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MEMORANDUM

TO: **Interested Parties**
FROM: **Penn Hill Group**
DATE: **January 22, 2015**
SUBJECT: **Senate HELP Committee NCLB Hearing on Testing and Accountability**

Senate Health, Education, Labor and Pensions Committee

[\[List of Committee Members\]](#)

“Fixing No Child Left Behind: Testing and Accountability”

Overview:

On January 21, 2015 the Senate Health, Education, Labor and Pensions (HELP) Committee held the first of a series of hearings regarding the reauthorization of the Elementary and Secondary Education Act (ESEA), focusing on the subjects of testing and accountability.

[\[Webcast of the hearing\]](#)

Key Issues Discussed:

1. Witnesses and senators discussed how much flexibility states should have in creating assessment systems without sacrificing accountability. They varied in their support for larger or smaller state and local roles in accountability systems, in their support for annual grade-level or grade-span assessments, and in the extent to which standardized tests promote or inhibit learning opportunities.
2. Witnesses and senators discussed creating accountability systems that hold schools accountable for narrowing achievement gaps for all students, especially low-income students, students of color, students with disabilities, and English language learners (ELLs). A few Senators focused on questions of the cap for the number of students with disabilities who are classified as severely disabled and thus eligible for an alternative assessment.
3. Witnesses and senators discussed information on and opinions about the number of administered annual tests and over-testing concerns. They noted a lack of data on the number of tests required at the state and local levels and whether or not these exist because of the high stakes attached to federally-mandated assessments. Sen. Baldwin noted she has introduced the SMART Act, which would support state and local audits of assessments.

Witnesses:

- **Marty West**, Associate Professor of Education, Harvard Graduate School of Education
- **Paul Leather**, Deputy Commissioner, New Hampshire Department of Education
- **Tom Boasberg**, Superintendent, Denver Public Schools
- **Jia Lee**, Fourth- and Fifth-Grade Special Education Teacher, Earth School, New York
- **Wade Henderson**, President and CEO, Leadership Conference on Civil and Human Rights and the Leadership Conference Education Fund
- **Stephen Lazar**, Eleventh-Grade U.S. History and English Teacher, Harvest Collegiate High School, New York

Opening Statements:

Chairman Lamar Alexander (R-TN) opened with an overview of the committee's schedule, which begins with fixing the No Child Left Behind (NCLB) Act of 2001, the most recent reauthorization of ESEA. He referenced his draft ESEA discussion bill released earlier this January, which he hopes to have on the floor by the end of February. Second, he said, the committee will focus on the reauthorization of the Higher Education Act (HEA), during which it will discuss deregulating higher education, looking at accreditation, and making processes, like filling out student aid forms, simple and more effective. He said he has formed a task force on deregulation with Sens. Barbara Mikulski (D-MD), Richard Burr (R-NC) and Michael Bennet (D-CO) that will be the subject of a hearing in February. Next, he said, the committee will focus on Obamacare (the Affordable Care Act) and 21st century cures. The committee, he noted, will also discuss the President's major announcements regarding community college and early childhood education.

Sen. Alexander said NCLB has become unworkable because, under current law, almost all schools are labeled failing. Furthermore, he said, the U.S. Department of Education's (ED's) ESEA Flexibility waivers allow the Secretary of Education to tell states what their academic standards are, how to measure those standards, what constitutes failure, what the consequences of failure are, how to fix low-performing schools, and how to evaluate teachers, thus allowing ED to become a national school board.

Sen. Alexander said the federal requirement that states administer 17 standardized tests with high-stakes consequences is at the center of the ESEA reauthorization debate, with questions such as (1) are there too many tests?; (2) are they the right tests?; (3) are the stakes for failing too high?; and (4) what should the federal government have to do with this? Many states and districts, he noted, require additional tests. He said his working draft includes two options on testing—option one gives states the flexibility to decide what to do about testing, and option two maintains current law regarding testing. Both options, he emphasized, require annual reporting on student achievement disaggregated by subgroups. He reminded the audience that the federal government has limited involvement in K-12 education, providing 10 percent of the K-12 budget, and the real action is in the states. He said that with Washington, DC mandating Common Core and certain types of evaluation, it makes it harder for states to set higher standards and choose how to effectively evaluate teachers. [[Sen. Alexander's full opening statement](#)]

