

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

HOUSE EDUCATION COMMITTEE  
joint with the  
SENATE EDUCATION COMMITTEE  
PUBLIC HEARING

STATE CAPITOL  
HARRISBURG, PA

NORTH OFFICE BUILDING  
HEARING ROOM 1

MONDAY, MARCH 14, 2016  
10:40 A.M.

PRESENTATION ON  
EVERY STUDENT SUCCEEDS ACT

HOUSE COMMITTEE MEMBERS PRESENT:

HONORABLE STANLEY E. SAYLOR, MAJORITY CHAIRMAN  
HONORABLE ROSEMARY M. BROWN  
HONORABLE HAL ENGLISH  
HONORABLE MARK M. GILLEN  
HONORABLE HARRY LEWIS  
HONORABLE BERNIE O'NEILL  
HONORABLE KRISTIN LEE PHILLIPS-HILL  
HONORABLE KATHY L. RAPP  
HONORABLE CRAIG STAATS  
HONORABLE WILL TALLMAN  
HONORABLE MIKE TOBASH  
HONORABLE DAN TRUITT  
HONORABLE STEVE MCCARTER

SENATE COMMITTEE MEMBERS PRESENT:

HONORABLE LLOYD SMUCKER, MAJORITY CHAIRMAN  
HONORABLE MIKE FOLMER  
HONORABLE RYAN AUMENT  
HONORABLE ANDREW DINNIMAN, DEMOCRATIC CHAIRMAN

\* \* \* \* \*

*Pennsylvania House of Representatives  
Commonwealth of Pennsylvania*

I N D E X

TESTIFIERS

\* \* \*

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LEE POSEY FEDERAL AFFAIRS COUNSEL, EDUCATION COMMITTEE OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL).....	8

SUBMITTED WRITTEN TESTIMONY

\* \* \*

(See submitted written testimony and handouts online.)

1 P R O C E E D I N G S

2 \* \* \*

3 SENATE MAJORITY CHAIRMAN SMUCKER: Well, good  
4 morning, everyone. I'd like to welcome you to this  
5 morning's hearing, which is a joint hearing of the Senate  
6 and the House Education Committees regarding the ESSA, the  
7 new Federal law that we think will result in major changes  
8 to education policy in Pennsylvania, in our classrooms, and  
9 regarding educators and schoolchildren.

10 As I mentioned, the No Child Left Behind has been  
11 replaced at the Federal Government level with the ESSA,  
12 Every Student Succeeds Act, and with it the highly  
13 prescriptive one-size-fits-all nature of the former Federal  
14 law has given way to a much more flexible State-centered  
15 approach. So there will be a number of State policies that  
16 will be impacted in regards to specific provisions of the  
17 ESSA. I think it will take us some time to work through  
18 those changes, but we believe that it was important to have  
19 a full understanding of what is included in the ESSA.

20 Today, we have with us an expert on ESSA, who's  
21 traveled from Washington, D.C., and is helping not only  
22 Pennsylvania but all of the 50 States to navigate through  
23 the Federal law. By the way, it's a 1,000 page Federal law  
24 and the literally probably thousands of decisions that'll  
25 have to be made going forward.

1           Lee Posey is a Federal Affairs Counsel for the  
2 Education Committee of NCSL, which is the National  
3 Conference of State Legislators. She conducts NCSL  
4 lobbying activities in education, representing State  
5 positions and concerns to Congress and the Administration.  
6 Lee is a native of Georgia and has been at NCSL since 1999.  
7 She holds a master's degree in political science from  
8 Georgia State University and a bachelor's degree from  
9 Davidson College.

10           And so we'll look forward to hearing -- she has a  
11 presentation and a PowerPoint this morning, and then we'll  
12 have plenty of time for questions from all Members of the  
13 Committee.

14           Before we go to that, I'd just like to thank the  
15 Chair of the House Education Committee, Representative Stan  
16 Saylor, for agreeing to hold this hearing together and for  
17 planning this together. And we look forward -- this will,  
18 by the way, be the first of what we expect will be a series  
19 of hearings around this issue.

20           But before I turn it over to him, I also want to  
21 recognize we have a number of students with us here today,  
22 and we're very pleased that they're here to get a taste of  
23 how laws are made and get a taste of the legislative  
24 process. We have, I think, 103 juniors and seniors from  
25 Mastery Charter Schools at the Shoemaker and Gratz

1 campuses. So welcome to the students here. We're really,  
2 really pleased that you're with us here today. Let's give  
3 them a hand, by the way.

4 And with that, I'll turn it over to  
5 Representative Saylor for opening comments.

6 HOUSE MAJORITY CHAIRMAN SAYLOR: Very quickly, I  
7 want to thank the students for coming today and seeing how  
8 the process is. It was not that long ago I was in one of  
9 the Mastery Charter Schools in Philadelphia, so glad to see  
10 some of you here today.

11 The big thing that I think is important as we  
12 move forward with No Child Left Behind was designed, it  
13 left out many of the teachers and the parents and  
14 legislators, State legislators from across the country in  
15 putting it together. It is my hope that, as we move  
16 forward, the Department of Ed and the Governor will make  
17 sure that the Legislature and all of us have input as to  
18 the new design of the new program.

19 And I'm looking forward to hearing Ms. Posey's  
20 comments today exactly, 1) filling us in as to exactly what  
21 is going on with the Federal Government and what allows the  
22 States to do today. And again, I want to thank all my  
23 colleagues from the House and the Senate who are here as  
24 well. Thank you.

25 SENATE MAJORITY CHAIRMAN SMUCKER: Thank you.

1 I'd also like to recognize my minority Chair of the Senate  
2 Education Committee, who I enjoy working with, is Senator  
3 Dinniman.

4 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Well,  
5 welcome, everyone, today and especially the students from  
6 the charter school because ESSA affects you and it affects  
7 all students now and into the years ahead. So this  
8 discussion is of importance.

9 I thank the Chair. The Chair and I have together  
10 come to the conclusion, and I believe most of my Senate and  
11 House colleagues as well, that the Legislature absolutely  
12 has to have a say and a role in what happens in terms of  
13 education.

14 I can tell you that I am quite thankful that No  
15 Child Left Behind is gone. I am thankful that the  
16 requirement for a Common Core curriculum as an automatic  
17 requirement is gone. The notion that all children can be  
18 educated in exactly the same way is fallacious to begin  
19 with, so we're glad that that's gone.

20 And now, we come to one of the most important  
21 periods of time, an education of this Commonwealth during  
22 the next six months. One is we want to make sure the  
23 Legislature is part of any State plan, and in fact, in  
24 terms of legislation at least in the Senate Education  
25 Committee tomorrow, we're going to make sure that that is

1 the case.

2           And second, we want to make it clear, as I'm sure  
3 my colleagues would want, that unlike other State  
4 Constitutions, the Constitution of Pennsylvania, as it was  
5 amended in 1968, puts education under the authority of the  
6 Legislature. In other States, it's under the authority  
7 perhaps of the Governor's office or of the State Board of  
8 Education. That is not the case in Pennsylvania. This was  
9 purposely and conscientiously done in 1968, and we in the  
10 Legislature need to understand our constitutional  
11 responsibilities and exercise it, and the hearing today is  
12 part of that.

13           This is an exciting moment, Mr. Chairman, and I  
14 thank Representative Saylor as well. You know,  
15 Representative Saylor put into our bill and to 880, I  
16 believe, the provisions that they have now six months to  
17 report in on some question we have asked. So thanks to  
18 Representative Saylor. Thanks to the leadership of our  
19 Chair, Senator Smucker.

20           What is going to happen is you're going to have  
21 an important six months. Not only does the Department of  
22 Education have to respond to 880, as amended in the House  
23 and concurred in the Senate, but they also have to present  
24 a plan to the Federal Government. And I hope my colleagues  
25 here of both parties will join me in insisting that the

1 Legislature not only has a role but has the key role based  
2 on our own State Constitution, which my friend Senator  
3 Folmer here always tells me we have to recognize, right,  
4 Michael?

5 REPRESENTATIVE FOLMER: (No audible response).

6 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: And so I  
7 thank you, Mr. Chairman.

8 SENATE MAJORITY CHAIRMAN SMUCKER: Thank you,  
9 Chairman Dinniman.

10 Ms. Posey, thank you so much for being here with  
11 us today. We appreciate you making the trip to Harrisburg.  
12 So the floor is yours.

13 MS. POSEY: Thank you. Good morning, and I  
14 really appreciate the invitation to be here. They don't  
15 let me get out of D.C. often enough, so I'm very glad to be  
16 able to do this. And I wanted to bring you today a kind of  
17 50,000-foot overview of the new law. As has been  
18 referenced, it's a very long law, eight titles, almost  
19 1,000 pages, and I'm really going to concentrate most of  
20 this discussion that I start with on Title I, which is  
21 where many of the provisions that you probably are the most  
22 concerned about are. And I'm going to try to highlight  
23 places where I think there are opportunities and challenges  
24 for State Legislatures as they look at the law and things  
25 that you might want to be asking and thinking about right



1 now.

2 I'm really glad that the conversation is going on  
3 here now in Pennsylvania because I think that's exactly  
4 what needs to be happening now. It will be helpful when I  
5 talk about the transition time. The bill provides some  
6 transition time, but it always is, you know, much less time  
7 than you would think.

8 So let me get started. I hope this won't be  
9 death by PowerPoint, but I will try to talk as fast as  
10 anybody born in the South can talk.

11 But the first news, of course, is that we  
12 reauthorized the underlying law, the Elementary and  
13 Secondary Education Act. It was last reauthorized in 2002,  
14 has been overdue for reauthorization since 2007, so it was  
15 high time. And I think it's important to realize that it's  
16 been the law of the land for quite some time so there are a  
17 lot of things that will be new and different. There are  
18 also a lot of things that you all will have to do that  
19 you're doing now. So I will hit some of those.

20 But almost from the beginning, No Child Left  
21 Behind was very well-intentioned, but from a State  
22 perspective, I know my organization had two task forces on  
23 the law after it had been passed and going through the  
24 years to look at how it was working. It really did shift a  
25 great deal of control in education from State and local

1 governments to the Federal Government.

