconception that alternate assessments are not based on grade-level content standards); and,***
6. ***Ensure that any student who meets the AAAS is on track to pursue postsecondary education and employment, consistent with the purposes of Workforce Innovation and Opportunity Act of 2014.***

Alternate Assessments aligned to Alternate Achievement Standards (AA-AAS): ED must clarify and reinforce, through regulation, the following requirements related to the AA-AAS:

1. ***Reinforce the statutory requirement of a state level cap not to exceed 1% of the total number of students in grades assessed;***
2. ***Clarify the consequences for exceeding the 1% cap;***
3. ***Establish criteria for requesting a Secretarial waiver to exceed the 1% cap which should match the prior requirements in the Department's 2003 regulation on this issue***[1] which states:

   "An SEA may request from the Secretary an exception permitting it to exceed the 1.0 percent cap. The Secretary will consider granting, for a specified period of time, an exception to a State if the following conditions are met:

   (i) The SEA documents that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the grades assessed.

   (ii) The SEA explains why the incidence of such student exceeds 1.0 percent of all students in the combined grades assessed, such as school, community; or health programs in the State that have drawn large numbers of families of students with the most significant cognitive disabilities, or such a small overall student population that it would take only a very few students with such disabilities to exceed the 1.0 percent cap.

[11] **Federal Register: December 9, 2003 http://www2.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html:**

(iii) The SEA documents that it is fully and effectively addressing the requirements of § 200.6(a)(2)(iii)."

4. ***Clarify that any student that is assessed via the AA-AAS in excess of the 1% cap shall be counted as non-proficient for purposes of accountability, unless a State has an approved waiver to exceed this cap;***
5. ***Reaffirm that all students will participate in a state assessment based on the state content standards for their enrolled grade level. The AA-AAS should measure proficiency on the grade level content standards by using alternate academic achievement standards, while the general assessment measures proficiency using grade-level academic achievement standards;***
6. ***Emphasize that parents will be informed, through the development of an individualized education program, the impact of having their child participate in the AA-AAS;***
7. ***Ensure participation in the AA-AAS will not preclude a child from attempting to complete the requirements for a regular high school diploma and clarify that this means more than saying they can stay on diploma track; the students must receive instruction designed to help them meet this goal;***
8. ***Reinforce that students participating in the AA-AAS will be included in and make progress in the general education curriculum for the grade in which they are enrolled;***
9. ***Recommend the use of Universal Design for Learning in the assessment process;***
10. ***Reinforce the need to build the expertise of both general and special educators in determining when and how to administer the alternate assessment and promoting the highest expectations of students at all times; and***
11. ***Clarify that provisions in the law about students participating in the AA-AAS, or their parents, apply when a student participated in an AA-AAS in the most recent assessment period and/or will participate in the next AA-AAS, in either or both subjects.***

Assessments: We appreciate that the ESSA continues the requirement for annual, statewide assessments. Having high quality, statewide, annual assessments is a vital part of our public education system, ensuring the existence of an objective tool to determine student success and progress. In addition, the law provides some flexibility for innovation in state assessment systems, including an option for states and local educational agencies to select different nationally-recognized high school assessments, allowance of portfolios, projects and performance tasks as part of a state assessment system, allowance of computer-adaptive assessments and an innovative assessment system pilot program. While innovation is important, it cannot come at the price of rigor and comparability – the two features of statewide annual assessments that are most critical for equity. Therefore, ED must issue regulations to provide states and stakeholders with clarity in the following areas:

1. **High-Quality Assessments**: ***Regulations must continue to reinforce the importance of states developing and using high quality assessments that are fully accessible to all students – no matter the format of the assessment or its form of delivery.***

2. **Grade-Level Assessments:** ***ED must assure states uphold the requirement that students with disabilities are to be assessed using the assessments for their enrolled grade.*** Regulations should explicitly state that practices such as "out-of-level," "below-level," and/or "instructional level"

assessments do not satisfy the accountability provisions of the Act. Students not assessed at their enrolled grade level must be counted as non-participants.

3. **Computer-adaptive assessments (CAT):** ***Regulations must clarify provisions about measuring the student's level of academic proficiency and growth using items above or below the student's grade level, and the limitation on the use of out-of-grade-level scores within a State's accountability system, as indicated by the statute.*** For students with the most significant cognitive disabilities, the CAT provisions state that the requirement to measure proficiency on the challenging state academic standards for the student's grade-level does not apply; however the term "challenging state academic standards," which is defined in ESSA to refer to both the content and achievement standards, must be clarified as only referring to achievement standards for the student's grade level in this section (an alternate CAT must not be exempt from alignment with the state content standards for the student's grade level.

