

“Frank Brogan to be Assistant Secretary for Elementary and Secondary Education”
Hearing Date: January 25, 2018

Questions for the Record from Senator Elizabeth Warren

1. If confirmed, you will be in a position to influence the U.S. Department of Education’s (“the Department”) annual budget request. The Department’s Fiscal Year 2018 budget proposed cutting more than \$9 billion in federal education dollars, completely eliminating critical programs that help Massachusetts. This budget proposal was roundly rejected by Republicans and Democrats in both chambers of Congress. Do you believe the federal government should be investing more or less in education?

I was not a part of the Fiscal Year 2018 budget, nor the development of the Fiscal Year 2019 budget, thus I cannot comment on the decisions that were made. If confirmed, I look forward to being a part of the conversations related to the best use of federal dollars, including the use of evidence-based decision making to inform choices that are being made.

2. If confirmed, will you do everything in your power to prevent harmful cuts to federal education programs?

If confirmed, I look forward to being a part of the conversations on how to use federal resources to best support States, LEAs, schools, and teachers, to ensure all students have access to a high quality education and the opportunity to succeed.

3. The Department’s Fiscal Year 2018 budget also proposed sending hundreds of millions more dollars to implement school privatization policies, such as private school vouchers.
 - a. Do you believe federal taxpayer dollars should generally stay in public education?
 - b. Should federal taxpayer dollars fund private school vouchers?

I believe all students have the right to a high-quality education and that families should have a range of options to best meet the educational needs of their children irrespective of their zip code. I further believe that taxpayers, whether local, State, or federal, expect their tax dollars to be both administered in accordance with the law, and used to support high-quality educational options for children.

If a federal private school voucher program were to be developed, it would be up to Congress to design the program and establish its parameters, as well as allocate resources for such a program. Should Congress choose to create and fund a federal private school voucher program, I would, if confirmed, faithfully implement the law as written by Congress.

4. You and I both started our careers in public elementary school classrooms. As a former teacher, I believe strongly in the importance of teacher voices in local, state, and federal decision-making.
 - a. Do you agree?

Yes.

- b. What role do you think teachers should play in the creation of state plans, district plans, and school improvement efforts?

I believe that all stakeholders should play a role in informing all levels of the system, including teachers, who will be on the front lines of implementing plans and improvement efforts.

- 5. The Every Student Succeeds Act (ESSA) rightly placed a strong emphasis on the importance of stakeholder engagement throughout the creation, adoption, and implementation of state plans and school improvement efforts. The law requires teachers, paraprofessionals, parents, and community and civil rights organizations, among others, to be consulted as states are drafting their plans. Under Secretary DeVos, however, the ESSA state plan template was amended to remove the requirement that states detail their stakeholder engagement efforts.
 - a. Do you agree that meaningful stakeholder engagement, as outlined in the law, is essential?
 - b. Do you believe that states should detail their stakeholder engagement efforts in state plans? If not, why not?
 - c. How specifically do you intend to hold states accountable for ensuring meaningful stakeholder engagement?

The State Plan template, which States had the option to use, aligns to the requirements in the law. The Secretary has said she will only approve plans that comply with ESSA. To date, approximately 35 plans have been approved. The remaining plans have been submitted. Those plans will be approved if they are in compliance with the requirements of ESSA.

- 6. Secretary DeVos has said that “high-quality virtual charter schools provide valuable options to families, particularly those who live in rural areas where brick-and mortar schools might not have the capacity to provide the range of courses or other educational experiences...”⁷ But according to a 2015 study, academic outcomes in math among students in virtual schools, who receive no in-person instruction, were equal to scores a student who had skipped 180 days of school would receive. Virtual school students’ reading scores exhibited the effect of missing 72 days of school.⁸ Last year, a national study found that two-thirds of full-time virtual schools that have academic ratings received “unacceptable” results. The same report found that the average graduate rate for those schools is less than half of the average rate for public schools in general.⁹
 - a. Given this evidence, if confirmed, will you commit to using your position to encourage states to strengthen, rather than weaken, charter school accountability, particularly among virtual and for-profit charter schools?