2           It put into place a metric, adequate yearly  
3 progress, which was a single metric that schools and  
4 students were measured on to see how they were performing.  
5 And now it demands 100 percent proficiency. And that  
6 target, by the way, if you talk to people that were working  
7 on the Hill when the original law was passed, they thought  
8 that would be revisited in reauthorization. They wanted to  
9 set an extremely high bar and then see where States were  
10 and maybe look back at that, but that's been a problem.

11           And I think also it's important to remember that  
12 when States were seeking flexibility from the law that the  
13 current Department of Education allowed and got waivers,  
14 those came with some of their own requirements, for  
15 example, teacher evaluation based predominately on student  
16 growth. So there were all these issues from a State  
17 perspective with the law.

18           So we were delighted when finally we had  
19 reauthorization. The House and Senate passed their bills  
20 this summer. That actually had happened before in 2011,  
21 2013. We kind of came close. We had bills in both  
22 chambers. But what happened that was different this time  
23 is that we had a bipartisan process in the U.S. Senate HELP  
24 Committee, Health, Education, Labor, and Pensions  
25 Committee, the Committee of jurisdiction. And Senator

1 Alexander, the Chair, and Senator Patty Murray, the Ranking  
2 Member, really got together and negotiated a bill that  
3 could pass out of the Committee and then the Senate on a  
4 bipartisan basis kind of giving people a place to come  
5 together and talk about getting this done.

6           And amazingly -- and there's a picture of it on  
7 the slide -- we actually got to see a real House/Senate  
8 Conference Committee. There are not too many of those in  
9 Washington, D.C., these days because there's not a lot of  
10 legislation moving.

11           But House and Senate passed, followed quickly.  
12 The President signed it into law, and there was an outbreak  
13 of bipartisanship and good feeling that you would have  
14 thought the National Zoo had a new baby panda, and we get  
15 real excited about our baby pandas at the National Zoo. So  
16 it was a really exciting time, and of course then people  
17 start coming through the bills.

18           So I want to talk about ESSA, Every Student  
19 Succeeds Act. I put up this quote from the *Wall Street*  
20 *Journal* that it represents the largest evolution of Federal  
21 control to the States in a quarter-century.

22           I'm a cautious person so I'm going to add the  
23 question mark because the devil is always in the details.  
24 And the details, some of them will still be forthcoming  
25 because part of this bill will involve the regulatory

1 process that the U.S. Department of Education will be  
2 beginning actually next week formally, and they've already  
3 put out some guidance for States more generally on the  
4 bill. We'll talk about that when I talk about the  
5 timeline.

6           So what is in the bill for States? Well, the  
7 first thing that I want to highlight because it's something  
8 of particular importance to you all is the provision for  
9 State legislative involvement. The issue is that when the  
10 underlying law, the Elementary and Secondary Education  
11 passed, it was 1965. And if you can think about what was  
12 happening in 1965 it's probably not all that surprising  
13 that the bill that was written kind of put into place  
14 Congress was not particularly trusting of State  
15 policymakers at that point, and it put into law a sort of  
16 relationship between the U.S. Department and State  
17 Departments of Education that's bypassed, we think, some  
18 State policymakers, including State Legislatures.

19           Now, we insisted that State Legislatures be  
20 included in the list of those who have to be consulted  
21 before the Title I plan is submitted by your State  
22 Department of Education to the Federal department. And I  
23 think this is important not just because I think it kind of  
24 corrects an imbalance but because education is different  
25 than it was in 1965.

1           We don't talk about it as really being the  
2 purview of one department anymore. We talk about early  
3 education, K-12, career and technical education,  
4 postsecondary, all those different parts. And from my  
5 perspective the Legislature is the appropriate place to  
6 bring those folks together, exercise some of your oversight  
7 and budget authority to kind of look at how education is  
8 going broadly in your State. We don't in any way want to  
9 intrude on the expertise of the State Departments of  
10 Education, but we do think this consultation is extremely  
11 important.

12           So I was very interested in what was being said  
13 about the legislation because I think that process will  
14 look different in different States depending on your State  
15 governance structure. And also it is important to remember  
16 that some of those conversations have already been going  
17 on, and some of that's been taking place in some States.  
18 We just want to make sure it happens everywhere.

19           There are a lot of prohibitions on the authority  
20 of the U.S. Secretary of Education and on the Federal  
21 department. In the bill, it seems to me that almost any  
22 place that they could say "the Secretary shall not" they  
23 did. The Secretary is forbidden explicitly from  
24 incentivizing any particular set of standards, any  
25 particular kind of assessment or assessment items. All of

1 those kinds of things are written in several places in the  
2 bill.

3           Finally, there's a new approach to accountability  
4 for your schools and students, and I think this is an  
5 exciting place to focus. We got rid of adequately yearly  
6 progress, which most policymakers said was not an adequate  
7 metric for really determining what needed to be happening  
8 in your schools. And we've come into a new format of State  
9 accountability plans, and I'll be talking more about them  
10 later.

11           I wanted to briefly talk about the timeline.  
12 I've already mentioned that. Waivers under ESSA  
13 flexibility from the U.S. Department of Education go away  
14 as of August 1st of this year. New State plans will be  
15 developed, and full implementation will be in the 2017-2018  
16 school year. Congress did write a transition time into  
17 this law. I simply would want to point out that, yes, it's  
18 true you don't necessarily have to change everything or  
19 make huge changes this session.

20           There's a rulemaking process going on. But you  
21 certainly want to be in a position where early in 2017 you  
22 have some idea of what the State plan is going to be when  
23 it's submitted to the U.S. Department because the  
24 Department can take a number of months to review that plan.  
25 It may not need all that time, but it has up to four

1 months. And you want to be sure that your plan is in place  
2 so that schools can make decisions before the school year  
3 2017-2018. So that would be what I would say to focus on  
4 in implementation.

5           As I've said, we've already had some guidance  
6 from U.S. Department of Education. Back in December they  
7 said they were going to conduct negotiated rulemaking on  
8 some provisions of ESSA, and that in fact will begin next  
9 week for the first of those meetings. What happens in  
10 negotiated rulemaking is that they bring stakeholders  
11 together, and they have selected a group of people to come  
12 and meet, a lot of representation from educators and  
13 administrators and superintendents. And they get those  
14 people together to take a look at various issues, too, that  
15 are going to be dealt with.

16           Specifically in this part of the negotiated  
17 rulemaking process are supplement not supplant requirements  
18 and assessments because there are a number of questions  
19 about assessments that we have from the law. So this will  
20 be a very important process. After they get consensus,  
21 they will put that out for comment. If they don't get a  
22 consensus, then the U.S. Department of Education will  
23 conduct its normal rulemaking process where it puts out a  
24 rule and then you comment. So all that's going on.

25           I really think that this year is kind of a dry

1 run as you start talking about what you're going to do as  
2 you transition from current provisions of law to the new  
3 law. There are some things that you're going to have to  
4 keep doing. For instance, you wouldn't want to probably  
5 change your way that you're reporting data because you're  
6 also going to have to report data on those same groups of  
7 students when you transition to ESSA.

8           Let me talk about the State Accountability  
9 Systems. This is something a little bit different. We've  
10 talked about adequate yearly progress under No Child Left  
11 Behind as the single metric. What Congress did in writing  
12 this law was say that States should design accountability  
13 systems. These are State-designed. They did give you  
14 required indicators, but there is some flexibility in how  
15 you weigh those and how you put those together.

16           The first one is academic achievement as measured  
17 by proficiency on annual assessments. I'm going to be  
18 talking a fair amount about assessments because it's been  
19 such a hot topic in almost every Legislature across the  
20 States, and I'm sure you've got a lot of questions about  
21 that. But that measure is in there, as well as another  
22 measure of academic achievement. This could be a way of  
23 looking at student growth, how well students are moving  
24 from a certain level to another proficiency level.

25           The progress of English language learners, a



1 critical group, and one of the things that I want to say  
2 about this is that they come under these accountability  
3 provisions that are found in Title I and will be part of  
4 your submission of your Title I plan. And that was a  
5 deliberate way -- the program itself for English language  
6 learners is still reauthorized in Title III of the bill,  
7 but they put the accountability systems -- they put the  
8 English language learner measure there as a way to show  
9 that they really thought States should focus on this group.

10           A measure of school quality and student success,  
11 this could look very different depending on what you want  
12 to do. You might decide that what you want to know is how  
13 Pennsylvania parents feel about their children's schools  
14 and collect that information by a survey. You might want  
15 to look at how well schools are doing giving students  
16 access to higher-level courses. There are a lot of ways  
17 you can look at that rate. And for high schools, of  
18 course, the graduation rate, the cohort graduation rate  
19 that you've been reporting.

20           And the other part that I'll go ahead and  
21 mention, you will have to incorporate test participation in  
22 your accountability system, but it's not one of the  
23 indicators, so it's kind of in this little bit unusual  
24 place. And I think what we can say about that is look at  
25 what the current Department of Education has said it will

1 continue to look at since that participation rate is a  
2 requirement both under the old law and the new law.

3           So let me talk about assessments. The first  
4 thing I want to say is that, yes, the No Child Left Behind  
5 schedule of federally required Statewide assessments  
6 continues. This is testing every student in grades three  
7 through eight in reading and in math and once in high  
8 school, and doing grade-span testing in science.

9           So you might be asking yourself, well, we're  
10 hearing a lot about over-testing from teachers and from  
11 parents and students and did Congress not even have that  
12 discussion? Well, actually they did. I heard a lot of  
13 discussion about that. Congress made the decision in  
14 writing this law that it really was not so much the  
15 federally required tests that were causing the issue, it  
16 was the additional test that States, local education  
17 authorities, sometimes schools, sometimes even individual  
18 teachers were giving because of the anxiety about meeting  
19 the requirements of No Child Left Behind. So there was  
20 some sense in Congress, and we'll have to see how this  
21 plays out, that if the test was not the single measure of  
22 how your schools and students were doing be less high  
23 stakes.