4. **Locally selected assessments:** ***ED must notify States that any district choosing to use a nationally-recognized high school assessment in lieu of the State-designed academic assessment must assure that in addition to meeting the requirements of the statute relative to rigor and comparability, any and all assessments chosen must also be fully accessible to students with disabilities.***

5. **Setting standards for quality and comparability for portfolios, projects and extended performance tasks**: ***Regulations must require states that choose to use portfolios, projects, or extended performance tasks as a part of their statewide annual assessment system to demonstrate that the assessment is evidence based, and how they have ensured the integrity and comparability of the results. At a minimum, the states should have to ensure that a) the tasks are always scored by an external evaluator (someone not employed by the student's school); b) the state has developed common scoring rubrics for these tasks; c) all external evaluators undergo rigorous training on scoring tasks using these rubrics; and d) following training, evaluators are able to demonstrate inter-rater reliability. Additionally, states must explain how the tasks contribute to the summative score for a student, including the weight of such tasks in the system and the content areas being measured through those tasks.*** Student portfolios can be powerful instruments for assessment for learning, having the potential to allow learners (of all ages and kind) to show the breadth and depth of their learning. Research indicates that involving students in every part of the portfolio process and embedding portfolio skills into instruction are critical to its success as a learning and assessment tool. Since there are different ways for students to show what they know, the assessment information collected can legitimately differ from student to student. In addition, evidence also shows that strict quality controls must be in place to ensure rigor and comparability. Without these quality controls, these measures could threaten the objectivity and credibility of the assessment system and lower expectations for students.

6. **Alternate formats and interoperability:** ***ED must recognize and reinforce to states that students with disabilities are allowed to use other alternative formats and the assistive technology they regularly rely on when accessing the general education curriculum to take assessments and that States must assure such access so students have effective and meaningful accessibility to assessments.*** The availability of alternative formats and the interoperability of assessment design is necessary to permit students, who require the use of alternative formats and/or assistive technology, to demonstrate their content knowledge. Such policy includes students with the most significant cognitive disabilities so they too may demonstrate their academic achievement relative to the challenging State academic content standards or alternate academic content standards. Lack of

availability of alternative formats and assessment interoperability results in students either not being able to access the assessment or not being able to demonstrate content knowledge accurately during the assessment due to the undue burden of needing to test while using unfamiliar technology. ED must encourage states to avoid the valid and known barriers created for students with disabilities when assessments are designed without consideration for alternative formats and interoperability, as well as to take this opportunity to update regulations in order to have assessments comport with IDEA and Department of Justice guidance on this issue.

Seclusion and Restraint: ***Clarify that state plans must now include how the State will provide resources and guidance, professional development, and technical assistance to reduce techniques, strategies, interventions, and policies that compromise the health and safety of students, such as seclusion and restraint.*** The new ESSA requirement will help assure that schools and districts have access to state support. We know all too well that students deserve protection from these harmful practices.

Pay for Success: ***Regulations must specify that States are prohibited from implementing any Pay For Success initiative that conflicts or interferes with the civil rights of students under any federal statute.*** ESSA requires that such initiatives include a feasibility study, rigorous third-party evaluation and be publicly reported, among other specifics. The new precedent sent by ESSA, allowing Pay For Success initiatives requires specific attention, including regulation, technical assistance, monitoring and enforcement to assure there is no misuse of public funds especially as it relates to the civil rights of students.

Stakeholder engagement/Public Reporting: ***ED must provide recommendations so states can conduct a meaningful planning process that ensures all Title I schools encourage and promote meaningful engagement and input of all parents/guardians and that schools communicate and provide information and data in ways that are accessible to all parents (e.g. written, oral, and translated).***

Educator Equity: ED must reinforce the importance of ensuring students from disadvantaged backgrounds are not disproportionately taught by ineffective, inexperienced, out-of-field educators.

