

**Testimony of Randi Weingarten,
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**Before the U.S. Senate Committee on
Health, Education, Labor, and Pensions**

**Full Committee Hearing on
ESSA Implementation: Perspectives from Education Stakeholders**

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

As Washington policymakers wrangle with the details of this law, the AFT views these details—those sorted out in both last year's legislative process and this year's regulatory process—through the lens of whether they are workable in America's classrooms and reflect the voices of educators. Sen. Patty Murray and Rep. Bobby Scott recently reiterated this priority in a joint letter to the administration. The regulatory process is the process through which ESSA enables states—informed by

the collective wisdom of those who help kids every day—to shape their education systems to create great environments for teaching and learning, not testing, particularly for disadvantaged children.

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

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

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

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

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

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

Will schools have the latitude to make staffing decisions—like how many experienced teachers they retain or how many new teachers they hire—based on their own needs? Or will federal policy force the leveling down of funding, so some schools face budget cuts that compel them to make no-win choices about which teachers to keep or hire?

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

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

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

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

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

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

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

systems of accountability that measure school success beyond reading and math test scores.

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

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

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

This is happening at the very time stakeholders are beginning the process of developing these new education systems. The Education Department's overreaching draft regulations, especially if they are a harbinger of what is to come in the way of

accountability, will undermine the potential of ESSA before it ever has a chance to be implemented.

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