24           The 95 percent participation rates remains.  
25 There is a statement about State laws that allow parents to

1 opt out, that the Federal law can't supersede that.  
2 However, a provision that was discussed in Congress and did  
3 not make it into the bill would have allowed if a parent  
4 opts their child out, they would not have been counted in  
5 the participation rate requirement. That's not true. If  
6 those students opt out, they are counted against your 95  
7 percent participation rate.

8           So I can almost feel you asking, Lee, how much  
9 flexibility is that really? And it is difficult because  
10 that high level of participation rate, there are actually  
11 some really good psychometrician discussion to this and why  
12 it's necessary for comparability and for validity to get 95  
13 percent participation rate. What I can say is the current  
14 department has made it quite clear, starting with letters  
15 that went out in December where States didn't meet the rate  
16 on the '14/'15 test to say we expect you to do better in  
17 the test this current school year, and we hope you are  
18 working with your schools to ensure that they are making  
19 the 95 percent participation rate.

20           And ultimately, you know, the U.S. Department of  
21 Education, if you fail to meet that rate, because you would  
22 not be meeting a requirement of your Title I plan, you  
23 could endanger your Title I administrative funding perhaps.  
24 You could eventually get your Title I grant put on high-  
25 risk status. None of those things have happened yet, and

1 I'm pretty sure the Department doesn't want to actually  
2 have to take money from a program intended to serve  
3 disadvantaged students. But it is there, and they take  
4 this requirement seriously.

5           So I think that this discussion and issue of  
6 whether we're testing too much or just the right amount is  
7 certainly not going to go away. The 1 percent cap on  
8 alternative assessments for students with the most severe  
9 cognitive disabilities remains. One thing that may be  
10 helpful to you is that you get Federal assessment funding  
11 to develop your assessments. There is dedicated funding  
12 within that now that the Department will give to States  
13 that apply to use it this way to audit their State  
14 assessments, every assessment that you're giving in a  
15 State, take a look at what grades you're giving it, where  
16 there might be over-testing, and that may be a useful tool  
17 for States to pursue if they haven't already sought to use  
18 their funds this way.

19           Probably as importantly, Congress did allow some  
20 new flexibility in assessment design. And I should step  
21 back one minute, generally defining assessments because I'm  
22 getting asked this question. They did recognize that your  
23 Statewide assessments could be computer-based and have some  
24 flexibility there, but the real flexibility is in two new  
25 ways of going about designing assessments or using

1 assessments. The first is that States can allow their  
2 local education authority to use a nationally recognized  
3 test instead of a high school assessment. The thinking was  
4 there are already States that have work toward getting  
5 waivers and authority to use SAT or ACT for their high  
6 school students and that this could be one way of giving  
7 flexibility.

8 States will have to decide what tests meet that  
9 criteria and whether they are well designed to do what the  
10 State wants to do in their accountability system, which is  
11 a little bit of a question because most of these nationally  
12 recognized assessments, ACT and SAT, are actually designed  
13 to look at how well students are expected to do in college  
14 courses, not necessarily whether they have met the academic  
15 standards that you have in place, but certainly something  
16 many States are interested in.

17 There is a pilot, the Innovative Assessment  
18 Flexibility Pilot, for a total of seven States right now.  
19 It can grow subsequently, but initially, it would be seven  
20 States, and those seven could either be individual, in  
21 consortium of up to four States, and they would be allowed  
22 to pilot some really innovative assessments like  
23 competency-based, instruction-embedded tests, assessments  
24 that are done during the year that result in a cumulative  
25 score, different ways of looking at how you assess

1 students. It would be possible for a State to allow some  
2 local education authorities the ability to pilot some of  
3 these assessments.

4           This is all designed it -- the example that's  
5 usually held up is New Hampshire, and in New Hampshire a  
6 group of four districts working to have competency-based  
7 assessments that can be used along with the required high  
8 school assessments and eventually perhaps replace those.  
9 But it took New Hampshire a long time to develop that  
10 program, three or four years. There's a lot of technical  
11 expertise that will probably be needed to come up with  
12 something that can meet the criteria for reliability and  
13 flexibility, but it is something that I think is going to  
14 prove more and more important perhaps as the initial group  
15 of States steps up and tries some things that we'll see  
16 this become more and more important.

17           So overall, I think we're still going to have a  
18 conversation about assessments. I don't expect that to  
19 change. I think for the last two sessions it's been the  
20 number one education-related topic in State Legislatures in  
21 terms of legislation, and I think now people are trying to  
22 look at the new Federal law and see how that will impact  
23 what they're doing.

24           But the conversation won't go away. I think part  
25 of this is the need to -- you know, one thing that there

1 are a lot of people that feel that an important part of  
2 NCLB was simply that we were testing students and we did  
3 know how almost all students were doing, 95 percent of them  
4 were doing, so it's important.

5 But if you're testing, you obviously should be  
6 testing for a purpose. You're seeing how your schools are  
7 doing and then your accountability plan will identify  
8 schools that require intervention. Now, this is a really  
9 interesting part of the law to me, one that I think is  
10 going to really need State time and attention because right  
11 now, under these Federal School Improvement Grants that you  
12 can use to go into schools that are low performing, you  
13 have four required Federal interventions to turn around  
14 those schools. And we've argued for a long time that  
15 that's kind of a limited quiver of arrows when you have a  
16 problem that may look very different in one school  
17 district, in another school district in one State, in  
18 another State. So States are going to design these  
19 interventions.

20 Now, the Federal law requires that you intervene,  
21 although it doesn't say how, in schools that are in the  
22 bottom percent performing, any high school that fails to  
23 graduate a third or more of its students, and any school in  
24 which a subgroup of students is consistently  
25 underperforming. And we'll talk a little more about

1 subgroups of students.

2 But what I wanted to say is the intervention  
3 looks a little bit differently depending on what category  
4 you are identifying the school. The schools that are in  
5 the bottom 5 percent are having trouble with graduating a  
6 sufficient number of their students, a high school that's  
7 not doing that. The local education authority will design  
8 an evidence-based plan which isn't defined in the law -- I  
9 expect that to be a discussion in the rulemaking process --  
10 but an evidence-based plan to improve. States will monitor  
11 that. The expectation is that after four years that if the  
12 school has not made improvement under that process, then  
13 the State would come in and look at some interventions  
14 required for the schools.

15 If the school has a subgroup of students that's  
16 consistently underperforming, what happens is that the  
17 State lets that school know, the school designs an  
18 intervention for those students, it's monitored by the  
19 local education authority, and then the State will step in  
20 again if there's continual struggle.

21 I think it's also important, though, that you  
22 will design the exit criteria from schools that require  
23 intervention. In other words, if the school performs  
24 sufficiently better the next year, they could come off your  
25 list depending on how you design that, which is something



1 that is a little harder under the current law. So I think,  
2 again, this is going to be an area to know exactly what's  
3 going to work and how to best intervene in schools that's  
4 going to need a lot of attention.

5 I want to talk about the subgroups of students.  
6 I think that probably the thing that most people agree that  
7 No Child Left Behind did get right was that we have more  
8 information than we've ever had on how students in various  
9 subgroups were performing, and a lot of times previously  
10 that had been masked by school averages or State averages.  
11 But the ability to look at groups of students and see how  
12 that group in particular was doing is very important, and  
13 there was a strong commitment in Congress on the part of  
14 many of the people writing this bill that this was an  
15 important part of equity and that we needed to preserve it.

16 So basically, you're still going to report this  
17 aggregated data by student subgroup, State, LEA, and school  
18 level. And as I said, you're going to be identifying  
19 schools where subgroups of students are consistently  
20 underperforming. I've listed the subgroups for you, the  
21 current ones: economically disadvantaged students,  
22 students from major racial and ethnic groups, students with  
23 disabilities, English language learners. So you're going  
24 to have this information and you're going to be expected to  
25 look at a situation in which a school has a group of

1 students that's not performing as well as their peers in  
2 that school.

3           One thing, too, the law requires your  
4 accountability plans to set subgroup performance targets,  
5 but this isn't the same as annual measurable objectives  
6 under the current law, and there's not a prescribed penalty  
7 if you don't make those objectives. You just have to write  
8 those into your plan that this is the improvement that we  
9 want to see.

10           I wanted to talk about what Federal support that  
11 the States have for schools and students. First of all,  
12 school improvement funding will be different under the new  
13 law. Your Title I grant, 7 percent of that will be set  
14 aside to do school improvement, and that will be different  
15 from the current school improvement grants, which were  
16 elsewhere in No Child Left Behind. Title I was increased a  
17 bit in the authorization, see what the appropriators do,  
18 same as in State Legislatures. If I mention any amount of  
19 funding, it all does depend on what ultimately gets  
20 appropriated, but the intent is to have that source of  
21 funding to work a little more flexibly.

22           There also are New Student Support and Academic  
23 Enrichment Grants. I think this is another place that you  
24 can look broadly at what you want to do here in  
25 Pennsylvania for your students. If you look at the three

1 purposes of these new grants, they're very broad: provide  
2 all students with access to a well-rounded education,  
3 improve school conditions for student learning, and improve  
4 the use of technology to improve academic achievement and  
5 digital literacy.

6           And I put from our friends at Federal Funds  
7 Information for the States what you would expect to receive  
8 in a fiscal year under this grant: Pennsylvania, almost  
9 \$61 million. Now, we realize broken down by student that's  
10 not going to be a huge amount of money, but what Congress  
11 wanted to do was put together some existing Federal grant  
12 programs that they felt had not been performing well and  
13 take the ones that had some funding with them, put that  
14 together with some additional funding. It's about a \$1.6  
15 billion program if they appropriate all of the money  
16 overall.

17           But they wanted to give these grants as a way of  
18 saying there were a lot of different things that you could  
19 do with them. For instance, under the well-rounded  
20 education part, this could provide art or music or perhaps  
21 other kinds of courses like that, improving school  
22 conditions for student learning. That could be, for  
23 example, school safety, violence prevention, and other  
24 kinds of programs like that. And of course the digital  
25 learning is an important part of education now, and this

1 would provide some funding, although it's designed not to  
2 be all spent on infrastructure.

3           States could use 20 percent of the funds on the  
4 well-rounded use purpose, 20 percent on the school  
5 conditions purpose. The remainder could go for this use of  
6 technology purpose without limit within that on how much  
7 could be used for hardware and software. So again, I think  
8 this might be a place for policymakers to take a look and  
9 say what are some things that we might want to do with this  
10 money.

