



Illinois State Board of Education

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State Superintendent of Education

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James Butler
U.S. Department of Education
400 Maryland Ave. SW
Room 3W246
Washington, DC 20202

Docket ID: ED-2016-OESE-0056

Dear Mr. Butler:

I am writing on behalf of the Illinois State Board of Education (ISBE) to provide comments on the regulations proposed by the U.S. Department of Education (ED) regarding the amendments made to the supplement not supplant rule in the Every Student Succeeds Act (ESSA). Illinois is a state with great diversity; ISBE oversees 852 school districts, more than 4,000 schools, and 2 million students.

ISBE and the districts and schools within the state are dedicated to ensuring that all students have equitable access to the resources, facilities, and teachers that will help them to be engaged and successful students. However, we are concerned that these regulations go too far. For instance, ED asserts that 90% of districts would already be in compliance if the proposed regulations are finalized. The data on which the Department appears to have developed its case for the proposed rules and used to estimate its impact, are of uncertain accuracy. It is important to make the data, including the supporting documentation that ED used to develop its proposed rules, readily available to stakeholders.

ESSA was designed to put more decision-making power in the hands of state and local officials, and instead, these proposed regulations would dramatically extend the authority of the federal government into our classrooms, require rigid, inflexible approaches that will add to the administrative burden and costs and divert the focus away from the overall quality of education in Illinois schools. Below are our detailed concerns, which include highlights from district administrators:

1. The Proposed Regulations Go Beyond the Scope of the Statute

Both Congressional intent and statutory language of the Elementary and Secondary Education Act (ESEA), as amended by ESSA, are clear: federal funds must be used in ways that are supplemental to state and local dollars. The statute does not dictate how a district must ensure that funds are supplemental, only that it must do so. The language of the statute says only that a local educational agency (LEA) "shall demonstrate that the methodology used to allocate State and local funds" to each Title I school ensures that Title I funds are supplemental (Sec. 1118(b)). Members of Congress have made clear in discussions, reports, and statements that the intention is for more flexibility at the state and local levels.

Additionally, the statute attempts to limit ED's regulatory power, saying that "[n]othing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local educational agency uses to allocate State and local funds to each school receiving assistance under this part" (Id.). ED may believe it is not in violation of the statute because it is offering three methodologies for compliance (four, if a state chooses to create an additional expenditure test, which must be approved by ED). If the intent of the statute is to minimize federal intervention in state-level and local decision-making, however, then the proposed approaches go far beyond the congressionally intended oversight role by dictating explicitly how an LEA may comply with the supplement not supplant provision.

"Decisions are being taken away from local LEAs. In the past we have had guidelines to follow, as long as those were followed the decisions were still in the hands of the local district."

-- Southwestern CUSD #9 (37% Low Income)

"Our district simply would not have the flexibility to allocate resources where they need to be allocated while being fiscally responsible and responsive to our needs. Being responsive to the needs of our students and families requires flexibility. These proposed rules only seem to add 'red tape' that could impede or obstruct an LEA's ability to allocate resources where most needed in actionable and timely manners. These rules also seem to add to districts' financial commitments by making them guarantee that funds will be equally spent in Title and non-Title schools."

-- Orland School District 135 (19% Low Income)

2. The Proposed Regulations Put State and Local Expenditures under Federal Control

The intent of Congress in modifying this provision was to provide flexibility to states and districts. The proposed regulations; however would result in the opposite. By conditioning receipt of federal funds on how state and local dollars are allocated, ED is using a relatively small portion of a district's funding to leverage control over a much larger pool of funds that have been appropriated by the state and raised by local levies. In effect, this allows the federal government more control over a school's budget and spending decisions than its administrators, teachers, or parents. Districts in Illinois have expressed interest in refusing Title I funds to avoid these overly burdensome and intrusive requirements. That cannot and should not be the result of the proposed regulations. If this occurs, then children in those districts will lose access to valuable Title I resources and access to educational opportunities.