Ranking Member Patty Murray (D-WA) said her committee goals include making college more affordable, reducing the overall burden of student loans, expanding access to early learning, and making sure voices of parents and students are heard in the policy process. Regarding NCLB, she said that the law is broken and virtually everyone agrees it needs to be fixed. She said NCLB set unrealistic goals for schools and failed to give them necessary resources. At the same time, Sen. Murray believes in the importance of measuring students' progress and not ignoring states and schools failing to provide a quality education to all of their students. She noted some successes since NCLB passed in 2001: graduation rates increasing by ten points, regular diploma graduation rates for students with disabilities increasing by more than 12 percent, dropout rates decreasing by more than 17 percent, and achievement gaps declining for African American and Latino students.

Sen. Murray said the federal government has an important and productive role to play in making sure assessments and accountability systems work and in helping parents and communities hold schools accountable. She also believes it would be irresponsible to spend billions in taxpayer dollars without knowing if the law is making a difference in students' lives. She said



she would be concerned with proposals to eliminate annual statewide testing and roll back on accountability. However, she said, states and districts should be encouraged to reduce redundant and low-quality tests. She also thinks the federal government should offer resources for improving professional development and expanding access to high-quality learning opportunities to help struggling schools. In sum, she said, as Congress considers changes to testing and accountability that will give states and districts the flexibility they need, members should not forget obligations to ensure that no kids fall through the cracks.

Testimony:

Marty West called for Congress not to lose sight of the positive aspects of NCLB, especially the requirement that students are tested annually in reading and math in grades 3-8 and once in high school. He said this system has (1) called attention to achievement gaps between students of different race, ethnicity and socioeconomic class across states and within specific schools, (2) has led to a new era of education research, and (3) has made it possible to develop new indicators of a school's performance based on its contribution to student learning. However, he said, because far too many schools were identified as under-performing, the system lost its credibility.

West also noted recent concerns about the amount of time students spend taking standardized tests. He said that there is no systematic data on the amount of time students spend taking these tests or on how much time would be optimal. He cited recent state- and district-level audits suggesting that students spend only about one-to-three percent of the year taking standardized tests, but he said that some schools test far more than this and that too many schools devote excessive time to narrow test preparation activities in an attempt to avoid federally-mandated sanctions. He then cited an Ohio study that found federally-mandated state tests account for less than half of test-taking time, and the rest is devoted to state- and district-mandated tests and new tests for teacher evaluation systems to meet requirements under ESEA Flexibility waivers.

West said that achievement levels are a poor indicator of school quality as they are heavily influenced by factors outside a school's control, and he said that performance measures based on growth and student achievement over time are only possible with annual testing. He noted that eliminating annual testing would also (1) all but eliminate school-level information about the learning of student subgroups, (2) sharply limit information available to parents making choices about the school their child will attend, whether through open enrollment or charter school programs, and (3) prevent policymakers and researchers from evaluating the effectiveness of new education programs. He said his recommendation is to maintain the law's annual testing requirements while restoring to states virtually all decisions about the design of their accountability systems, including how schools and teachers are identified as underperforming and what should be done to improve their performance. [[West's full testimony](#)]

Paul Leather said that New Hampshire is exploring next-generation assessments in coordination with the Council of Chief State School Officers and its priorities for ESEA reauthorization, such as (1) continuing to support annual assessments of student performance, (2) allowing states to base students' annual determinations on a single standardized test or the combined results from a coherent system of assessments, and (3) giving states the space to innovate on assessment and accountability systems through locally-designed assignment systems, which he said is especially important when periods of authorization can last ten years or longer. He described working in collaboration with four New Hampshire school districts to pilot competency-based assessment systems.



Key components of the pilot, he said, include (1) the development of statewide model competencies to describe the knowledge and skills that all students are expected to master; (2) the use of a personalized competency-based approach to instruction, learning assessment and awarding credit; and (3) the use of common and local performance-based assessments of competencies throughout each school year in tangent with grade-span Smarter Balanced assessments of state standards in math and English language arts. Rather than relying on just one state summative assessment to make annual determinations, he said, the pilot combines a series of assessment results throughout the year. He thinks concerns about over-testing are caused by a disconnect between local and state assessments and point to a need to reduce any redundancy between them.