11           I wanted to touch on some other Title I issues.  
12 Title I portability is not in the bill, but there is a  
13 weighted student funding pilot that would allow some  
14 districts to experiment. Portability, of course, is  
15 allowing the Federal funds to follow the student from  
16 school to school. That was a very popular thing,  
17 particularly in the House of Representatives. The final  
18 bill does not include that, but again, we have this  
19 weighted student funding pilot for districts that could  
20 allow them to experiment with combining their Federal,  
21 State, and local dollars with some hold-harmless for  
22 schools because they didn't want poorly performing schools  
23 to necessarily suffer, but they wanted to see if there was  
24 a more effective way of combining the money.

25           The Title I formula does not change. It will be

1 studied. I already mentioned the accountability provisions  
2 for English language learners.

3 I want to talk about Title II, the Supporting  
4 Effective Instruction title of the bill. This provides the  
5 Federal grant that you use to support your teachers and  
6 school leaders, and of course it's mostly used for  
7 professional development. There was a gradual shift in the  
8 formula, which is now based more on children in poverty and  
9 they have a share of children overall. But this would  
10 increase the percentage that you get based on your share of  
11 the children in poverty versus your number of students  
12 overall.

13 This change is not good for Pennsylvania. You  
14 would actually lose some funding under it. It was one that  
15 Senator Casey had quite a lot to say about when we they  
16 were discussing it. Formula fights are not something that  
17 are pretty. They're very difficult to watch, but they did  
18 put this change in. It is gradual. And the hold-harmless,  
19 which would keep you at a certain amount of funding, will  
20 gradually be eliminated. But Pennsylvania, according to  
21 FFIS, would stand to lose funding overall as this plays  
22 out. So that's something to be aware of.

23 I wanted simply to say that I've spent a lot of  
24 time and I've come to the end of my time talking mostly  
25 about Title I programs, but there's a lot that was

1 reauthorized in this bill. And I'm certainly happy to, you  
2 know, get you more information about these particular  
3 programs and bills. They all had some changes, but I think  
4 perhaps there were no really radical changes, but it's  
5 important to note that they were all reauthorized.

6 Education of migrant children; homeless,  
7 neglected, or delinquent youth programs; English language  
8 learners I've already mentioned; ImpactAid; rural education  
9 grants; I would mention McKinney-Vento for homeless  
10 children and youth; 21st Century Schools, Promise  
11 Neighborhoods, Community Learning Centers, a source of  
12 funding with wraparound services for some students; and the  
13 Federal funding that goes to magnet schools and charter  
14 schools were all reauthorized.

15 And I want to conclude with talking about early  
16 education. There was a lot of interest in what this bill  
17 might or might not have in it for our youngest students,  
18 and Senator Murray is a strong champion in the Senate pre-K  
19 and pre-K funding and other kinds of early education  
20 funding.

21 And what they finally ended up doing was putting  
22 into the law preschool development grants that are like but  
23 not exactly like the current ones administered by the U.S.  
24 Department of Health and Human Services and the Department  
25 of Education. And those are mainly competitive grants to

1 States that want to use the money for, you know, looking at  
2 how they can better, you know, make their whole system of  
3 early education work, everything from, you know, childcare  
4 to preschool and all of that. If you get a grant and then  
5 it's continued, you would be able to use it in the second  
6 year for providing a few more slots. But it's not a full-  
7 fledged pre-K program, and it was kind of interesting to  
8 see the messaging around that. But basically, those grants  
9 are in there.

10 I actually think it's more interesting that there  
11 were a couple of places in the bill where they allow you to  
12 use existing funding for early learners. There are two  
13 literacy grant programs in ESSA. Both can be used to help  
14 children before school age, and there are other permissive  
15 uses of funding for early education, for example, with  
16 English language learners because all policymakers, I  
17 think, agree that the earlier you can start with students  
18 that need to learn English the better, and things like  
19 professional development for early educators. So there are  
20 some permissive uses and clarifications in the bill that  
21 weren't there in the previous law.

22 So I'm going to conclude this overview by giving  
23 you my contact information, also encourage you to visit our  
24 website. We will keep updating that website because as the  
25 Federal Government comes out with guidance or letters or

1 anything of interest, we want to keep that current so that  
2 you have a place to go to find all of that. And I hope you  
3 can take advantage of that and certainly contact me if you,  
4 you know, have questions getting to that material.

5 So with that, I'd like to let the Chairs know I'm  
6 concluding my report and happy to take any questions.

7 HOUSE MAJORITY CHAIRMAN SAYLOR: Senator  
8 Dinniman.

9 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Thank you,  
10 Representative Saylor.

11 A couple of questions if I may. There's no  
12 mention of vocational education and no mention of any  
13 changes in the Perkins Act. Why was that? I mean, we're  
14 talking about people not only being college-ready but being  
15 career-ready, but yet the career-ready part seems to be  
16 left out.

17 MS. POSEY: I understand the question. I will  
18 say that Secretary King, the new -- well, he's going  
19 through the process of being confirmed, he's Acting  
20 Secretary of Education. John King has announced that they  
21 will do a push to get Perkins reauthorized. It's simply a  
22 separate piece of legislation, and I gather the feeling was  
23 let's get, you know, the Elementary and Secondary Education  
24 Act authorized and we'll build on that. But very  
25 definitely there is an interest in Congress in that



1 legislation because they do see the importance of career  
2 and technical education.

3 And, I mean, it should be a fairly bipartisan  
4 one, so I wouldn't expect it to be beyond the bounds of  
5 possibility they could actually get that done this fall  
6 even in a campaign season, so we'll be watching --

7 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: I only  
8 mention that because under new legislation we passed, which  
9 put a moratorium on the Keystone exams, one of the three  
10 things the Department of Education has to help us with or  
11 give us their insight so to speak is the area of vocational  
12 education.

13 Second, the issue of privacy, we see the  
14 requirement still of information being collected, the issue  
15 of if you do embedded type of competency then you're going  
16 to be using more computer type of requirements and exams,  
17 you know, this notion of mass customization of education.  
18 And is there anything different or any changes noted in  
19 privacy?

20 MS. POSEY: Not in ESSA. There was discussion  
21 about whether to make changes in student data privacy in  
22 this bill. I think what has to happen, and there have been  
23 -- we've gotten fairly far down the road in seeing  
24 legislation on reauthorizing the FERPA, the Family  
25 Education Responsibility and Protection Act, which

1 basically is the main source of law in this area, although  
2 there are others, and that's also part of the issue how  
3 those would work. But that would probably be a separate  
4 authorization. I think there were a lot of extremely  
5 technical changes that they needed to make.

6           The one thing that I will say in data collection  
7 is there is the emphasis that when you're breaking down  
8 into student subgroups, if a group would -- you don't have  
9 to do it if it would be identifiable. So if you, say, only  
10 had one or two students in a category, you wouldn't want to  
11 report that because everybody could figure out who that  
12 was. So the end group is still an important issue, and  
13 that is mentioned in the bill, but I think we'll see more  
14 about student data privacy in other legislation.

15           SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Well, the  
16 issue is, as you know, if you're doing the computer-based  
17 programs, and some of those programs deal with career  
18 choices, you know, beyond the reading and the writing, and  
19 they ask you all kinds of questions, including ones about  
20 your family, ones about your own objectives. And if you  
21 look at some of the contracts that are associated with --  
22 that the parents fill out or they just sign because they  
23 assume the school has protected the privacy of the child,  
24 that a family, they're not there.

25           So I think that what you find in many States now

1 based on the feedback we get from parents and one reason  
2 parents opt out and there's no change in the opt-out  
3 criteria that you said is because it's a matter of privacy.

4 MS. POSEY: I would recommend that you might want  
5 to take a look at some of the resources of a data quality  
6 campaign. Are you familiar --

7 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Yes, I am.

8 MS. POSEY: -- with their work on that? They're  
9 continuing to try to provide some expertise and information  
10 about those contracts that you're discussing because  
11 obviously we've come a long way from when everything was in  
12 a filing cabinet to when records are online and who has  
13 responsibility when there are third-party vendors, for  
14 instance, providing supplemental educational services or  
15 academic improvement services that students might do  
16 online. So they're continuing to monitor this. But I  
17 think there's a lot of interest in looking at this. It  
18 just didn't get into this bill, and I do understand the  
19 concerns you've voicing.

20 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Well, the  
21 State has authority in this area as well, I would assume.  
22 I mean, in any program that we approve ultimately that  
23 involves data collecting or the use of curriculum because,  
24 you know, I mean, really, if you look at these contracts  
25 which parents sign automatically, there is no protection

1 really of where that data goes. And once students -- you  
2 almost as soon as you get into the program, you've given up  
3 your rights in terms of privacy because of the lack of  
4 information the parent receive. And when parents have  
5 tried to opt out based on that, that's one of the bases of  
6 your opt-out movement. There's certainly the over-testing  
7 but also this other matter. So I think you're going to see  
8 -- I've already seen at least on the House side -- bills  
9 that have focused in on this.

10           And finally, let me ask this: One of the  
11 difficulties and I'm just trying to understand this is the  
12 Constitution says that education is the authority of the  
13 States, and in our State it even goes further by saying  
14 it's the State Legislature which has that authority. Is  
15 the basis of Federal involvement, then, that you don't get  
16 the money if you don't cooperate with us? I mean, on what  
17 basis so I can more thoroughly understand is Federal  
18 authority in curriculum in what you can do or what you  
19 can't do is this based on? I mean, it's certainly not a  
20 constitutional question.

21           And, I mean, I understood No Child Left Behind.  
22 They got different groups to agree to it through the back  
23 door so to speak with our counsel, chief, State officers,  
24 et cetera. But help me. You're a lawyer. What is the  
25 Federal authority and what is the system of punishment.

1 MS. POSEY: It is a big legal debate, and I will  
2 just say this. It is a condition of accepting the Federal  
3 grants. That's the lever that has been used, and there is  
4 a lot of, you know, difference of opinion on exactly, you  
5 know, what can and should be required, but those are  
6 provisions of grant aid, for instance, that you have. An  
7 accountability system is a provision of getting your Title  
8 I funding.