⁷ <https://www.npr.org/sections/ed/2017/02/04/513220220/betsy-devos-graduation-rate-mistake>

⁸ https://www.washingtonpost.com/news/answer-sheet/wp/2016/12/14/virtual-school-operator-k12-faces-challenge-from-stockholders-demanding-transparency/?utm_term=.ee2cbda5b171

⁹ <https://www.npr.org/sections/ed/2015/02/02/382167062/virtual-schools-bring-real-concerns-about-quality>

- b. If confirmed, what, if anything, do you plan to do to reign in the excesses of the for-profit, virtual charter sector and prevent more students from being harmed?

I appreciate the results of the study you cited. However, we should be mindful that the study examined results from 2008 to 2013, and I believe that the study and other information made available to school officials and parents are resulting in continual improvements. I agree with the Secretary that high quality virtual charter schools that use high quality teachers can take advantage of the advances of technology and can be used to provide valuable options to families.

If confirmed, I will encourage State and local officials to help strengthen the ability of these schools to provide a high quality education, and if there are excesses that are inconsistent with the law, I will work with the Inspector General and other offices and agencies that may have jurisdiction to enforce the laws in question.

- 7. 76 percent of private schools in the United States are affiliated with a religious group, and more than 80 percent of private school students attend a school with a religious affiliation.¹⁰ Many of these schools include religious instruction in their curricula and require students to attend religious services. And hundreds of these schools receiving taxpayer dollars have reportedly discriminated against vulnerable students, such as LGBTQ students.¹¹
 - a. If confirmed, what specifically will you do to prevent schools that receive federal education dollars, including publicly funded vouchers, from discriminating against LGBTQ students?

Schools that receive federal dollars must comply with federal law. The Office for Civil Rights (OCR) enforces Title IX which prohibits discrimination of all students, including LGBTQ students, on the basis sex. If confirmed, I will work closely with OCR on these issues and support the vigorous enforcement of civil rights laws.

What will you do to prevent private schools that receive federal education dollars from discriminating against students on the bases of race, sex, or disability?

Schools that receive federal financial assistance must comply with federal civil rights laws, including prohibitions under Title IX (sex), and Title VI (race), and discrimination based on disability. These protections are enforced by OCR. If confirmed, I look forward to working closely with OCR to ensure that institutions that receive federal funds comply with these important statutory protections.

¹⁰ <http://www.capenet.org/facts.html>

¹¹ https://www.huffingtonpost.com/entry/discrimination-lgbt-private-religious-schools_us_5a32a45de4b00dbbcb5ba0be

8. Many ESSA plans submitted this year did not clearly describe plans for school improvement, including how states will help and support schools identified for improvement. If confirmed, how will you help states and districts implement evidence-based improvement strategies with proven track records of success?

As you note above, evidence-based interventions must be implemented in the schools that States identify consistent with the statutory requirements for this identification. States and school districts have flexibility to identify evidence-based interventions, as defined in ESSA, to meet the specific needs and contexts of schools and students. States and school districts will be best positioned to craft plans for school improvement that meet the needs of identified schools once those schools are identified. As noted above, the Department has made available a variety of resources to support selection and implementation of evidence-based improvement strategies with proven track records of success and will leverage these resources in supporting States and school districts. To the extent feasible, offices within the Department, such as the Institute of Education Sciences, that develop and publish reports and guides to summarize and provide information on evidence-based interventions will continue to do so and collaborate with program offices that administer formula and discretionary grant programs to take into consideration the needs of States and school districts. Further, offices in the Department that administer programs will continue to communicate with States and school districts to identify needs and provide support.

9. Per the Supreme Court decision *Plyer v. Doe*, schools are expected to serve all children regardless of immigration or citizenship status.¹²
- a. If confirmed, what specifically will you do to ensure the right of all students, including undocumented students, to a public education is protected?