In terms of innovation, Leather described how New Hampshire has been developing the pilot for over three years, starting with professional development to raise the assessment literacy of teachers. He said he applauds Section K of Sen. Alexander's discussion draft, which allows for a locally-designed assessment system in option two; however, he said, he also believes that Congress should establish parameters for local districts, including (1) assurances of technical quality and on the breadth and depth of assessments, (2) the ability to demonstrate a focus on college- and career-ready outcomes, (3) commitments to improving the achievement of educationally-disadvantaged students, and (4) clearly-described internal accountability systems with necessary leadership in place. [[Leather's full testimony](#)]

Tom Boasberg provided an overview of improved graduation rates and dropout rates, including among African American and Latino students, but noted that Denver Public Schools continues to have significant achievement gaps among students of different income, race and ethnicity. The increased positive outcomes, he said, are due to improving district-run schools; opening innovative, new schools led by teachers; and welcoming high-performing charter schools. He believes that annual measures of kids' progress in literacy and math are vital, but there should also be fewer and shorter tests. He said good measures of student progress in math and literacy should be limited to no more than three-to-four hours of combined time per school year, less than half of one percent of students' annual classroom time. He cited Colorado as a state that needs to eliminate non-federally required state tests. New-generation assessments, he said, are improving the understanding of how children are progressing in literacy and math. Transparency and high standards, he said, are vital for students, parents and teachers, particularly for students in poverty and students of color. He said accountability is also vital—not in a punishment sense but to recognize what is not working and make necessary changes. [[Boasberg's full testimony](#)]

Wade Henderson said his testimony speaks for all students, especially students of color, English language learners (ELLs), students with disabilities, and students who are homeless or migrant, in criminal juvenile justice system, or living in foster care. State and local school financing systems, he said, continue to be unfair and inadequate. He referenced a group of more than 20 national organizations that have created a set of principles calling on Congress to maintain and improve strong accountability requirements in ESEA. First, he said, ESEA must continue to require high-quality annual statewide assessments.

Second, he said, statewide accountability systems must expect all students to make enough progress every year so they are on track to graduate from high school college- and career-ready, and support them in doing so. He said states should set annual district and school targets for grade-level achievement, high school graduation, and closing achievement gaps for all students, including accelerated progress for each racial and ethnic group, students with



disabilities, ELLs, and students from low-income families. State should also, he added, evaluate schools and districts on how well they meet these targets.

Third, he said, states and school districts need to improve data collection and reporting to the public on student achievement and gap closing, course completion, graduation rates, per-pupil expenditures, opportunity measures like pre-K and technology, and school climate indicators, including decreases in the use of exclusionary discipline practices, use of police in schools, and student referrals to law enforcement. He said that these data need to be disaggregated and cross-tabulated among all demographic categories. Henderson said he has serious concerns about Sen. Alexander's proposal—generally that the bill “bends over backwards” to accommodate the interests of state and local government entities that have avoided real accountability for their failures. [[Henderson's full testimony](#)]

Jia Lee gave the examples of Microsoft, Expedia, and Adobe Systems as companies that once adopted “stack ranking,” the practice of applying rewards, consequences and rankings based on performance. She said the same business advisors informed many of the country's biggest school districts. In the past few years, she said, many businesses—but not schools—abandoned stack ranking because they do not support collaboration, problem solving and innovation. She said that some schools are increasingly data-driven as opposed to student-driven. Learning environments, she believes, need to value a culture of trust, diversity and autonomy and not a focus on test preparation. She said the focus on testing has taken valuable resources and time away from programming, like instruction in social studies, art, physical education, special education services and ELL programs. She also noted that, last year, over 50 percent of her school's parents opted out of the New York state Common Core assessments. [[Lee's full testimony](#)]

Stephen Lazar said that standardized tests measure the wrong things and that three hours of testing are valued more than a year of learning. He said that even when his students pass these tests, they are not college- and career-ready. He described how his current school is part of the New York Performance Standards Consortium, a group of 40 schools with an alternative model. The consortium, he elaborated, uses a more rigorous assessment system with college-level, performance-based assessments and has higher graduation and success rates. He called for ESEA reauthorization to allow models like the consortium to exist and expand.