9 And while overall the funding for the States, you  
10 know, that the Federal Government gives to States is a  
11 relatively small percentage of your Federal budget is an  
12 important one, and most States -- there are States that  
13 have kind of looked at could we just not accept the Federal  
14 dollars? And no State so far has made that choice.

15 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: So we don't  
16 know what the Federal Government would do if that was the  
17 situation?

18 MS. POSEY: Yes. I mean, you know, I'm sure that  
19 they will continue to, you know, work with States. I  
20 should also add I think one of the unknowns right now and  
21 in terms of how the regulatory process will play out and  
22 how the Department will be monitoring States and how well  
23 they do is simply the fact that we're in a presidential  
24 election campaign. There's going to be a new  
25 Administration and a new Secretary of Education.

1           So some of this remains to be seen as to exactly  
2 how it will play out. There could be changes after the  
3 current Department. They should have the regulations that  
4 are part of the negotiated rulemaking done by hopefully in  
5 the fall but we're facing a time of uncertainty with a new  
6 Administration.

7           SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Well,  
8 Mr. Chairman, if I may, just one final thing.

9           The money we're losing, Title II, I'm not as  
10 familiar with Title II. Can you explain exactly what that  
11 loss of about, what was it, \$23 million or something?

12          MS. POSEY: Yes. The money goes -- well, there  
13 are a couple of uses. Some of the money goes for Statewide  
14 activities that you might want to provide, say, technical  
15 assistance, from your State Department. The majority of  
16 that is money that you send out as grants to the local  
17 education authorities. I think it's one of those grants  
18 where, you know, a large percentage of it goes directly out  
19 to the local authorities for their activities involving  
20 this.

21          The overwhelming use is for teacher professional  
22 development. It has been focused on classroom teachers.  
23 One change that was made is that you can use these funds to  
24 help principals get professional development and improve  
25 their capacity to be school leaders. So it has been an

1 important part of funding for activities like that. I know  
2 in different States it looks a little bit different because  
3 you might have different things that you're funding through  
4 it. But overall, it's helped mostly fund professional  
5 development activity.

6 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: So, in  
7 essence, if our level of professional development  
8 activities will have that X amount of less Federal aid and  
9 therefore --

10 MS. POSEY: A part of Federal aid you will be --

11 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: -- it's  
12 another requirement of the States if they want to continue  
13 some of those activities?

14 MS. POSEY: And we're very much aware when you  
15 cut Federal funding that local authorities come to the  
16 State to ask them to make up the difference if they want to  
17 continue doing those activities so --

18 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Thank you.  
19 Thank you. And thank you, Representative Saylor, for your  
20 patience with my questions.

21 HOUSE MAJORITY CHAIRMAN SAYLOR: Representative  
22 Rapp.

23 REPRESENTATIVE RAPP: Thank you, Mr. Chairman.

24 And, thank you, ma'am, for being here. It was  
25 very informative. I appreciate the information you've

1 brought to us today.

2 I'm basically going to follow up with some of the  
3 comments and questions from Senator Dinniman. He's asked a  
4 lot of the same questions, I think, that probably many of  
5 us have. So I will start with the statement of parental  
6 right to opt out of the assessments. That has been very  
7 difficult for parents. I've had many parents contact me  
8 regarding their ability to opt out, and their concern is  
9 the data collection and how that affects them as families  
10 and how it affects them as the government looking into the  
11 family.

12 So do you see a set criteria? Right now, most  
13 families believe it's purely based on their religious  
14 beliefs. And I know that some school districts are asking  
15 them to go into detail what beliefs those are in detail and  
16 how it is in opposition to their child taking that testing.  
17 So can you explain a little bit more or do you have any  
18 more insight on that statement of parental right to opt out  
19 at this point in time?

20 MS. POSEY: Yes. What the provision of law says  
21 is actually rather simple for the purpose of the bullet  
22 point. I probably had to oversimplify it. But basically,  
23 what it says is that the Federal law shouldn't supersede  
24 State laws enacted to allow parental opt-out, which is  
25 something, of course, many States have looked at. But what



1 it doesn't do is then relieve the State of the  
2 responsibility for meeting the 95 percent requirement.

3           So when I've talked about this in other States,  
4 basically the same issues, you're going to have parents who  
5 want to exercise their right as parents, recognized by the  
6 State, to opt their students out. I think it will be  
7 incumbent upon probably State policymakers, but I think  
8 it's really going to happen at the local level to look at,  
9 you know, how they're responding to those concerns, whether  
10 they're telling parents exactly how the data will be used.

11           I think some of this could be simply if schools  
12 are more proactive in educating parents in how they're  
13 going to use the data, I mean, and, you know, having that  
14 discussion. We need to know how your child is doing so we  
15 can do X, Y, or Z. It's obviously not going to convince,  
16 you know, every parent by any means, but I think in terms  
17 of the Federal requirement, I think in terms of meeting  
18 that rate what the Department has asked States that aren't  
19 meeting that, do you have a plan, have you worked with  
20 parents, have you worked with schools to address this  
21 issue, to address their concerns, to really look at this.  
22 And I think if the State can show that they are doing that,  
23 that is a big step up, that they kind of have a proactive  
24 plan for looking at this.

25           The other thing that I think is kind of hard

1 about that question is that what you typically see is that  
2 it varies a lot. I mean, you can understand you get pretty  
3 good participation rate in the elementary grades, and then  
4 in high school, you know, it doesn't even matter about  
5 parents opting out. The kids, you know, don't want to take  
6 the test necessarily. So I think that's going to be  
7 another place to look at what groups of students or what  
8 grades of students are you having the issues in  
9 participation.

10 REPRESENTATIVE RAPP: Thank you. And I just have  
11 one more question.

12 We've had a lot of discussion and hearings and  
13 concerns about career and technical students and having  
14 them be forced basically as a requirement to take the high-  
15 stakes testing. Will this legislation, will this law allow  
16 Pennsylvania to look at other assessments for students who  
17 want to go in the career and technical field? Will we have  
18 the ability to offer them different assessments than the  
19 academic assessments?

20 MS. POSEY: The way I read the law, you couldn't  
21 offer different assessments without seeking that waiver or  
22 flexibility authority because what the bill requires is  
23 that you're testing all students with the same test. What  
24 you do have to do and whatever test that you decide to do,  
25 it has to be aligned with entrance requirements either into

1 credit-bearing courses at the post-secondary level or your  
2 career and technical standards.

3           So I think what hasn't been resolved is the  
4 debate in how do we see if we're assessing maybe not just  
5 career or, you know, post-secondary readiness in general  
6 but career and college readiness. And the bill doesn't  
7 really direct that. I think the issue is that you still  
8 have to have a single Statewide assessment, and that's  
9 going to be the issue.

10           Now, the flexibility waiver might enable you to  
11 look at that and experiment with different ways, and so I  
12 certainly think that that could be very important in that.  
13 But overall, all it says is that the test should be aligned  
14 to both those kinds of standards if you have them so --

15           REPRESENTATIVE RAPP: Thank you. Thank you,  
16 Mr. Chairman.

17           HOUSE MAJORITY CHAIRMAN SAYLOR: Thank you.  
18 Representative Truitt.

19           REPRESENTATIVE TRUITT: Thank you, Mr. Chairman.

20           I have to admit Senator Dinniman stole most of my  
21 questions so --

22           SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Sorry about  
23 that.

24           REPRESENTATIVE TRUITT: -- we'll have to talk  
25 about that later but --

1                   SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Well, we  
2 come from the same district so --

3                   REPRESENTATIVE TRUITT: Yes. Lee, thanks for  
4 your testimony today. As I was listening to this, I was  
5 going down the same road in my head about, you know, what  
6 if we just ignored all this stuff, right? There's a fairly  
7 valid argument that the Federal Government doesn't have the  
8 constitutional authority to impose any of this on us, and  
9 every time they make a change, it's like the tail wagging  
10 the dog. Now we have to change State policy to match  
11 Federal policy. Why don't we just ignore it? What are the  
12 potential risks involved?

13                   And you alluded to that a little bit before but I  
14 just wonder if you could go into a little more depth. I  
15 mean, how much money do you think we're putting at risk,  
16 and would they really do it? Would the Federal Government  
17 really withhold the money? Because I'm thinking to myself  
18 -- there's a quote, and I can't remember who said it  
19 originally, somebody said to me, you know, it's immoral to  
20 let somebody bribe you but it's stupid to let them bribe  
21 you with your own money. It drives me crazy that, you  
22 know, the Federal Government taxes us and then offers us  
23 the opportunity to get our own money back if we'll do  
24 things that we don't necessarily want to do.

25                   So what can you tell me about the likelihood of

1       them actually withholding our money? And you said no State  
2       has ever tried this. Have they ever tried it partially?

3               MS. POSEY: No State has ever turned down -- the  
4       closest that we came actually -- and this is doing some  
5       research from before, before I was even at NCSL really, but  
6       after No Child Left Behind within a couple of years the  
7       State of Utah went pretty far down the road looking at  
8       that.

9               And I just would simply say that when they  
10       basically confronted -- when a Republican State confronted  
11       a Republican Administration at that time with this, they  
12       said they would not only lose their Title I funding but  
13       could lose all the grants that are based on Title I  
14       formulas and everything. And it was quite a sizeable  
15       amount of money and they ended up smoothing it over, and  
16       Utah went on and the Federal Government kind of backed down  
17       a little. Whether that could happen, you're asking me to  
18       read the minds of two different Administrations, and I'm  
19       not sure that I can.

20               I will say I think that there will be a very  
21       intensive process of working with any State that is even  
22       thinking about that or is not meeting the requirements in a  
23       way that could put their funding in judgment. I mean, as I  
24       said, the major part of this is Title I funding, and I  
25       simply can't believe that the U.S. Department of Education

1 really ultimately wants to take it away, but nobody's  
2 tested it that far. That's about the furthest we've gone  
3 is a discussion with Utah.

4 REPRESENTATIVE TRUITT: I may be confusing some  
5 other issue, but are there any court challenges in process  
6 right now or anything that you're aware of?