"The proposed regulations assume that all districts can operate the same way, which is not possible for districts across our state let alone across the country. In order to implement the proposed regulations, we would need to change our entire system of accounting. Moving to a school-based system would require us to recode all of our revenue and expenditure accounts (effectively doubling or tripling the number of account codes we utilize)... We are a small district and in order to operate a more complex accounting system such as this we would need to consider hiring additional business office staff, taking resources away from the students these regulations were developed to help. Beyond the financial logistics that we would need to overcome, these rules would force us to make decisions based on the restrictions of the legislation and not what is best for our students."

*-- Skokie/Morton Grove, School District 69
(52% Low Income)*

"In order to implement the proposed SNS regulations, the district's chart of accounts and the budget would have to be changed; thousands of new accounts will have to be added, which in turn would add confusion and additional work for the district's staff."

-- Evanston/Skokie School District 65 (38% Low Income)

3. The Proposed Regulations Do Not Take into Account LEA Needs

From a more practical standpoint, the proposed methodologies in these regulations could hamper the ability of LEAs to make any improvements in their non-Title I schools. For example, under several of the methodologies suggested, state and local dollars could only be spent by a non-Title I school on projects like a new school building, new fiber optic internet connections, or an extensive renovation, and only if an equal or greater amount were spent in Title I schools. Even more affluent schools need repairs or updates from time to time, neglect of which can lead to greater costs district-wide in the long-term. Limiting the ability of an LEA to spend state and local dollars on such projects leaves them with few choices for financing. Also, schools within a district may serve different populations and, thus, have different needs. The proposed regulations would leave LEAs little autonomy to address these diverse needs.

"Beyond the financial logistics that we would need to overcome, these rules would force us to make decisions based on the restrictions of the legislation and not what is best for our students. We provide most of our special education services in-house, and we are very proud of that because that benefits our students more than out-placing them. However, if we are bound by this new legislation and a student at a non-Title school needs an additional aide, we may not be able to hire an additional staff member due to the allocation of expenditures among schools. We would not be able to provide the services that our students need simply because they attend one school and not another."

-- Skokie/Morton Grove School District 69 (52% Low Income)

"Spending equal amounts of money to each school will make it more challenging to provide additional staff and resources to primary age students in grade K, 1 and 2 and force more resources to be spent on students in 5th and 6th grade. Clearly K, 1, and 2 students can make the most progress as we are able to identify their weaknesses at an early age and expose them to research-based intensive instruction to improve their skills before they form poor habits. This requires more faculty and staff to ensure we give them a solid foundation as they mature and advance throughout school. Additionally, if the resources are used for curriculum and technology, we cannot buy half of a computer lab one year and the other half the following year if money is distributed equally. The same could be said regarding a new reading curriculum."

-- Southwestern CUSD #9 (37% Low Income)

4. The Proposed Regulations Could Impact Decisions on Serving Title I Schools

If all schools in a district are Title I, then the necessity to equate funding decisions does not apply. This logic creates an unintended incentive for districts to choose to serve more schools with Title I funds to avoid the supplement not supplant requirement, even if there is insufficient funds to properly serve all schools. For example, one district in the state currently only serves schools above 75 percent poverty to maximize resources to the schools with the highest need, as is the intent of the law. The district has expressed that, under the proposed regulation, redistribution of its funds throughout the district would be considered so that it could avoid supplement not supplant.

“These new regulations also place a greater emphasis on cost factors being equal and not allowing local districts to make decisions in the best educational interests of our students. ... Districts use Title I resources to maximize their impact. [The regulations] will likely drive dollars from the primary ages where students need the most assistance but also show the most growth.”

-- Mannheim District 83 (81% Low Income)

“Each building in our district is unique. Some educational needs are needed at the high school whereas they are not needed at the junior/elementary schools. How will this impact the formulas?”