Lazar said that ESEA reauthorization should still include disaggregation of student achievement data, but he believes this does not require testing every kid every year. He supports using grade-span testing or using the representational sampling technique of the National Assessment of Educational Progress (NAEP), which he said is universally considered to be the gold standard of educational assessment in the U.S. He said he supports the position of his union, American Federation of Teachers (AFT), which calls for Congress to remove high stakes from mandated tests, limit the number of tests used for accountability purposes, and allow schools to use more sophisticated and useful assessment tools such as performance-based assessments. [[Lazar's full testimony](#)]

Question and Answer:

Sen. Alexander said the Foundation for Excellence in Education in Florida reported that its schools administer between 8 and 200 tests each year in addition to the 17 required by federal law. He asked West if this over-testing is because of state and local decisions, pressures felt by state and local entities to administer additional tests in preparation for the high-stakes federally

mandated testing, or the amount of federally-required tests. He then asked Leather and Boasberg about their state's policies.

West noted that there are not great data on amounts of testing but several recent studies suggest the bulk of testing is not because of federal requirements. However, he said, many state- and local-administered tests are part of the effort to prepare for federal tests that hold so much weight and involve unrealistic expectations.

Leather said New Hampshire only administers the 17 federally-mandated tests as well as some alternatives for students with disabilities and ELLs.

Boasberg said he and other superintendents are encouraging the Colorado state government to not require additional annual testing.

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Sen. Murray said that, since NCLB, achievement gaps have narrowed for black and Latino students in both reading and math, according to the NAEP long-term trend data, and the dropout rates for these students have been cut in half. She asked Henderson to discuss the role of ESEA assessment and accountability provisions in these outcomes and his recommendations for further improvements. She then asked Lazar how his school's high-quality assessments help cater to students' unique needs.

Henderson said the federal government's ESEA requirements have helped create more accountability and have pushed state systems to address the particular needs of poor students, students of color, and students with disabilities. In the absence of those standards, he said, he fears there will be a rollback in the requirements that produced those positive outcomes. For example, he said, states that were granted ESEA waivers, in many instances, found ways to avoid this type of meaningful accountability. Many states, he said, have a history of poor financial equity and commitment to students, and specifically mentioned Kansas—where the Supreme Court ruled its school funding system unconstitutional—and Pennsylvania. He said he hopes there will be restrictions on the casual use of Title I funding for students who are not eligible.

Lazar described his school's robust assessment system, which he said is accessible to a range of learners. He said it informs what happens in classroom and how to professionally develop teachers, and allows the school to judge itself based on how students approach similar tasks later in the year and if they demonstrate improvement.

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Sen. Susan Collins (R-ME) referenced a 2005 task force to evaluate NCLB that explored unintended consequences of the law's annual test requirement, including increased test anxiety among students, loss in teaching time, misinterpretation of schools classified as failing, and the scapegoating of certain subgroups like special education students and ELLs. She said the task force concluded that states need greater flexibility, and it recommended allowing states to measure student progress over grade spans and to track student growth over time. She asked each panelist if he or she believes grade-span testing, which is already used for science, would help resolve over-testing concerns or would result in decreasing accountability.

West said it would difficult to have a fair system of accountability under a grade-span testing regime because it becomes more difficult to look at individuals' progress at a certain point in time. He said it would have a punishing effect on schools serving disadvantaged students.



Leather said consistency is important as well as making sure schools and parents see annual information about their students.

Boasberg said annual measurements are important for seeing individual growth, which is important for both high- and low-achieving students.

Henderson reiterated the importance of annual assessments in determining individual progress. He also brought up types of collateral factors that affect students' performances, such as poverty, lack of effective teachers in high-need schools, and school discipline practices that work against the interests of students.

Lee noted that the question assumes that the tests accurately measure what they purport to measure. She said teachers assess their students every day in multiple ways that are more conducive to complex learning.