7 MS. POSEY: I'm sorry, what?

8 REPRESENTATIVE TRUITT: Are there any court  
9 challenges to the Federal --

10 MS. POSEY: No, there were some considered after  
11 No Child Left Behind, I know, but I don't -- if anything  
12 was initiated, I don't believe -- I'd be happy to do a  
13 little research on that because I know we were tracking  
14 that with the work of our task forces that reported out in  
15 2005 and 2010, and I'd be happy to kind of look and see  
16 from that perspective.

17 But there were some lawsuits discussed. Some of  
18 them may have been initiated but not gone forward, you  
19 know, the court didn't move them forward. So I can see  
20 what I can find out about that for you.

21 REPRESENTATIVE TRUITT: Great. Thank you. I  
22 appreciate that.

23 Thank you, Mr. Chairman.

24 HOUSE MAJORITY CHAIRMAN SAYLOR: You're welcome.  
25 Representative Hill.

1           REPRESENTATIVE PHILLIPS-HILL: Good morning.

2 Thank you so much for being here, Ms. Posey.

3           I'm going to go back and follow up on a question  
4 that Representative Rapp asked and take a little bit of a  
5 twist on it. You discussed the new flexibility that we'll  
6 have in assessment design, how we may use nationally  
7 recognized high school assessments, and you spoke about  
8 this new flexibility, computer-based, these pilot programs.  
9 Are these same sort of provisions, the flexibility,  
10 computer-based, these pilot programs, will they be  
11 available for States as well at the K-8 level?

12           MS. POSEY: Will they be available at the State  
13 level?

14           REPRESENTATIVE PHILLIPS-HILL: Right. Will that  
15 money come down to us to, you know --

16           MS. POSEY: Oh, the --

17           REPRESENTATIVE PHILLIPS-HILL: -- to do some  
18 innovation with regard to flexibility in assessment --

19           MS. POSEY: Yes.

20           REPRESENTATIVE PHILLIPS-HILL: -- for our K-8  
21 students? Because most of what you discussed was with  
22 regard to high school assessments.

23           MS. POSEY: Right. Right. And --

24           REPRESENTATIVE PHILLIPS-HILL: And many of the  
25 concerns that we hear are not only data privacy issues,

1 oftentimes we hear from parents at testing fatigue. We  
2 hear from educators that the information that they've  
3 received back is really not useful to improve instruction  
4 in the classroom. So we're looking at the possibility of  
5 how can we do assessments better, recognizing the need for  
6 accountability but also for providing educators with better  
7 feedback, as well as parents.

8 MS. POSEY: Yes. And you do have a source of  
9 Federal funding, State assessment grants that come down to  
10 you to use for looking at your assessments for improving  
11 the assessments. That would be the money that if you were  
12 part of the pilot or simply wanted to start work toward  
13 looking at that, that you could use. That would be funding  
14 you would choose how to use that. That's not a set-aside.  
15 The audit of your assessment program, that is from a set-  
16 aside that is set aside to go to States that particularly  
17 want to do that. So that doesn't come out of your normal  
18 pot of assessment funding. The rest of it would, and those  
19 are resources that are intended to help States do that.

20 I will say, for instance, something like the New  
21 Hampshire project that everyone loves to talk about is  
22 time- and expertise-intensive, but they did find a way to  
23 do it as a small State. And so I think that's kind of  
24 interesting.

25 But, yes, there is Federal funding available to



1 you to look at this. It's just how you choose to use it  
2 would be the issue.

3 REPRESENTATIVE PHILLIPS-HILL: Thank you. Thank  
4 you very much.

5 HOUSE MAJORITY CHAIRMAN SAYLOR: Representative  
6 Tallman.

7 REPRESENTATIVE TALLMAN: Thank you, Mr. Chairman.  
8 Thank you, Lee, for being here. And I could ask questions  
9 from Pennsylvania core standards to pedagogy because  
10 they're all impacted here with this new legislation.

11 I'm going to go back to the assessment issue.  
12 And we keep falling behind, the United States. We keep  
13 going down. I think we're at 32 now compared to other  
14 countries. But when you look at Sweden and Hong Kong,  
15 which are one and two, they don't even test 50 percent of  
16 their students. Why is Congress requiring us 95 percent,  
17 and then when these things come out, Pennsylvania's, you  
18 know, school systems are failing when -- many of these --  
19 you know, Representative Kathy Rapp, Senator Dinniman, all  
20 these questions are all why do we make career people? I  
21 mean, why do we have to have a 90 -- what does that -- it  
22 doesn't make sense to me when you compare it to other  
23 countries that seem to do very -- well, because they only  
24 test 50 percent of their students.

25 MS. POSEY: Well, and I will agree with you

1 because NCSL has had a project looking at international  
2 comparisons in education that has focused on high-  
3 performing countries and what they are doing, and they do  
4 assess very differently than we do here in the U.S. There  
5 are fewer tests. They are higher stakes. They're usually  
6 given at a transition time, say, from elementary to middle  
7 or middle to high school or whether you're going -- what  
8 kind of post-secondary education you're going to. And  
9 they're taken very seriously there. But no, they don't do  
10 the continual testing that is part of No Child Left Behind.

11 I think it emerged from an attempt to want to --  
12 two things: I think, one, it was an equity issue. We  
13 wanted to know how all of our kids are doing. I think the  
14 other reason that the focus in No Child Left Behind that  
15 somewhat continued maybe with a little additional  
16 flexibility under ESSA is that the whole idea of  
17 comparability, I mean, I think they really wanted to be  
18 able to know how a student that moved from place to place  
19 was doing, how they performed on the test, and that was  
20 part of testing so broadly and making it a Statewide  
21 assessment.

22 And, you know, I think to be able to break it  
23 down into the subgroups, they wanted to be sure that they  
24 were testing a large number of students. But, yes, it's  
25 simply out there that, yes, it's a very different picture

1 than when you look at some of the countries that perform  
2 better than we do on something like the PISA, the Program  
3 for International Student Assessment, that looks at 15-  
4 year-olds. They test quite differently than we do. And I  
5 think a lot of that is because of what they're doing  
6 differently in the classrooms. A lot of what we pull out  
7 and do as individual testing is the teachers are kind of  
8 doing it as they go along and assessing the students  
9 without a formal assessment looking at their work.

10 REPRESENTATIVE TALLMAN: Thank you.

11 MS. POSEY: So that's all I can respond. I mean,  
12 you know, but I --

13 REPRESENTATIVE TALLMAN: Thank you. And look for  
14 a multi-question email from me.

15 HOUSE MAJORITY CHAIRMAN SAYLOR: Thank you,  
16 Representative Tallman.

17 Representative Gillen.

18 REPRESENTATIVE GILLEN: Thank you very much for  
19 your testimony.

20 Would you say that some commentators or critics  
21 have said that ESSA cements common core? How would you  
22 respond to that?

23 MS. POSEY: Well, I think it is about as clear as  
24 Congress could make it in the bill that they did not intend  
25 for States to have to adopt common core, for there to be

1 any incentivizing of adopting common core, which was an  
2 issue around Race to the Top and the waivers, and that in  
3 no way could the Secretary, you know, interfere with that  
4 process in the States. That's also deliberately stated.

5 But the underlying -- I will have to say the  
6 underlying thing in the bill, I talked about the  
7 accountability system, so it is based on having what is  
8 called in the bill challenging academic standards, and  
9 these standards are the basis for, you know, the  
10 assessments and all that. So each State does have to have  
11 standards. It just is very clear that if you want to have  
12 Pennsylvania standards, you can have Pennsylvania  
13 standards. You do not have to adopt the common core. So  
14 that's about the best way I can answer that question.

15 REPRESENTATIVE GILLEN: Just a broader question  
16 relative to the Federal involvement with education.  
17 Probably 1965 is the seminal year in some people's minds  
18 with Linda Baines Johnson. We've gone through different  
19 phases, the most recent of which was No Child Left Behind.  
20 And in 2001 there was a lot of bipartisan fanfare, and if  
21 you look at the Senate and the House votes in terms of the  
22 percentage of Senators and House Members federally that  
23 voted for ESSA versus No Child Left Behind very similar  
24 bipartisan, both sides of the aisle. I don't think Ted  
25 Kennedy and George W. Bush agreed on the time of day very

1 often, but they were working together on this.

2 But then you fast-forward a few years and you  
3 have significant percentages of Congress and United States  
4 Senators then turn around and they're opposed to something  
5 some of them vociferously advocated for in a prior  
6 generation. What hope have we of this that we won't have  
7 the same situation occurring? And if you could look  
8 prophetically down the highway 10, 15, 20 years, what  
9 culpability prospectively might we find in this legislation  
10 fast-forwarding?

11 MS. POSEY: That is a very interesting question,  
12 and it's one I actually, you know, have been thinking about  
13 and talking to policymakers and people that I work with in  
14 Washington. I think what made the change happen this time  
15 was probably the outcry and concern about both the issue of  
16 testing and whether we were over-testing and the concern  
17 about -- so over-testing was probably one of the biggest  
18 single things that made people realize that we had to do  
19 something, as well as the impossibility of the 100 percent  
20 proficiency requirement under AYP. So those things kind of  
21 came together this time.

22 I guess what I'm concerned about happening four  
23 years down the road -- this bill is authorized for four  
24 years -- if States have done, in the Federal Government's  
25 opinion, nothing to move the dial in any way, which I think

1 there's a lot of frustration that there's some improvement  
2 but not a lot since we put No Child Left Behind into place,  
3 Congress could look at this again very differently and  
4 maybe try to go back that role of more Federal prescription  
5 and, you know, requirements, and a more punitive bill.

6           So I think what could make it different is if,  
7 you know, States figured out where the flexibility is and  
8 really used it in a way that drove the indicators in their  
9 States and they could show that they had a process of  
10 improvement in place that was working and was going to  
11 work. That would probably prevent that.

12           But I agree with you. These things come around.  
13 You can almost see pendulums swing back and forth. And we  
14 could very well be back in four years in a situation like  
15 that in which No Child Left Behind was adopted largely  
16 because, I think, the frustration that we hadn't had enough  
17 improvement in education, and I think that's a real  
18 concern. So I think that's a very thoughtful question, and  
19 that's about the best answer I can give.