As a result of the Supreme Court's ruling on *Plyler v. Doe* (1982), States and school districts are obligated to enroll students regardless of immigration status and without discrimination on the basis of race, color or national origin. 457 U.S. 202 (1982). *Plyler* makes clear that the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to that student's entitlement to an elementary and secondary public education. If confirmed, I will work closely with OCR, which enforces Title VI of the Civil Rights Act of 1964 to protect every student's right to access his or her education free from discrimination based on race, ethnicity, or national origin, consistent with *Plyler V. Doe*.

10. According to a 2015 study, a 10 percent increase in per-student K-12 spending increased adult wages by 7 percent, an effect that was even larger for low-income students.¹³ Similarly, a 2016 study found that greater state spending on low-income students dramatically improved student learning in reading and math.¹⁴ Unfortunately, Title I schools generally receive less state and local funding than non-Title I schools. That is

¹² <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

¹³ <https://academic.oup.com/qje/article-abstract/131/1/157/2461148?redirectedFrom=fulltext>

¹⁴ <http://www.nber.org/papers/w22011>

why Title I includes a “supplement, not supplant” requirement—a critical civil rights component of the law. Despite the long history of the “supplement not supplant” requirement, however, serious funding inequities remain, not only between districts but also within them. ESSA for the first time contains a statutory directive around how districts must demonstrate compliance with the “supplement, not supplant” provision. ESSA states that districts must use a methodology to allocate state and local funds to each Title I school that ensures each such school receives all the state and local funds it would otherwise receive if it were not a Title I school.

- a. If confirmed, how specifically will you enforce the language in ESSA requiring Title I Part A funds to supplement state and local funds rather than supplant them?
- b. What test will you use to ensure states and districts are complying with this provision in the law and adequately demonstrating compliance?
- c. How will you ensure that Title I funds are truly providing the supplemental supports necessary in high-poverty schools, and not just filling in shortfalls in state and local funding?

I am keenly aware of the longstanding and important fiscal compliance requirements of ESEA through my experiences as a Superintendent of Schools in Martin County and as the Florida State Commissioner of Education, including supplement, not supplant. I particularly appreciate the flexibility that Congress provided in ESSA by moving away from requiring districts to identify each individual cost and service funded with Title I as supplemental, towards a more holistic approach that looks at the overall methodologies by which districts distribute funding. Ultimately, I believe this will ensure federal Title I dollars are truly supplemental, while not discouraging districts from investing in innovative approaches to supporting students in high-poverty schools. However, it would not be appropriate for me to speculate on how I would implement or enforce these requirements until I am confirmed and have an opportunity to consult with the Secretary and staff in the Office of Elementary and Secondary Education.

11. During your confirmation hearing, in response to one of my questions, you unambiguously committed to making sure every state follows the ESSA provision requiring that the performance of all groups of students be included in a state’s accountability system. I appreciate your firm and clear commitment, particularly since the Department has approved state plans—like Florida’s, Maryland’s, and New Mexico’s—that flout this requirement.

- a. If confirmed, will you stop the Department from approving plans that do not meet this essential element of ESSA?

The Secretary has said she will only approve plans that comply with ESSA. To date, approximately 35 plans have been approved having met this requirement. The remaining plans have been submitted. Those plans will be approved if they are in compliance with the requirements of ESSA. Should I be confirmed, I look forward to working with the Secretary on any remaining plans. I commit to you that I would recommend approval of only plans that comply with the law.

12. I fought with Senator Cory Gardner (R-CO) for ESSA's bipartisan data transparency provisions to help us better understand how schools are serving all kids. Because of our amendment, states must provide to the public information required under ESEA section 1111(h)(1)(c) in an easily accessible and user-friendly manner that can be cross-tabulated by student subgroup.¹⁵
- If confirmed, will you ensure that all states comply with this provision in ESSA?
 - Will you commit to providing my office with a state-by-state update of how exactly states are complying with this provision?

If confirmed, I would commit to implementing the laws as authorized by Congress. In addition, I believe strongly in the necessity of giving parents useful, accessible information regarding the performance of their child's school, which the report cards provide. So yes, I commit to helping ensure that all States comply with this provision in ESSA.