Lazar agreed with the need to be focused on student academic growth; however, he thinks learning should drive assessment rather than accountability driving assessment. He does not think federal and state accountability should be attached to yearly tests.

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Sen. Elizabeth Warren (D-WA) said that under the draft Republican ESEA reauthorization proposal, all states would be required to do is submit a plan of promises with no proof that the promises will actually be kept. She added that the proposal would also result in ED losing all meaningful tools to make sure that states follow through. She asked panelists about their confidence that the proposal would hold states accountable.

Boasberg described how Denver looks at multiple measures, such as disaggregated data on student growth, graduation rates, remediation rates in college and parent satisfaction.

Henderson said he does not think Sen. Alexander's proposal holds states accountable and believes it would allow them to repurpose Title I funds and serve students who are not eligible. He referenced a report written by former Secretary of Education Margaret Spellings and released by the George W. Bush Institute that discusses the importance of accountability in education and ensuring that federal money is well spent. Some states, he said, have used waivers to weaken standards.

Sen. Warren said that if states want the flexibility to do whatever they want in this area, they should raise their own taxes for it.

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Sen. Pat Roberts (R-KS) emphasized the Sen. Alexander's proposal is a working draft that he thinks is moving in the right direction. He brought up his concerns with the Administration "sidestepping Congress" through the waiver process and coercing states to implement Common Core. He also mentioned Kansas's statewide commission to develop and implement teacher and principal evaluation. For ESEA reauthorization, he said, he wants to simplify the law without sacrificing accountability and asked the teacher panelists about the best way to do so.

Lee said there should be a system of communication that involves comprehensive assessments and ways of communicating information rather than a single, flawed metric.



Lazar said that there should be better and more diverse assessments, high stakes should be removed from assessments, and accountability should be limited to the use of grade-span assessments or representational sampling.

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Sen. Michael Bennet (D-CO) asked Boasberg to describe how Denver uses student growth measures to drive positive outcomes and inform district policies with respect to choice. He also asked for the distinction between student growth and student status.

Boasberg said that just measuring students' status—whether or not they are proficient or at grade level—means ignoring kids who are well above or well below grade level. Students' status, he said, may not change from one year to the next, but their growth may and is important to track. He gave an example of a student with a high status but low growth level, which indicates his or her learning is stagnant. Measuring and disaggregating growth, he said, also informs the district on what needs to be done differently, thus providing accountability. Parents deserve to see how much their children are growing, especially in a district where parents have school choice. He said growth measures inform district decisions about which charters to authorize and which charters to close.

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Sen. Richard Burr (R-NC) asked panelists if it is more important to know what students know or more important to know that students are learning.

West said that at the school system level, it is more important to know what students are learning because that is what schools have an impact on. What students know at a given point in time, he said, is influenced by other factors and accountability should be for student learning.

Leather said he thinks the two cannot be separated, and it is most important to know that students are ready to make use of learning.

Boasberg said a clear standard of students being college and career ready when graduating from high school is most important. He thinks there should be accountability and transparency around students being prepared to succeed.

Henderson said the question assumes that students begin on an even playing field, but students in poverty, students of color, students with disabilities, and ELLs are often not given resources they need. Only assessments, he said, can demonstrate whether a state has failed to make progress in serving all students. He said when states are given this much deference, they have a history of weakening standards, failing to invest in communities most in need, and reinforcing existing inequalities in how schools are funded.

Lee said she knows many students who are brilliant but poor test takers. These tests, she said, are narrow measures, and there has to be a better way to measure valuable knowledge that is not easily quantifiable.

Lazar said that, like his school's consortium, schools should be held accountable for learning and should hold students accountable for what they know and can do.

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Sen. Al Franken (D-MN) spoke positively of real-time assessments and computer-adaptive tests that allow teachers to use results to inform their instruction. Current assessments, he said,



create a curriculum that focuses on the wrong things—employers want candidates with good critical thinking skills and the ability to work in teams. He asked how to hold schools accountable but also make sure they are creating citizens who can think critically.