-- Carlyle CUSD 1 (43% Low Income)

“We will need to reevaluate and reorganize how our schools are staffed, supervised, served, and supported. NLSD 122 currently designs and implements a district-wide academic program that is designed to best serve the students of the district in the most efficient manner possible. Student needs, programing consideration, the ability to adapt and adjust as needed, academic performance, and overall fiscal responsibility are the driving force of the intentions of the design. If these new rules are implemented, the primary goal will be to first meet the mandated compliance. Staffing, programs and support will need to be manipulated to meet the regulatory benchmarks. Administration will spend a significant amount of time redesigning the programs of the district and other more important issues will not receive as much attention as deserved. After a great expenditure of time and resources to reach compliance, the resulting programming will be a diluted version of what the district began with and the entire process will need to start over each year.”

-- New Lenox School District 122 (10% Low Income)

5. The Proposed Regulations Would Impact Teacher Assignments

Under two of the three proposed methodologies (the personnel and nonpersonnel expenditures test and the per-pupil expenditure test), teacher salaries and benefits would have to be taken into account when allocating funds to Title I and non-Title I schools. The proposed regulations assume that teacher effectiveness and teacher costs are the same thing. States are already engaged in implementing plans to increase equity in the distribution of highly effective teachers per their agreements with ED; these requirements could be conflicting or disruptive by requiring teacher movement contrary to the equity efforts.

Finally, there are already provisions in ESEA that address spending equity in schools – the “comparability” requirement – but they specifically exempt teacher salaries and other costs. Congress debated -- and rejected -- language that would amend the comparability loophole, essentially acting to continue this exemption. However, these proposed regulations give ED the opportunity to add in teacher salaries, effectively legislating through regulation what Congress would not do through statute.

“Staffing decisions would be driven by financial factors rather than the needs of the position and the qualifications of the applicants that best meet the educational needs of our students.”

-- Mannheim District 83 (81% Low Income)

“CBAs change, benefits change, enrollment fluctuates, and staffing changes. The restrictions in the proposed rules could impose even further financial hardships on districts and limit flexibility to act responsibly and in compliance with CBAs.”

-- Orland School District 135 (19% Low Income)

6. These Methodologies Create Significant Additional Administrative Burden

Simply choosing a methodology to demonstrate compliance with the proposed rule will also significantly increase administrative costs. Demonstrating compliance is not simply a matter of filling out a form; each district will be required to run multiple calculations to determine which methodology is best for it and will have to reassign staff and reallocate expenditures accordingly. The demands will be unique based on the size of the district. With 852 school districts within the state of Illinois, each district will encounter these 3 methodologies differently. The impact and expense - both fiscally and personally - will be felt dramatically in our districts large and small.

“Site-based accounting would cost NLSD 122 at least \$20,000 per year. This estimate is based on the need to upgrade the various accounting software programs and the additional Business Office and District Office staff time needed to excessively categorize and break down the thousands of budgetary line items already planned each year. Administration will spend an excessive amount of time itemizing costs into site cost centers instead of focusing on designing excellent programing at the most efficient cost.”

-- New Lenox School District 122 (10% Low Income)

“One bookkeeper attempting to keep track of each building’s expenditures and revenues will be a nightmare for one person.”

-- Carlyle CUSD 1 (43% Low Income)

For the above reasons, ISBE strongly believes that the proposed regulations should not move forward. States and districts should be allowed to create their own tests for compliance with the supplement not supplant requirement that follow the letter and intent of the statute while allowing for local autonomy and decision-making in order to provide access and opportunity for each and every child in Illinois’ schools.

Thank you for the opportunity to provide recommendations on the proposed regulations. If you would like to discuss our concerns, please do not hesitate to contact our federal liaison, Melina Wright, at mewright@isbe.net or (312) 814-1295.

Sincerely,



Tony Smith, Ph.D.

State Superintendent of Education