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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

August 4, 2014

The Honorable Arne Duncan
U.S. Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan:

We write to express concern and request information about the U.S. Department of Education's recent decision to base determinations of a state's programmatic compliance with the *Individuals with Disabilities Education Act* (IDEA) in part on the performance and participation rate of students with disabilities on the National Assessment of Educational Progress (NAEP).

Federal law contains a number of general limitations on the federal government's involvement in decisions concerning academic standards and curriculum. For example, *20 USC § 1232a* prohibits any department, agency, officer, or employee of the United States from exercising "any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system."

In addition, the authorizing statute for NAEP (*20 U.S.C. §9622*) specifies that "Any assessment authorized under this section shall not be used by an agent or agents of the Federal Government to establish, require, or influence the standards, assessments, curriculum, including lesson plans, textbooks, or classroom materials, or instructional practices of States or local educational agencies."

The changes spelled out in your "Results-Driven Accountability" framework clearly amount to Federal influence on the standards and assessments states and school districts use to direct the educational program of students with disabilities and would give the Federal Government authority to use student proficiency as measured by the NAEP to evaluate and either reward or sanction school districts. This is clear influence and coercion, if not direct control. It is troubling that the Department made unilateral changes to the IDEA compliance framework without seeking legislative approval, disregarded Congressional intent, and appears to have violated the clear letter of the law.

To better understand your rationale for these changes, please provide a detailed response to the following questions:

1. Please provide the specific statutory authority for each indicator under your Results-Driven Accountability framework.

2. With respect to the NAEP Statute (*20 U.S.C. §9622*):

- Please explain how each indicator that uses NAEP does not violate the following general list of prohibited activities? “In general—The use of assessment items and data on any assessment authorized under this section by an agent or agents of the Federal Government to rank, compare, or otherwise evaluate individual students or teachers, or to provide rewards or sanctions for individual students, teachers, schools or local educational agencies is prohibited.”
- Please explain how each indicator that uses NAEP does not violate the following special rule? “Any assessment authorized under this section shall not be used by an agent or agents of the Federal Government to establish, require, or influence the standards, assessments, curriculum, including lesson plans, textbooks, or classroom materials, or instructional practices of States or local educational agencies.”

3. One of the purposes of NAEP was to provide a common metric for comparing student performance across states in a low-stakes environment free of Federal mandates. Why do you believe it is appropriate to make NAEP into a high-stakes assessment?

4. We have been told that stakeholders were not informed about what the final scoring matrix would look like until the state determinations were issued. If this is accurate, please explain the rationale for not providing an opportunity for stakeholders and the public to provide feedback on the final indicators and scoring matrix?

5. A state’s determination could significantly impact the amount of Federal funds they receive in future years. Considering that the cycle for most indicators require one year or two years of prior data to make a determination, why do you believe that it is fair to change the Department’s compliance metrics without appropriate notice?

6. How do you believe these changes will impact state determinations of whether local education agencies are in compliance with IDEA requirements?

7. How is the Department ensuring that NAEP results are representative of all IDEA-eligible students?

8. How is the Department ensuring the accommodations NAEP uses for their national assessments yield valid and reliable results for students with disabilities?

9. How are you taking into account NAEP’s confidence interval when determining a state’s score in your scoring matrix?

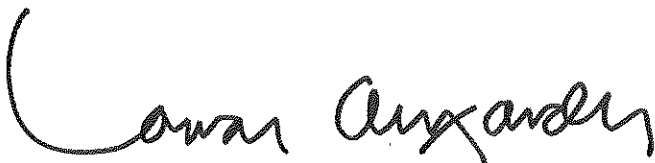
10. Please identify the source of funding and authority to use funds for your \$50 million technical assistance center.

11. The determination letters sent by the Director of the Office of Special Education Programs indicate there may be more changes to the Results-Driven Accountability framework. Will states be given advanced notice of the specific details of any future changes?

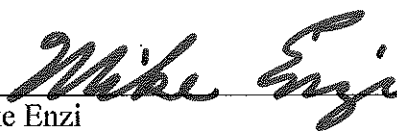
We share your belief that every child, regardless of income, race, background, or disability can succeed if provided the opportunity to learn. We also understand the Department's desire to move toward an accountability framework for students with disabilities that emphasizes outcomes rather than process and paperwork compliance. However, one-size-fits-all Federal mandates, standards, and assessments are not the solution. Any changes to the existing framework must comport to the letter of the law and cannot be made by administrative fiat.

Thank you for your careful consideration of this important matter and we look forward to your detailed response.

Sincerely,



Lamar Alexander
Ranking Member



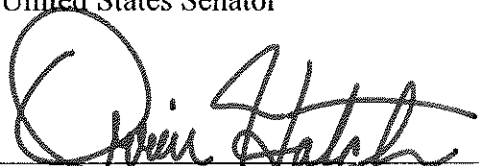
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United States Senator



Richard Burr
United States Senator



Johnny Isakson
United States Senator



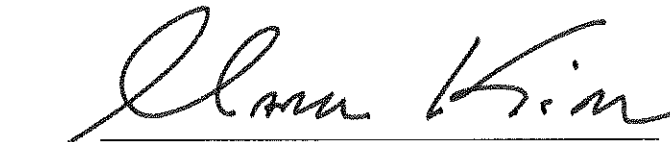
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