1. ***Define "inexperienced teachers" as teachers with less than two years of teaching, which is consistent with the Department's Office for Civil Rights Data Collection.***

2. ***Define "out-of-field teacher" as any teacher who is not fully certified by the state to teach the subject area, grade level, or student population for which they are assigned.***

3. ***The Parent Right-to-Know provision, clarify that parents need to be notified if a student is not taught by a fully-certified teacher in order to ensure effective and consistent implementation of the provision.***

4. ***Clarify that the term "certification" as applied to teachers, principals and other leaders means having met "full-certification requirements," as defined by the state to allow for meaningful differentiation regarding certification status.***

5. ***Promote state consideration of the distribution of beginning teachers who have not completed their preparation before becoming the teacher of record and the distribution of teachers who are fully state certified.*** While the Title I LEA Plans outline this student population as students from low-income and minority

backgrounds, COPAA believes ED must take this opportunity to recognize that students with disabilities also come from low income and minority backgrounds and analyze their access to well-prepared educators. Expanding teacher shortages in special education must not result in lower entry standards for special education teachers.

Adjusted Cohort Graduation Rate (ACGR): ***ED must uphold the 2008 Graduation Rate Regulation and continue to require use of the Four-Year Adjusted Cohort Graduation Rate (ACGR) for reporting and accountability purposes at the school, district, state and federal levels for all groups of students.*** The use of extended-year cohorts, such as five- and six year rates should continue to be allowed. However, these extended year rates should be reported separately and the emphasis should remain on graduating students in four years.

1. **Define "students with disabilities" in the ACGR:** ***Define the "students with disabilities" subgroup in the ACGR as any student who has an IEP for the majority of the time in the cohort (both the 4-year and extended cohorts).*** Currently, states are defining students who are counted in the "students with disabilities" subgroup of the ACGR in a variety of ways. According to the U.S. Department of Education, states may define the subgroup as (a) only students who both entered and exited high school as an IEP student, (b) only students who had an IEP at graduation, (c) any student who had an IEP at any time between entering high school and graduation, (d) some other definition. ESSA regulations should eliminate this inconsistency so that the reported ACGR for students with disabilities is consistent across states. ***ED should also make clear that minimum subgroup size (N) size for the ACGR should only be established for purposes of protecting personally identifiable information.*** There is no need for the N size for graduation calculation to be "statistically sound."

2. **Include Alternate Diplomas in the ACGR**: ***Require that any State electing to exercise the option provided in the ACGR definition under ESSA to count all students with the most significant cognitive disabilities assessed using AA-AAS and awarded a State-defined alternate diploma that is standards-based; aligned with the State requirements for the regular high school diploma; and obtained within the time period for which the State ensures the availability of a free appropriate public education under section 612(a)(1) of the IDEA to be counted as having graduated and to report disaggregated data on the percentage of the students with disabilities subgroup that are such students.***

Diploma Options: ***Issue regulations to clarify that states may develop a State-defined alternate diploma provided this new diploma option meets all statutory requirements and promotes postsecondary success of students with the most significant cognitive disabilities without lowering expectations or reducing access to the general curriculum or a state's regular high school diploma.*** Furthermore, the Department should clarify that an alternate diploma only applies to the ACGR and does not meet the definition for a high school diploma in ESSA or IDEA. Additionally, students receiving such diploma must not be counted in the IDEA 618 data collection as "graduated with a regular high school diploma."

In conclusion, this Administration has made great progress in supporting the alignment of general education and special education law, policies, technical assistance and funding; and therefore, COPAA urges you to continue in this vein. The new ESEA must help target every available resource on closing achievement gaps to assure school systems are inclusive and supportive of *every* child so they can meet challenging state standards and achieve postsecondary success. On behalf of students with disabilities,

COPAA looks forward to continuing to work with you as the process continues to implement the new law.

Sincerely,



Denise Marshall
Executive Director

COPAA's mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares him or her for meaningful employment, higher education and lifelong learning.

[Questions submitted for the record and their responses follow:]

MAJORITY MEMBERS:

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March 7, 2016

Dr. Paul "Vic" Wilson
Superintendent
Hartselle City Schools
305 College Street N.E.
Hartselle, AL 35640

Dear Dr. Wilson:

Thank you for testifying at the February 10, 2016, hearing on "Next Steps for K-12 Education: Implementing the Promise to Restore State and Local Control." I appreciate your participation.

Enclosed is an additional question submitted by a member of the Committee after the hearing. Please provide a written response no later than Friday, March 28, 2016, for inclusion in the final hearing record. Responses should be sent to Shearíah Yousefi of the Committee staff, and she can be contacted at (202) 225-6558.

