

Testimony before the U.S. House Subcommittee
on Early Childhood, Elementary, and Secondary Education

September 21, 2016

Hearing on
“Supplanting the Law and Local Education Authority Through Regulatory Fiat”

Nora E. Gordon, Ph.D.

Associate Professor
McCourt School of Public Policy
Georgetown University
Washington, DC
Nora.Gordon@georgetown.edu

Research Associate
National Bureau of Economic Research
Cambridge, MA

Note: the views expressed here are my own and do not necessarily reflect those of Georgetown University or the National Bureau of Economic Research.

Chairman Rokita, Ranking Member Fudge, and Members of the Subcommittee, thank you for the opportunity to testify today. I am Associate Professor at Georgetown University's McCourt School of Public Policy and Research Associate of the National Bureau of Economic Research. I study US education policy and finance, especially Title I.

First I'll explain how Congress changed the law on supplement not supplant in response to problems school districts had spending their Title I funds effectively. Next I'll describe how the proposed rule is on a totally different topic: how districts distribute state and local revenue across their schools. In fact, part of the proposed rule is extremely similar to the amendment Sen. Bennet offered and withdrew—on the comparability requirement, not supplement not supplant. I will outline negative equity implications of the proposed rule and weaknesses of the cost-benefit analysis offered in the proposed rule.

Supplement not Supplant Prior to ESSA

For decades, compliance with supplement not supplant was tested by looking at each individual Title I expenditure. Expenditures could not violate any one of these three 'presumptions of supplanting:'

- (1) they were required by law;
- (2) they had been supported with state or local funds in the previous year; or
- (3) they were simultaneously provided to non-Title I students with state or local funds.

Historic Problems with Supplement not Supplant

In 2014, I interviewed district Title I managers across four states for my research, and several key themes emerged.¹

1. Compliance, not the effective use of funds, is a central concern for school district Title I administrators.

States must approve districts' Title I spending plans, and districts quite rationally want the most straightforward path to state approval in order to get their federal funds on time. Because the old SNS rule was so complicated and misunderstood, however, compliance was difficult and required a great deal of administrative energy.

¹ Gordon, Nora and Sarah Reber. 2015. "The Quest for a Targeted and Effective Title I ESEA: Challenges in Designing and Implementing Fiscal Compliance Rules." *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 1(3), 129-147. Accessed 09/19/16 at: <http://www.rsjournal.org/doi/abs/10.7758/RSF.2015.1.3.07>.

² Center for American Progress and American Enterprise Institute. "Reauthorization of the

2. Despite their concern and attention to compliance, administrators were confused about what was and was not legal.

Confusion by both districts and states about what was permitted under SNS meant that districts often didn't propose costs because they didn't want to get into a fight with their states and hold up the delivery of their Title I funds..

3. The clearest message districts perceived under the old regime was that Title I should support supplemental, extra things and could not support core instruction.

School district personnel often felt pressured to use Title I for costs that were clearly extra, and different. In practice, this often meant unaligned from the core educational program. This often prevented districts from using Title I for comprehensive interventions, such as instituting dropout prevention programs, positive behavioral supports or arts integration programs – all of which are allowed under Title I – because they didn't look “different” enough to be extra. This promoted spending on add-ons, such as “extra” reading programs (which were often unaligned), or other pull out activities – because they were easy to audit under the old rule.

Meanwhile, research suggests that effective school improvement requires comprehensive strategies, not a hodge-podge of add-ons.

ESSA's Fix to Problems with SNS

The problems with the old supplement not supplant rule have been around and documented by researchers since the 1970s. Over the years, Congress has attempted to fix them, developing and expanding eligibility for schoolwide programs. Congress then allowed schoolwide programs to use a different compliance test in which they show that they allocated state and local funds to schools in such a way that did not result in Title I schools getting fewer state and local resources than they otherwise would have. Prior to ESSA, because of confusion over the schoolwide flexibility, most districts continued to rely on the three presumptions even for their schoolwide programs.

In 2012, the left-leaning Center for American Progress and the right-leaning American Enterprise Institute jointly issued a report detailing how supplement not supplant distorted districts' choices about how to spend Title I funds, and limited the efficacy of program funds. Both CAP and AEI wrote that they:

...embrace the option that would make SNS amenable to innovation while greatly reducing the burden of compliance. The idea is to replace the primary test currently in use with a simpler, more objective test, specifically:

- If districts can document that the manner in which they allocate state and local resources to schools is “Title I neutral,” they should be clear of suspicion around supplanting nonfederal funds with Title I dollars.²

This message was similarly embraced in a bipartisan manner during the reauthorization process for ESSA.

ESSA’s “new” supplement not supplant test transforms what was *already* an *option* for schoolwide programs under NCLB, and makes it the *compliance standard* for *all* Title I schools. As described in the Senate committee report on S. 1177 (note that the final statute retains the same supplement not supplant language referenced):

Specifically, **the bill allows States and LEAs to comply with SNS for title I, part A funds if they can document that the manner in which they allocate State and local resources to schools is ‘Title I neutral,’ or that the methodology does not account for the title I funds that schools will receive.** Additionally, the bill removes requirements in regulation that force LEAs to identify individual costs or services as supplemental. Instead, the way in which State and local resources are allocated to a school must be examined as a whole to ensure that the methodology does not account for title I funds the schools will receive. This language will provide more flexibility for schools to utilize title I funds to implement comprehensive and innovative programs. LEAs will be able to demonstrate SNS compliance in a much less burdensome and restrictive way, while still making clear that Federal dollars are supplemental to State and local dollars and not be used to replace them. (Emphasis added.)

