



November 7, 2016

The Honorable John B. King, Jr.
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
Docket ID: ED-2016-OESE-0056

Dear Secretary King:

On behalf of the National Conference of State Legislatures (NCSL) and the National Governors Association, we appreciate the opportunity to comment on the proposed regulations contained in the docket listed above. The nation's state legislators and governors share the U.S. Department of Education's commitment to ensuring that Title I funding for disadvantaged students goes to supplement, not supplant, state and local funds. It is critical that students served by Title I receive the additional supports and services the funds are intended to supply. However, we have serious concerns about the department's proposed regulations, which ignore the clear intent of Congress and the statutory language of the Every Student Succeeds Act (ESSA).

ESSA amended existing law to reduce the compliance burden of the supplement, not supplant requirement of the Elementary and Secondary Education Act (ESEA). Local Education Agencies (LEAs) are not required to determine that individual costs or services supported by Title I-A funds are supplemental expenditures. Instead, to meet the supplement, not supplant requirement, LEAs must demonstrate that the methodology used to allocate state and local funds to Title I schools does not reduce their funding because of their status as Title I schools. State legislators and governors support fiscal accountability and believe the test in ESSA is appropriate.

Importantly, there were two specific prohibitions in ESSA regarding what the department could require from LEAs to show their compliance with the supplement, not supplant requirement. The statute prohibits the department from prescribing the specific methodology an LEA must use to allocate state and local funds to schools. It also states that LEAs cannot be required to equalize per-pupil funding across schools.

The Notice of Proposed Rule Making (NPRM) requires that LEAs publish their methodologies for allocating state and local funds and specifically requires that "almost all" state and local funds be allocated in a way that passes one of the specific tests listed in the regulations. We note that the department did provide the opportunity in this list of tests proposed for a district to establish its own test, as long as it is as rigorous as the other federally-defined ones. The department also proposes some additional flexibility, such as allowing the LEAs to demonstrate compliance on a district-wide or grade-span basis. However, such provisions do not change the

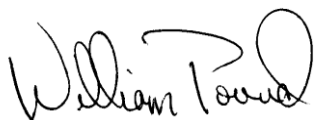
fact that in creating formulas, the department is going beyond the statute's explicit prohibition on prescribing a specific methodology for determining compliance.

As noted, the law states that "Nothing in this section shall be construed to mandate equalized spending per pupil for a state, local education agency or school." Congress specifically considered but did not choose to adopt an amendment that would have directed that actual teacher salaries be considered in determining whether or not federal funds were being supplanted. This clearly indicates congressional intent in this matter. The proposed regulations, however, could push districts in this direction as they seek to comply with the various options, and struggle with exactly what allocating "almost all" funds means, what costs should be accounted for at the district, not school level, and what would be included in an "average districtwide salary."

While supplement, not supplant requirements are at the LEA level, the proposed regulations have consequences for states, who would have to monitor LEA compliance. The department has expressed its hope that states and districts not in compliance would provide more spending to Title I schools, and states certainly vary in their ability to provide new funding. Reallocating existing resources presents a challenge that might lead to districts transferring staff as a simpler way of complying, complicating state efforts to ensure equity in education.

While there are many particular concerns that can be raised about this proposed rule, as important to state elected officials is the underlying principle that federal regulations should reflect the underlying statute and provide assistance and clarity in implementing it, not add additional requirements or conflict with it. The proposed rule imposes a prescriptive mandate, and would provide the federal government with influence over state and local education budgets that far exceeds the federal share of K-12 education funding. The NPRM needs to be revisited and changed to reflect the intent of Congress in writing ESSA, which was to ensure that states had the flexibility to pursue equity and excellence for all students.

Sincerely,



William T. Pound
Executive Director
National Conference of State Legislatures



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