Opening Remarks of the Honorable Marcia L. Fudge
Subcommittee on Early Childhood, Elementary, and Secondary Education
"Supplanting the Law and Local Education Authority through Regulatory Fiat"
Wednesday, September 21, 2016

Remarks as prepared

Thank you, Mr. Chairman. And thanks to our witnesses for appearing before the subcommittee today to discuss the implementation of the Every Student Succeeds Act, a bipartisan law that I believe, if implemented with fidelity, will fulfill both Congressional intent and honor the Elementary and Secondary Education Act's civil rights legacy to promote and protect the right to educational opportunity for our nation's most vulnerable children.

Poverty, especially when highly concentrated, presents unique educational challenges. It takes more money, not less, to provide equitable educational opportunity in high-poverty communities, which is why Congress enacted Title I – to serve as a supplemental funding stream for our nation's neediest schools. Simply put, Title I is Congress' longstanding recognition that equal doesn't mean equitable.

Unfortunately, the intent of Title I has gone unfulfilled in school districts that continue to spend less to educate children in their high-poverty schools than in their lower-poverty schools, perpetuating within-district educational disparities, despite drawing upon dollars from the same tax base.

First adopted by Congress in 1969, the "Supplement not supplant" or "SNS" requirement that Title I funds be supplemental to state and local investment in schools receiving federal dollars is the most important fiscal accountability provision in the entire law. Congress agreed, in ESSA, to amend the provision to no longer allow compliance with SNS to be determined using current-practice cost test demonstrations that have allowed within-district inequities to go unresolved.

Congress did not agree, however, to remove or waive compliance with the SNS requirement. And so, to ensure the integrity of the requirement, the U.S. Department of Education has put forward a proposal to replace the now disallowed cost test demonstrations with a new standard for compliance. One that honors the intent of Congress to allow for greater flexibility in how Title I dollars are spent while also ensuring those dollars are, in fact, supplemental to state and local investment.

According to the proposal, each school district, not the federal government, comes up with its own formula for allocation of state and local funds. If the district's Title I schools are receiving their full share of state and local funds based on the district's own formula, Title I dollars are truly supplemental and the district is fully compliant with federal law. That seems like a reasonable standard to me.

The proposed rule seeks to address, not ignore, the annual underfunding of high-poverty schools in setting forth the standard for compliance. Meeting this new standard for SNS compliance will

be uncomfortable in some school districts. It will likely drive politically hard conversations and newfound accountability for local budgeting processes. And while all of that may be challenging, none of it inherently disqualifies the proposal as inappropriate or illegal.

As part of a larger narrative and attack on the role of the executive branch, colleagues on the others side of the aisle are characterizing the proposal as inappropriate and illegal. Nothing about the proposal "supplants" the law or local authority as the title of this hearing would suggest – unless they're speaking of the local authority to undermine the spirit and intent of Title I by using it to plug budget holes.

Let me be clear: enforcement of the supplement not supplant requirement is the responsibility of Department, and it is my expectation – and the expectation of House Democrats – that the Secretary fulfill his responsibility to set an enforceable standard for the nearly 15,000 school districts across this country. In ESSA, Congress made it very clear that supplement not supplant would remain a requirement. We chose to amend it, not eliminate it.

With the enactment of ESSA we have the opportunity to create a more equitable system of public education. It would be inexcusable for the Secretary to render the supplement not supplant requirement meaningless without a federal standard for compliance and squander that opportunity.

I thank the witnesses for taking the time out of their busy schedules to participate in today's hearing, and look forward to learning about their experiences and recommendations for ensuring a smooth and successful transition to the new law in a way that preserves the critical federal role in promoting educational equity.

Thank you, and I yield back.