20           REPRESENTATIVE GILLEN: Thank you. Thank you,  
21 Mr. Chairman.

22           HOUSE MAJORITY CHAIRMAN SAYLOR: Representative  
23 English.

24           REPRESENTATIVE ENGLISH: Thank you, Mr. Chair.  
25 Thank you, Ms. Posey, for your information. I'm

1 glad you're from the South and went slow. I'm glad you're  
2 not from New York.

3           And there are regional differences, and I'm  
4 curious. I appreciate your honesty in your answers. I  
5 just want to -- how stable -- you kind of answered it. How  
6 stable is this? You know, I sit here in my short tenure  
7 and go, boy, we had a lot of hearings on a lot of things  
8 that I think are not as important anymore and a lot of time  
9 and effort. And I'm sure the people that are out there  
10 listening that have invested their lives and their careers,  
11 how this pendulum just keeps changing. Is it for the  
12 better or for the worse? So I just wanted to get your  
13 insight how stable this is. Is it, in your opinion,  
14 helpful or harmful to Pennsylvania? And where are we in  
15 relation to other States as far as a pendulum shift? You  
16 know, is it good and we're moving somewhere better or are  
17 we just taking it and --

18           MS. POSEY: Well, I'm not really the expert on  
19 State policy like my colleagues in our Denver program are  
20 that could probably do a comparison for you in what various  
21 of your education policies look like in terms of other  
22 States.

23           But I will say this more broadly when you're  
24 asking kind of where the pendulum is, you know, I think  
25 that there's been a lot of reflection and a lot of thinking

1 about what we can do better in the education system. I  
2 think that we had to push the pendulum on the Federal part  
3 a little bit at least back toward the flexibility that we  
4 needed to do that. I don't think it goes all the way. I  
5 think it could possibly, as I indicated. You know, there's  
6 a concern it could sweep back if there isn't improvement.  
7 But I think we have moved in a direction that should allow  
8 you to recognize differences here in Pennsylvania and other  
9 States and focus on those things. I tried to highlight a  
10 couple of places where I think you could make some  
11 decisions that this is what we think Pennsylvania students  
12 need to focus on the most.

13           And one of the things that is not really in the  
14 purview -- I mean, there's Federal funding for professional  
15 development, but I certainly think that anything States are  
16 doing around the teaching profession is important work  
17 right now because we know that that is the single factor in  
18 student achievement, the single school-related factor that  
19 is the predominant measure of student achievement, how well  
20 the teacher is doing instructing those students. And so I  
21 think there is an important place that we're seeing a lot  
22 of State activity and I think we'll continue to see more.

23           But that's something that is really even more in  
24 State purview then, as I said, there's, you know, important  
25 Federal funding for professional development and everything



1 but, you know, States set the standards for the teachers,  
2 and I think that's going to be an important area.

3 REPRESENTATIVE ENGLISH: And would you agree that  
4 Congress was at least being thoughtful looking forward  
5 recognizing there'll be a change of Administration and a  
6 potential Secretary of Education?

7 MS. POSEY: I can tell you, having sat in on  
8 conversations with the Hill staff for the Members that are  
9 the most involved in this on the Senate and the House side,  
10 they are very carefully monitoring everything the  
11 Department of Education is doing or saying. They'll be  
12 watching this negotiated rulemaking process. I can tell  
13 you they are quite prepared to stand up and say, no, this  
14 is what Congressional intent was, to give States  
15 flexibility in this area.

16 I think as Congress looks at what the Federal  
17 Government tries to regulate in terms of what the  
18 Department is coming out with, there will definitely be  
19 cases where they will say we didn't define that because we  
20 didn't think that we should and we wanted States to make  
21 this choice. So I think they're very much engaged in a way  
22 that maybe I haven't seen them on some legislation once  
23 it's been passed and watching the regulatory and the  
24 implementation of this bill.

25 REPRESENTATIVE ENGLISH: Thank you, Ms. Posey.

1 Thank you, Mr. Chairman.

2 HOUSE MAJORITY CHAIRMAN SAYLOR: Senator Smucker.

3 SENATE MAJORITY CHAIRMAN SMUCKER: Thank you.

4 I'd like to just follow up to some degree the question that  
5 was just asked and specifically as the law relates to  
6 Pennsylvania and some of the issues that we've been  
7 discussing here.

8 But let me start with you briefly mentioned a  
9 timeline, but could you give us just a little more of an  
10 outline of what you think are some important dates that we  
11 ought to be thinking about as the Legislature in terms of  
12 the application of the law.

13 MS. POSEY: Let me first state that we're trying  
14 -- some of this is not knowing exactly when the regulatory  
15 -- you know, the speed at which the regulatory process will  
16 work, depending on whether the negotiated rule-makers come  
17 up with something or whether the Department then writes the  
18 regulation.

19 But we're hoping that you will have some  
20 regulation on some important parts of this bill in the fall  
21 that you would be able in early 2017, as I said, to be  
22 submitting your State plan because it could take, as I  
23 said, the Department up to four months to review it. So  
24 you want to be sure that you're not, say -- I think the  
25 deadline is actually in July for the Title I, but you would

1 want to have it submitted well before then so it will be  
2 reviewed and ready to go before the school year.

3           So I guess what I've been telling -- actually,  
4 it's a question I get a lot from people that are in State  
5 Departments. So what I've been saying is if I needed a  
6 statutory change, I would be preparing for it and talking  
7 about it now because you wouldn't want to in, say, next  
8 February if you're trying to get your plan out, you  
9 wouldn't want to be coming to the Legislature at that point  
10 and saying we need this bill passed because that's just not  
11 going to work with the legislative calendar.

12           I can tell you one of the difficulties is that,  
13 you know, getting simply -- I'm glad Congress wrote as much  
14 of a transition period as they did. Sixteen months doesn't  
15 sound like a lot, but oftentimes they completely ignore the  
16 fact that sometimes there's a legislative calendar to  
17 consider.

18           So as I said, we'll try to put together a little  
19 something more specific with maybe some of the important  
20 dates. But what I can say is that you certainly would want  
21 to be well on the road by next legislative session.

22           SENATE MAJORITY CHAIRMAN SMUCKER: Yes. Thank  
23 you. And Senator Dinniman brought up earlier the role of  
24 the Legislature. And we know it can be different in  
25 different States. But as you get around to various States,

1 can you talk a little bit about where you've seen an  
2 effective process in regards to the interaction with the  
3 State and the Department, and what recommendations would  
4 you have for us as the Legislature?

5 MS. POSEY: Well, I mean, I just want to start by  
6 saying we, of course, didn't define what that consultation  
7 should look like. We didn't push to have that defined in  
8 the law, and we wouldn't for obvious reasons, that, as I  
9 said, it would look a little different. And when I talked  
10 to States, they're looking at different things, I think you  
11 have a little bit different situation here in Pennsylvania  
12 because you have some very clear language in your  
13 Constitution about whose authority is what.

14 But I will say that one way that I've heard about  
15 this being accomplished, one State is looking at -- it had  
16 education roundtables that were the highest level  
17 policymakers, you know, the superintendent, representatives  
18 of the Legislature, representatives from the Governor's  
19 office coming together to look at the Title I plan and to  
20 discuss these issues. I could see that being an example of  
21 a process that would be, I think, consultative and would  
22 allow for what the law says.

23 So that's probably the most specific example, but  
24 I know that there are other Legislatures that are working  
25 on, you know, maybe putting something in a bill. And we'll

1 be watching what's happening here in Pennsylvania frankly.  
2 And I'd love to collect some of those examples and make  
3 those available.

4 SENATE MAJORITY CHAIRMAN SMUCKER: Thank you.  
5 One of the areas that we have been focused on in  
6 Pennsylvania over the past few years is our educator  
7 evaluation system. Could you speak to any provisions  
8 within the ESSA that would affect the State's educator  
9 evaluation system?

10 MS. POSEY: I'm sorry, the teacher evaluation?

11 SENATE MAJORITY CHAIRMAN SMUCKER: Teacher  
12 evaluations.

13 MS. POSEY: Yes, okay. Well, basically, because  
14 the waivers go away, the requirements around teacher  
15 evaluations built on substantial student growth go away. A  
16 lot of States had made a great deal of progress in working  
17 toward teacher evaluations. I think that's going to  
18 perhaps slow down because you won't have the Federal  
19 timelines that seemed -- you know, were really causing a  
20 problems, States wanting to implement it thoughtfully. I  
21 think there will continue to be State activity in the area.  
22 It just won't be driven by requirements of ESSA.

23 Where it will come into play -- because I wanted  
24 to mention this -- the definition of highly qualified  
25 teacher that was in No Child Left Behind is not included in

1 ESSA. I think that's partly a recognition that we kind of  
2 need to move beyond looking at simply credentialing and  
3 looking at a teacher's effectiveness in the classroom.

4           Where it is going to be driven at least for the  
5 remainder of the current Administration is your teacher  
6 equity plans. Those are plans -- they've called them out  
7 separately. Each State has already submitted a plan with  
8 how it's going to ensure that the most disadvantaged  
9 students are not taught by, say, the newest teachers or  
10 less-credentialed teachers disproportionately from other  
11 students. And under those plans you're supposed to be  
12 looking at how you have effective educators for all groups  
13 of students, particularly recognizing that disadvantaged  
14 students need to have excellent instruction.

15           I think that's going to kind of be -- those  
16 plans, which the Department has asked States to revise,  
17 they kind of just sat there and nothing much happened, I  
18 think that those plans are going to be a serious way of  
19 looking at what is an effective teacher. They don't define  
20 that, and so there's not that requirement. I just think  
21 having to be able to show that students are being taught by  
22 effective teachers, you've got to know what an effective  
23 teacher is.

24           So that's the place that I see in terms of any  
25 impact currently because it didn't happen with this bill.

1 It is a Title I provision, but it wasn't really discussed  
2 as part of the Title I plans in this bill. But it is  
3 connected as part of that, the teacher equity plans. Those  
4 plans just are reviewed by a specific part of U.S.  
5 Department of Education, the Office of Civil Rights there.

