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## Secretary of Education King off to a disappointing start

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When the Every Student Succeeds Act was enacted last December, many on the right were hugely skeptical. Thoughtful critics like [Neal McCluskey](#) and [Lindsey Burke](#), at places like Cato and the Heritage Foundation, argued that the law gave self-aggrandizing Department of Ed officials far too much room to run. Some of us who supported the law granted the probity of their concerns, but argued that the legislative language was tight enough to reduce the chance for federal mischief. I, for instance, [argued](#) that the law was substantially better than the status quo but that it'd be crucial that the House and Senate keep a careful eye on the executive branch. And the House and Senate education committees have been doing just that.

On that note, we were given some cause for optimism with the departure of former Secretary of Education Arne Duncan. Duncan never seemed to regard laws as much more than an unfortunate nuisance, but Duncan's successor John King had an opportunity to repair some of the damage to legislative-executive relations, and to address some of the deep distrust that Duncan had sowed among Hill Republicans. He started with a strong hand. It was Republican Senator Lamar Alexander, chair of the Senate education committee and the person most responsible for ESSA, who urged President Obama to formally nominate King for the Secretary post and who moved King's nomination with alacrity. During his confirmation hearing, King promised the Senate that he would "abide by the letter of the law."

The problem for King is that what he and his team want to do is specifically prohibited by ESSA. We're not even two months into King's tenure, and his department seems intent to go on trampling the law in order to do whatever the secretary and his team happen to think is the "right" thing to require of the nation's states, systems, and schools. As Politico reported, King [told](#) reporters, "When you look state by state, district by district, you can see these huge gaps in spending between Title I schools and non-Title I schools – even with radically different percentages of students in poverty." Therefore, King wants to require school systems to change the accounting rules for Title I. It's nice that King is passionate about this, but the frustrating reality for bureaucrats is that their job is to execute the law — even when they'd really, really like to change it. And the problem for King is that what he and his team at the department want to do is specifically prohibited by ESSA.

I could try to explain what's going on, but it wouldn't be half as clear as what Senator Alexander had to say about this on Tuesday. So, in the spirit of convenience and clarity, I'll quote Alexander on King's attempt to disregard clear legislative language regarding certain Title I provisions. Alexander explained:

The law specifically says that school districts shall not include teacher pay when they measure spending for purposes of comparability.

This committee has debated several times whether or not teacher pay should be excluded. . . . Ultimately the United States Congress made two decisions about this issue, as reflected in the law we passed:

First, we chose not to change the comparability language in law, so the law still says teacher pay shall not be included:

Second, we added a requirement that school districts report publicly the amount they are spending on each student, including teacher salaries, so that parents and teachers know how much money is being spent . . .

But here's what your department did on April 1 – you tried to do what Congress wouldn't do in Comparability by regulating another separate provision in the law.

In a negotiated rulemaking session, your department proposed a rule that would do exactly what the law says it shall not do—that is, force districts to include teacher salaries in how they measure their state and local spending and require that state and local spending in Title I schools be at least equal to the average spent in non-Title I schools.

. . . I'm not interested in debating today whether what you've proposed is a good idea or a bad one – the plain fact of the matter is that the law specifically says you cannot do it. . . .

According to a *Politico* story published on December 18, the former Secretary of Education said: “Candidly, our lawyers are much smarter than many of the folks who were working on this bill.”

We in Congress were smart enough to anticipate your lawyers' attempts to rewrite the law. . . .

I'll use every power of Congress to make sure the law is implemented the way we wrote it, including our ability to use the appropriations process and to overturn such regulations once they are final.

Thus far, King has seemed unimpressed by Alexander's concern. And why should King care? Why should anyone expect him to swallow his passion and abide by the law, when he believes the law has it wrong?

If you'd like to see education legislation get done, it requires a lot of trust.

Well, let's put it this way. If Donald Trump or Ted Cruz happened to be our next president, and you'd be fine with their appointees making up the law based on their sense of what's right and wrong, then I guess you're free to cheer King on as he does the same. It means throwing in the towel on the whole “rule of law” thing, but at least you're consistent. However, if you think you

might be bothered by a Trump or Cruz appointee taking that path, you might think twice about the safeguards provided by the expectation that bureaucrats are obliged to respect the law.

President Obama and a lot of well-intentioned education advocates have bemoaned how hard it is to pass education legislation. (I'm not one of them—I think gridlock can serve a very useful purpose.) But, if you'd like to see education legislation get done, it requires a lot of trust. It requires trust between the parties to the negotiation, and trust that the law will be executed pretty much as it was negotiated. If King continues trying to blatantly trample on explicit statutory prohibitions, no one should be surprised by the negative consequences—or if a Secretary of Education Dr. Ben Carson decides that what's good for the goose is good for the gander.