Thank you, again, for your contribution to the work of the Committee.

Sincerely,

TODD ROKITA
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education

Rep. Bonamici (D-OR)

1. You have named many benefits of local control, including helping states and school districts address schools' unique conditions and needs. But local control can come with risks, too, including the risk that there could be higher expectations for students in Hartselle, with less than 10 percent students of color and 30 percent low-income students, than for students in districts serving large concentrations of low-income students and students of color. These are the very risks that the federal role in education was developed to guard against. How can we be certain that states and districts will not take advantage of flexibility to lower expectations for some groups of students, especially those in the most vulnerable communities?

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MARK DESAULNIER, CALIFORNIA

March 7, 2016

Ms. Selene A. Almazan, Esq.
Legal Director
Council of Parent Attorneys and Advocates
P.O. Box 6767
Towson, MD 21285

Dear Ms. Almazan:

Thank you for testifying at the February 10, 2016, hearing on "Next Steps for K-12 Education: Implementing the Promise to Restore State and Local Control." I appreciate your participation.

Enclosed are additional questions submitted by members of the Committee after the hearing. Please provide written responses no later than Friday, March 28, 2016, for inclusion in the final hearing record. Responses should be sent to Sheariah Yousefi of the Committee staff, and she can be contacted at (202) 225-6558.

Thank you, again, for your contribution to the work of the Committee.

Sincerely,

TODD ROKITA
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education

Rep. Bonamici (D-OR)

1. In your opinion, is the statutory language in the ESSA clear enough to ensure that equitable resources reach schools that most need the support? What can the Department do in regulations to ensure that states and districts are addressing persistent resource inequities, as intended by Congress?

Rep. Polis (D-CO)

1. Ms. Almazan, both the previous administration and the current administration have promulgated Title I regulations regarding the development, administration, and use for accountability of alternate assessments aligned to alternate achievement standards, despite there being no statutory language in No Child Left Behind directing use of such assessments. Can you explain how and why both Republican and Democratic administrations regulated this issue, the resulting benefits to students with disabilities, and what's at stake relating to the appropriate use or threat of misuse of the alternate assessment in implementation of this new law?



HARTSELLE
CITY SCHOOLS

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March 25, 2016

Dear Congresswoman Bonamici:

I write in response to your question relative to my previous testimony before the Subcommittee on Early Childhood, Elementary, and Secondary Education in Washington, DC. Thank you for taking the time to follow up with the question, and thank you and your colleagues for the hard work put forth to pass this legislation.

You mentioned the risk of higher expectations for Hartselle than other districts. Hartselle sets very high expectations and will continue to do so. Other districts must set their own expectations and must be held accountable by their local constituents, the state, and, if necessary, the federal department should they fail to meet the expectations set forth in ESSA. At no time should a system who chooses to go above and beyond be required to slow down or come back to the pack. I know that you are not suggesting that; however, your statement about "higher expectations in Hartselle" could lead one to believe that systems who choose to go above and beyond are in some way not fulfilling the laws outlined by ESSA.

It is my understanding that the laws were developed to make sure everyone has a free and appropriate public education. Since that time, the laws have been amended to ensure that all students with an IEP be placed in the least restrictive environment to ensure that FAPE is being met. I can find no aspect of the law that says the federal role in education was developed to guard against an LEA having higher expectations. The federal role is to see that every state has rules in place to ensure compliance with the laws of the land. If the states do not have this in place, or if states are not following through with the law, then those states should be required to answer why. Likewise, state departments of education should ensure that every LEA is following the law properly, and should results warrant, the state must take necessary measures to ensure the LEA complies properly. Ultimately, it is up to the constituents at the local level to demand excellence and compliance with ESSA. In all cases, consequences that follow failure to implement the law properly should be expected.

Your question at the end is very difficult to answer. We cannot be certain that every state and district will follow the law of ESSA any more than we can be certain that states will follow non-education laws. ESSA related issues must be dealt with on a case-by-case basis and not with a broad net. The only thing Congress can do is pass legislation that gives students the opportunity to succeed at every level. After passage thereof, the federal department of education should work to support and strengthen the ability of each state to carry out the law. Each state then works with each LEA as they strive to meet the needs of ALL children under their care.

Respectfully submitted,

Paul V. Wilson, Ed.D.

[Whereupon, at 11:31 a.m., the subcommittee was adjourned.]

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