However, I believe it would be premature to commit now to a schedule for providing state-by-state updates to your office as I am not yet aware if or when the Department will have this information available. Should I be confirmed, I would be happy to revisit this question.

13. There is an educational achievement gap in this country between white students and students of color. There is also unequal access to educational resources.¹⁶ I believe these gaps in achievement and resources are largely due a history of racial discrimination and unequal access to opportunity in this country.
- Why do you believe that these gaps persist?
 - In your view, what is the federal government's role in closing these gaps?
 - Please describe your view of the federal government's civil rights imperative when it comes to the educational opportunities of students of color.
 - If confirmed, how will you use your position to address these gaps and inequalities?

It is most important for us to discuss how we as a country can help every single child to have equal access to the quality education they deserve. The gaps that may exist and may otherwise persist may have been the product of the narrow thinking in the past--that reform to address gaps well had to be filled with many requirements and prescriptions. In the past efforts, there was not enough flexibility provided to help State and local educators drive innovation and true reform so that every student's learning needs are addressed. The role of the federal government is to help State and local governments facilitate innovation and improvement, and not stand in its way.

Our imperative is to ensure equal access to a quality education for every student, and parents should have the right to have a strong voice in how their child is educated.

¹⁵ ESEA section 1111(g)(2)(N)

¹⁶ <https://nces.ed.gov/nationsreportcard/pubs/studies/2015018.aspx>; <https://www.brookings.edu/articles/unequal-opportunity-race-and-education/>; <http://www.usccr.gov/pubs/2018-01-10-Education-Inequity.pdf>.

Government exists to protect those rights, and make sure that no one is discriminated against in pursuing those rights.

If confirmed I will address these issues by working with parents, students, and State and local leaders to help ensure that everyone has an appropriate opportunity for quality education.

14. In March 2017, Secretary DeVos eliminated a \$12 million voluntary competitive grant program designed to assist school districts attempting to increase socioeconomic diversity in their schools, because, according to the Department, the program was not a good use of taxpayer money.
- Do you agree with Secretary DeVos that this program was a waste of federal tax dollars?
 - Do you believe the federal government has a role to play in fostering and promoting school diversity in our increasingly diverse nation and world?
 - If so, how will you use your position to improve school diversity across the country if you are confirmed?

I cannot comment on decisions the Department made to which I was not a party as I do not have all the relevant facts. What I do know is when the Department makes choices among potential programs for the limited amount of federal funds available, there are often tough choices that have to be made to help ensure that taxpayer funds are spent efficiently and effectively.

Providing all students with meaningful choices to receive high quality education no matter what their economic situation ensures the most appropriate means for diversity that helps all students achieve to their full potential. It is most important for us to discuss how we as a country can help every single child have equal access to the quality education they deserve.

If confirmed, I look forward to improving diversity in a manner that takes into account the interests of all students.

15. Secretary DeVos has been noticeably absent from Congress since her confirmation. Several scheduled hearings and appearances have been postponed or cancelled, and the Secretary has not appeared before the Senate HELP committee since her confirmation hearing.
- How do you plan to communicate with Congress in your role as Assistant Secretary?

If confirmed, I will work with my colleagues in the Office of Legislation and Congressional Affairs in responding to any congressional requests related to the Office of Elementary and Secondary Education.

- Will you commit to substantively responding to inquiries and requests from all committee members, including those in the minority?

If confirmed, I will work with my colleagues in the Office of Legislation and Congressional Affairs to ensure any requests related to the Office of Elementary and Secondary Education from members of the HELP Committee regardless of party or position are responded to in a timely and appropriate manner.

- c. Please discuss your views on the role of Congress in conducting oversight of the Department of Education.

I appreciate and respect the oversight responsibilities of members of Congress and this Committee. If confirmed, I will in my role work with the Office of Legislation and Congressional Affairs to be as responsive as possible to all congressional inquiries in a timely and thoughtful way.

If you have any questions, please contact Josh Delaney in my office at (202) 224-4543.