6 SENATE MAJORITY CHAIRMAN SMUCKER: Yes. We have  
7 had discussions over the last year or so in regards to the  
8 achievement gap that we see and specifically focusing on  
9 the bottom 5 percent schools in terms of performance. And  
10 I know accountability specifically for that group is part  
11 of ESSA. Could you expand on what guidelines are included  
12 with ESSA in terms of that accountability?

13 MS. POSEY: On the 5 percent, yes. I'm trying to  
14 think of what specifically I could add that would be useful  
15 here. I mean, I think it was written to ensure that the  
16 group of schools that were consistently underperforming  
17 would be recognized, that you at least -- and I should say  
18 that. You at least had to recognize the lowest 5 percent  
19 and require some intervention in those schools. So I think  
20 there's where the requirement came from and how that's  
21 going to be exactly implemented, there's a lot there.  
22 There is a place where in terms of what the States decide  
23 you're going to do is up to the States, and so I think  
24 that's an area to be partly determined, and it will also be  
25 one we'll be watching to see what sorts of guidelines if

1 any the Department will want to place around that.

2 I think it's pretty clear that it was intended to  
3 be very flexible and allow you -- simply giving you some  
4 direction kind of as a guardrail of, you know, where you  
5 need to focus so --

6 SENATE MAJORITY CHAIRMAN SMUCKER: Thank you.

7 HOUSE MAJORITY CHAIRMAN SAYLOR: Ms. Posey, I  
8 want to thank you for coming.

9 The only thing I have I guess is a statement and  
10 any comments you may have on it is one of the things that  
11 we've talked about, opt-out here today, what I've taken  
12 notice to in talking to parents across the State and emails  
13 I've gotten, a lot of the opt-outs haven't been about  
14 religion although that's been the reason they've given for  
15 opt-out has been the length of test, the fact that there  
16 are no consequences for their students or benefits to their  
17 children taking the test.

18 I mean, these tests are 12 hours long for a  
19 student who's eight years old in third grade and so on and  
20 so forth, fourth grade, and I think that has a lot of  
21 parents concerned. The stress that it is causing on these  
22 kids, I think, is not a healthy thing, and I don't think  
23 it's a good thing. I personally am a believer that if you  
24 can't test a child in four hours on their abilities, you're  
25 not very smart. And the only people who are winning right



1 now in this whole testing issue are testing companies, not  
2 children, not teachers, not parents, and not taxpayers.

3 Are there any other States that have tests that  
4 are shorter than Pennsylvania is currently using in our  
5 PSSAs of less than 12 hours that you know of?

6 MS. POSEY: Not offhand. Because obviously most  
7 States have been involved in PARCC and Smarter Balanced so  
8 we've got those. There are some other tests. I would be  
9 happy -- we are looking at the assessment system in each  
10 State, and I'd be happy to get you that information and see  
11 where they stack up relatively in terms of who's doing what  
12 and how long it tests.

13 There is a paper recently out from Fordham that  
14 looks at the specific tests and how they are aligned with  
15 standards, but it focuses on that, not necessarily on the  
16 amount of time. It looks at the quality of the test items  
17 and how well they match to a State's standards. But I  
18 don't think they've evaluated or compared the length of  
19 testing on that. But I'll get some information for you on  
20 that.

21 HOUSE MAJORITY CHAIRMAN SAYLOR: Good. You know,  
22 it's interesting here in Pennsylvania -- I don't know about  
23 other States -- but our colleges and our universities are  
24 complaining that our students going to the colleges,  
25 university, community colleges aren't prepared. They're

1 not learning the basics. So it seems to me like the  
2 testing is not aligned to what the colleges really need in  
3 it.

4           You know, that's where I think the concern I have  
5 is that it seems like either -- I don't know who's  
6 designing the test. It surely isn't teachers and  
7 principals and superintendents, as well as people who are  
8 trying to get these students to know the basics in English  
9 and math and so forth.

10           So it's interesting, I think, when I talk to  
11 these individuals who are doing the testing, they're  
12 talking about they have no input. Teachers are having no  
13 input, superintendents, principals are having no input. So  
14 I'm not sure how these tests are being designed, but I also  
15 know that one of the things with No Child Left Behind has  
16 been that, again, we've seen no improvements. In  
17 Pennsylvania, our lowest-performing school districts  
18 haven't changed at all, the Yorks, the Chester Uplands, the  
19 Philadelphia school systems just have not improved because  
20 nobody is holding them accountable for their failures, nor  
21 making improvements that are quick enough.

22           I mean, I've just seen this weekend a story in  
23 the York newspaper saying York is making progress, but it  
24 still doesn't have curriculum after three years. It's  
25 amazing how easy it is to design curriculum when you have

1 500 school districts that you can't write curriculum and  
2 that children who are suffering. The poorest of the poor  
3 are without real good sense of direction. And it's a shame  
4 for the teachers that we don't.

5 So I'm hoping that ESSA will give us a better  
6 direction for the States, but hopefully, we as a State will  
7 take it more upon our responsibility to truly hold school  
8 boards and superintendents more accountable for failing our  
9 students.

10 Thank you for your testimony today.

11 Senator Dinniman? Okay. Senator Dinniman, go  
12 ahead.

13 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: One  
14 question of whether this is acceptable or not acceptable in  
15 ESSA: The original proposal for assessment, which goes  
16 back to the time of Senator Piccola, myself, and others and  
17 -- well, you were here even longer than I, Representative  
18 Saylor -- is this: that we wanted to take a system of  
19 assessment and break it down into units, okay, and that the  
20 students would be tested on each unit so that we could  
21 immediately then -- say it's algebra I, we could  
22 immediately give them the guidance they need. And then add  
23 up all those units with whatever test is given in the  
24 classroom anyway as a final.

25 Now, we realize that that would be used for the

1 class grade, et cetera, but at the same time, we felt that  
2 we could set a cutoff in terms of that test so that we  
3 could compare algebra I for each student. Is there  
4 anything in that system that would not be acceptable under  
5 ESSA?

6 The reason I ask is because, as several  
7 Representatives made the point, teachers don't get the  
8 feedback when they need it. And, you know, our curriculum  
9 was broken into modules anyway, and if a teacher, as part  
10 of her classroom instruction, can test each module, it's  
11 not obsessive testing. It fits into the curriculum. Then  
12 you add it up at the end and you have another test. Is  
13 there anything you know of in your interpretation that  
14 would make this impossible?

15 MS. POSEY: No. I think if you were using  
16 formative testing, going along through the system and  
17 coming up with a cumulative score, which is what you're  
18 talking about, I think that would be permissible. The  
19 issue that might be difficult is if you were not giving how  
20 that would work in terms of are you giving all students the  
21 same part because you're talking about giving them  
22 different sections.

23 That's a place that I would think you would  
24 probably want to actually have your State Department or  
25 inquire of the Department because I don't necessarily think

1 you would have to have one of the pilots to do that, one of  
2 the flexibility pilots because this might be something that  
3 is a simple waiver or something that you simply might have  
4 to spell out in your State plan how exactly it will work to  
5 the satisfaction of the peer-review process, which looks at  
6 your assessments and sees whether they're valid and  
7 reliable.

8 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: The only  
9 part that remains is every teacher is doing this anyway,  
10 and to require that gives the immediate assistance on the  
11 very basics that Representative Saylor told. In other  
12 words, in any course if I don't know unit module 3 of  
13 algebra I, I'm not going to do well on 4, 5, and 6.

14 MS. POSEY: Right.

15 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: But if I  
16 get that immediate feedback at the time -- and this was the  
17 original proposal of six, seven years ago, which we got  
18 everyone to buy into. And you could give the same final  
19 exam at the end --

20 MS. POSEY: Right.

21 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: -- and add  
22 it, you know --

23 MS. POSEY: Well, and that might be -- if you're  
24 giving the same final exam, that could be, but I think --

25 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: But that

1 would be a percentage --

2 MS. POSEY: But, I mean, that is part of what  
3 some of the discussion about assessment was. The current  
4 formats, you know, you give a test, you get results back,  
5 kids are out of your class. I mean --

6 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Right.

7 MS. POSEY: -- that doesn't help anybody.

8 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: No, and you  
9 need immediately. If I'm studying something and I don't  
10 understand it, I need that immediate feedback. But this is  
11 something for us to look into further. It was a plan that  
12 we got everyone to buy into, the principals, the school  
13 boards, the education association, and then in a prior  
14 Administration they went a different route. And you used  
15 the term graduation tests in here. Now, is the requirement  
16 that you can't graduate without passing that test? Because  
17 that never was in No Child Left Behind. There is no  
18 graduation -- there's no test that you have to pass in  
19 order to graduate.

20 MS. POSEY: You have to get -- the assessment in  
21 -- yes. Grade-span testing that it -- yes.

22 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: It's an  
23 assessment. It's not a graduation requirement?

24 MS. POSEY: Right. Right. Exactly. And they're  
25 different, and, you know, they could be very different

1 things because whether you're looking at what the student  
2 is going to do next or whether -- which the assessments are  
3 supposed to measure how well they're performing based on  
4 your academic standards that you've set, which could be two  
5 different things even.

6 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: But the  
7 school district still has the ability to make its own local  
8 decision on graduation?

9 MS. POSEY: Oh, yes. Yes.

10 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: And so  
11 the --

12 MS. POSEY: Absolutely.

13 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: -- tests  
14 are simply an assessment, not a requirement --

15 MS. POSEY: Something else, yes.

16 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: -- for  
17 graduation?

18 MS. POSEY: Right.

19 SENATE DEMOCRATIC CHAIRMAN DINNIMAN: Thank you  
20 so much. And thank you, both Chairmen.

21 HOUSE MAJORITY CHAIRMAN SAYLOR: Thank you,  
22 Ms. Posey.

23 MS. POSEY: Thank you.

24 HOUSE MAJORITY CHAIRMAN SAYLOR: I appreciate  
25 your time. Have safe travels back home. Our next hearing

1 will be with Secretary Rivera on April 12th if you want to  
2 make note of that.

3 And at this point the hearing is adjourned.

4

5 (The hearing concluded at 12:15 p.m.)



1                   I hereby certify that the foregoing proceedings  
2 are a true and accurate transcription produced from audio  
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