

Congress of the United States
Washington, DC 20515

May 17, 2016

The Honorable John King
Secretary
U.S. Department of Education
400 Maryland Ave, S.W.
Washington, D.C. 20202

Dear Secretary King:

We are writing with questions about the recent negotiated rulemaking session on provisions in the *Every Student Succeeds Act* (ESSA) as carried out by the Department of Education (the Department). We have serious concerns about the integrity of the negotiated rulemaking process as carried out by the Department.

Negotiated rulemaking, first established by Congress in the *Negotiated Rulemaking Act of 1990*, was created to bring federal agencies and interested stakeholders together to negotiate and develop certain new regulations through a negotiating framework designed to promote consensus among diverse stakeholders. In ESSA, Congress required the Department to use the negotiated rulemaking process, at a minimum, for regulations on standards, assessments, and the requirement that federal funds supplement, rather than supplant, state and local funds. ESSA also established specific new requirements for the negotiated rulemaking, including requiring that the participants of a negotiated rulemaking panel represent all geographic regions of the United States and represent an equitable balance between representatives of students and parents and representatives of educators and education officials.¹

To evaluate the Department's compliance with negotiated rulemaking requirements and the integrity of the ESSA negotiated rulemaking process, we ask you to please provide responses to the following questions by June 7, 2016:

1. Section 1601(b)(3)(B) of ESSA explicitly states that individuals on the negotiating panel shall include "representation from all geographic regions of the United States, in such numbers as will provide equitable balance between representatives of parents and students and representatives of educators and education officials."
 - a. What protocols did the Department follow to provide a balanced negotiated rulemaking panel to ensure that interests are fairly represented as required by the law?
 - b. Please provide the geographic region represented by each panelist on the panel and the constituency he or she represents (e.g., "educator" or "parent").

¹ 20 U.S.C. 6571

2. How did the Department account for the concerns and opinions of rural school districts due to the apparent omission of rural representation on the panel?
3. How did the Department account for the concerns and opinions of students given the panel's lack of any actual student voices?
4. During a call with Department officials,² Committee staff was told including representatives of all geographic regions was problematic because of the Department's desire to balance the individual characteristics of the panelists.
 - a. What legal authority did the Department rely on to balance individual characteristics of panelists over geographic representation?
 - b. How has the Department factored individual characteristics of the panelists, including race and gender, into the composition of each of the negotiated rulemaking panels formed since 1993?
5. Regarding your address to the negotiated rulemaking panel on March 21, 2016, please describe what protocols are in place and/or the criteria used to determine when a Secretary or other high ranking Department official will speak to a panel or otherwise participate in a panel's work.
 - a. Given the number of times your remarks before the panel have been cited during negotiations, how is the Department ensuring your comments will not bias the panel's deliberations and the subsequent rulemaking process?
 - b. Please provide every instance of a Secretary speaking to a negotiated rulemaking panel or otherwise participating in a panel's work since 1993.
6. During a negotiated rulemaking session, one of the Department's negotiators stated that ESSA more closely links the supplement, not supplant and comparability requirements. This is inconsistent with the law. Please describe what steps, if any, the Department takes to ensure that its negotiators' statements during negotiations accurately reflect the statute. What guidance is provided to the Department's negotiators as to their role during negotiations and how does the Department ensure its negotiators do not overstep that role?
7. Why were three outside experts chosen to participate in the negotiating panel's discussions? Did the panel invite these experts or did the Department choose the experts, and did they solicit recommendations from the field or public to ensure the most appropriate experts were selected? Please describe the conflicts of interest check performed on the experts, if any.
8. Many groups lobbied Congress on ESSA. What criteria were used by the Department to determine which constituencies would be represented on the negotiated rulemaking panel by individuals that directly lobbied on legislation to reauthorize ESEA? Did anyone at the Department advise any companies, organizations, groups, or individuals not to nominate people who worked with Congress on the aforementioned legislation? Why did the

² Phone call between Department officials, House Committee on Education and the Workforce staff, and Senate Health, Education, Labor and Pensions Committee staff, March 4, 2016.

Department not choose to ensure representation of all constituents by individuals who had previously worked on such legislation? Please provide the Department's policies, guidance, or practices related to the participation on negotiated rulemaking panels of individuals directly involved in advocating to Congress on the statutory language.

9. How did the Department determine which provisions related to assessments would be included in the negotiated rulemaking process?
10. Please provide all documents and communications related to the Department's determination of its legal authority for all regulatory language proposed to the negotiated rulemaking panel.

Thank you for your prompt attention to this matter. If you have any questions regarding this request, please have your staff contact Mandy Schaumburg (mandy.schaumburg@mail.house.gov) with the House Committee on Education and the Workforce at (202) 225-6558 or Lindsay Fryer (Lindsay_fryer@help.senate.gov) with the Senate Committee on Health, Education, Labor, and Pensions at (202) 224-6770.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



LAMAR ALEXANDER
Chairman
Committee on Health, Education, Labor
and Pensions



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