

Mandating Education Funding Equality: The “Supplement, not Supplant” Proposed Regulation

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September 2016

The U.S. Department of Education has released [proposed regulations](#) for [supplement, not supplant](#) (SNS) provisions – of the Every Student Succeeds Act (ESSA). The ESSA reauthorized the Elementary and Secondary Education Act (ESEA). The administration’s regulations have drawn opposition amongst congressional leaders, union leaders, and civil rights leaders alike. The economic impact of the rule will either force states and local school districts to foot the bill for an additional \$800 million in education funding, or concoct a “rob Peter to pay Paul” scenario in which funding is shifted from one school to another.

Background

ESSA requires that school districts use a methodology to allocate state and local funds to each Title I school that ensures the school receives all the state and local funds it would otherwise receive if it were not a Title I school. In other words, these schools must receive the same amount of funding they would have received if they were not eligible for additional federal aid. The intention of the regulation is understandable from the federal policymaker’s perspective, since allowing state and local funding for disadvantaged schools to be redirected in anticipation of filling budget gaps with federal dollars defeats the purpose of additional Title I funding and other federal education assistance.

SNS provisions are not a new idea, appearing in ESEA during the 1970’s, but the history of the statutory language has, for the most part, remained relatively plain – simply ensuring that state and local funding was not reduced when additional federal aid was made available. Specifically, ESSA states:

“(1) IN GENERAL.—A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such

Federal funds, be made available from State and local sources for the education of students participating in programs assisted under this part, and not to supplant such funds.

“(2) COMPLIANCE.—To demonstrate compliance with paragraph (1), a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under this part.”

Congressional Intent

Unfortunately, the Department of Education’s interpretation of this provision in the new rule ignores the longstanding flexibility afforded states and school districts to demonstrate compliance. The proposed rule instead seeks to force funding equality by mandating the equitable distribution of the state and local dollars amongst all the schools.

The proposed rule provides four funding formula options that Secretary of Education John King describes as “a step forward to help level the playing field” by requiring each district to demonstrate funding is level across the board. The options are limited to: 1) a weighted student funding formula that provides additional resources for districts with higher populations of disadvantaged students or Title I schools; 2) a formula that demonstrates equality by measuring human capital resources; 3) an

alternative funds-based test, developed by the state and approved by a panel of expert peer reviewers, that is as rigorous as the above two options; or 4) a formula that ensures the per-pupil funding in each Title I school is at least as much as the average per-pupil funding in non-Title I schools.ⁱⁱ

Regardless of the methodology selected by the district to allocate funds, to comply with the new rule the end result must ensure the school district is spending an amount of state and local funds per pupil in each Title I school that is equal to or greater than the average amount spent per pupil in nontitle I schools. A laudable goal for sure, but outside of the congressional intent set forth in the statutory language. As the Congressional Research Service notes in a recent [report](#), SNS does not establish any type of standard or requirement regarding how to demonstrate that a Title I school receives all of the state and local funds it would have received in the absence of Title I funds. Moreover, ESSA has maintained a provision which states:

“Nothing in this title shall be construed to mandate equalized spending per pupil for a State, local educational agency, or school.”ⁱⁱⁱ

As CRS writes, for SNS purposes, this provision appears to clarify that per-pupil expenditures in Title I schools do not have to be equal to the per-pupil expenditures in a non-Title I school.^{iv}

Bad News for Struggling School Districts

Mandating equalized per pupil expenditures could prove a daunting task considering local property taxes play such an important role in the level of school funding. In most states, where school district boundaries are not necessarily marked by the county line, communities have a vested interest in drawing school district lines that fence off their own neighborhoods from lower-wealth areas and needier students. Consider Jefferson County Alabama and the city of Birmingham as an example.

Birmingham is surrounded by 13 school districts, a hodgepodge of well-off neighborhoods that have created their own local education agencies. Over the past decade these acts of secession have lead to a significant population decrease and a poverty rate increase within the boundaries of Birmingham City Schools. This, in turn, has resulted in inner city schools that suffer from economic segregation and significant disparities in resources^v that make it difficult if not impossible to generate the additional local revenue needed to ensure equality of funding amongst all of its schools. In order for this district to comply with the proposed rule it would either have to raise revenue by increasing taxes – a move that would further exasperate the already struggling tax base – or reallocate resources – achievable only by reassigning personnel which would violate collective bargaining agreements and drive highly qualified teachers and administrators out of the district. Either way their problems are compounded.

Conclusion

This U.S. Department of Education is certainly no stranger to mandating favored policy objectives through the regulatory process, effectively usurping congressional action or intent. Over the course of this administration there have been 42 new regulations that have cost nearly five billion dollars and 30 million paperwork hours.^{vi} The latest proposed rule, focusing on supplement not supplant provisions in Title I of ESSA, will add an additional \$800 million to the tally while forcing already struggling school districts to adopt funding formulas that will further destabilize the very schools they seek to assist.

ⁱ P.L. 114-95, §1012.

ⁱⁱ Summarized from Fact Sheet: Supplement-not-Supplant under Title I of the Every Student Succeeds Act <https://www.politicopro.com/f/?id=00000156-e02e-d543-a3de-e62eb1c80000>

ⁱⁱⁱ P.L. 114-95, §1012. 20 U.S.C. §7372

^{iv} Jody Feder & Rebecca Skinner; Congressional Research Service; May 2016 Memo: Proposed Regulations on the Supplement, Not Supplant Provision That Applies to the Title I-A Program Authorized by the Elementary and Secondary Education Act.

http://edworkforce.house.gov/uploadedfiles/sns_and_negotiated_rulemaking_5-5-16.pdf

^vFault Lines: America's Most Segregated School District Borders; EdBuild's analysis of the degree of income segregation across America's school district borders

<http://viz.edbuild.org/maps/2016/fault-lines/>

^{vi} American Action Forum; [Regulation Rodeo](#)