Boasberg said it is important to care about growth for all kids and that he is looking forward to next-generation assessments that will be introduced in the spring because they are much more sophisticated and promote complex thinking and problem solving. He also noted that assessments could not measure everything, so it is important to have one statewide assessment, as sophisticated as possible, but also welcome multiple measures. It is not an either/or choice, he said, but it is important to have common statewide measures to see how schools are doing district-to-district and to capture best practices. He added that the statewide test should be short, no more than four hours.

Lazar said developing computer-adaptive assessments that could be used for accountability is possible but would take a lot of time and would be expensive. He said the appropriate role for the federal government is to put resources behind test development and offer schools a range of assessment options to choose from based on their needs.

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Sen. Johnny Isakson (R-GA) asked about whether or not it is possible to have a one-size-fits-all test. He also brought up the subject of the federal government helping schools make sure curriculum and assessments are in line.

Lee said no assessment can fit all students and described her process for diversifying assessments. She said she gets to know her students' abilities and works with parents and others on a team to develop assessments that meet students where they are and move them toward their goals.

Henderson said students, especially students of color, are often misclassified as having emotional disturbance disabilities or being intellectually disabled, which means they are taken out of the mainstream assessments and curriculum. He said that there should be more sophisticated forms of assessment to complement the annual assessment and that certain communities should not be left behind.

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Sen. Tammy Baldwin (D-WI) said she has introduced the SMART Act with Rep. Suzanne Bonamici (D-OR) and Sen. Murray. She said the bill calls for states and districts to audit their assessment systems for the purpose of reducing unnecessary and duplicative tests. She said it has support from the largest teacher union and other reform groups. She asked panelists about the importance of states and districts auditing their assessment systems.

West reiterated that there is little systematic evidence on the number of assessments and often a lot of confusion at the school level about what is being assessed for what purpose. He described frustrations among teachers about a lack of alignment between assessment programs and the schedule for the curriculum they are required to teach. He said more information would be useful but warned against framing it as simply reducing the number of tests. For example, he said, New Hampshire's competency-based pilot, to be effective, may require more frequent testing.

Boasberg said he is advocating that the state reduce the number of its assessments. He cautioned against an environment where teachers, for compliance purposes, have to report every single material they administer that could be classified as a test.

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Sen. Robert Casey (D-PA) noted that there are 6 million students in the country with disabilities and, according to the National Center for Education Statistics (NCES), 90 percent of students with disabilities do not have intellectual or cognitive disabilities that would limit them from taking mainstream annual assessments, which means only 10 percent could be categorized as in need of an alternate test. He asked about Henderson's concern with the draft ESEA proposal on this issue.

Henderson said that even with a cap, schools often use methods to allow more students to be classified as having significant cognitive disabilities so that those schools do not have to be held to rigorous standards for the education of those students. Furthermore, he said, because of budget issues, states like Pennsylvania are choosing not to invest in education, and thus they have to make cuts where voices of the community are the weakest, which is often advocates for students with disabilities.

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Sen. Sheldon Whitehouse (D-RI) said there are two worlds—one of contractors, consultants, academics, experts and officials at federal, state and local levels, and one of principals, classrooms and teachers. The footprint of first world, he said, is becoming way too large in the second world and inhibiting educators' abilities to do their jobs. He said he shares concerns about accountability but is also unimpressed with the Partnership for Assessment of Readiness for College and Careers (PARCC) math and English language arts tests. He said oversight is important but should not be conducted in such a clumsy, overbearing manner. The damage it causes, he said, falls hard on disadvantaged communities as well.

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Sen. Christopher Murphy (D-CT) asked West about what data show about the practice of requiring that the majority of children, except for those with significant cognitive disabilities, take the mainstream annual assessment and what it means for accountability.

West said the vast majority of children with disabilities should be able to reach the same standards on assessments. He said there has to be some form of a cap on the number of students allowed to take alternative assessments, though maybe one percent is not the correct cap. Some schools, he said, will find a way to game the system and reclassify students to exempt them from taking the mainstream assessment. He said that a cap also needs some degree of flexibility to allow for natural variance within certain schools.

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Sen. Murray said she wants to work on a bipartisan basis to move ESEA reauthorization forward.

Sen. Alexander said the next hearing is on Tuesday, January 27 on supporting teachers and school leaders.