Many people seem to think that without regulation, there would be no auditable test of supplement not supplant under ESSA. *This is not true.* The test is described in Sec. 1118(b)(2) of the law:

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.

In July 2015 guidance, ED itself explained how a district could demonstrate it has a Title I-neutral resource allocation methodology for schoolwide schools. The

² Center for American Progress and American Enterprise Institute. “Reauthorization of the Elementary and Secondary Education Act Offers a New Chance to Improve Education: Joint Recommendations on Needed Changes to Title I.” March 2012. Accessed 09/19/16 at https://cdn.americanprogress.org/wp-content/uploads/issues/2012/03/pdf/titleI_recs.pdf.

language of ESSA simply expands the schoolwide approach to SNS under NCLB to all Title I schools.

The Department of Education's Proposed Rule

The Department of Education's proposed rule takes an entirely different approach to SNS than ESSA's language or the Senate conference report.

ESSA's language states that compliance with SNS should be tested by ensuring that the *methodology* used to distribute state and local funds ensures that a Title I school gets all of the money it would have if it did not participate in Title I.

However, ED's proposed rule bases its test for compliance on *actual dollars, not a methodology*. It gives districts four possible ways of allocating funds, all of which mandate that funding be roughly equal, based on actual dollars.

Negative policy and practical implications of proposed rule

The goal of greater equity is critical, and school districts and states absolutely need to tackle improved spending equity head on. However, the approach that ED takes has important negative policy and practical implications for Title I and other low-income schools, as well as for public schools in general. These include:

- *Less school-level decision-making.* In order to comply, a district's central office will need to manage all spending decisions – such as hiring, purchasing, and other programming decisions that require money. School-level decisions on whom to hire and what to buy would have to be overturned by central office staff if those choices resulted in numbers that do not comply with the rule.
- *Instability in school staffing in places that cannot raise additional state and local money.* Because staffing costs are typically the largest cost center, the shifting of teachers and other school staff would likely be necessary in order to comply with the proposed rule
- *More expensive but less effective teachers in Title I schools.* In some districts, non-Title I schools will need to reduce costs, but will likely seek to keep their best teachers. This could mean more expensive, but worse teachers being assigned to Title I schools. This would comply with the proposed rule, but not promote equity.
- *Cutting entire programs* in a district – like music, art, or PE – in order to get the money to make the numbers meet the compliance requirement. Districts could also choose to cut programs with high cost variability that complicate compliance from year to year.

- *Reducing local support for public schools and the taxes that support them.* If programs that are important to a district are lost, and that impacts support for local levies or other taxes, the rule could level spending down, not up.
- *Changing which Title I eligible schools get the federal funds,* to meet compliance goals rather than programming goals. Depending on district finances, they could choose to spread federal funds more thinly to more schools, or to cut Title I from some currently participating schools—solely to pass the test.
- *Possible loss of state and local funds for low-income schools that do not participate in Title I.* It's a common misperception that Title I and non-Title I schools break down by poor vs. affluent status. However “affluent” is not a synonym for “non-Title I.” Which schools participate in Title I varies greatly by district. Some districts choose to concentrate Title I funds in only their very highest poverty schools in order to give those schools more money. For example, a district may only serve schools at 90% poverty or above with Title I. This means that all other poor schools in that district that are *Title I eligible* – schools in the 35% to 89% poverty range – are not Title I schools. Most would agree that schools in this poverty range are not affluent. The proposed rule could result in these kinds of high-poverty, Title I eligible schools losing state and local funds, in order to make the numbers balance to meet the proposed rule.

Flawed cost-benefit analysis and unreliable data

OMB has deemed the proposed rule “economically significant” and therefore subject to a higher standard of cost-benefit analysis. But the cost-benefit analysis ED has offered thus far is both superficial and based on unreliable data. Many school districts do not have accounting and financial management systems that can accurately capture per pupil financial data. The data ED is using, which districts have reported through the Civil Rights Data Collection, have not been validated against other administrative sources.

The biggest problem with meaningful cost-benefit analysis is that both the costs and benefits of the rule would depend on how districts respond to it—which ED doesn’t know. So instead it estimates the amount of dollars that districts would need to newly generate or to shift from non-Title I to Title I schools to comply with the rule using the unreliable CRDC school-level financial data. ED also presents very optimistic estimates of the administrative costs of compliance. The most important costs, however, are the ones ED does not discuss at all: the costs to *students* through changes in staffing and programming that districts make to comply with a test based on dollars, rather than methodology.

Without knowing the choices districts will make to comply with this rule, it is impossible to estimate the benefits of the proposed rule. For example, the cost-benefit analysis does not address some of the issues I flag above as actions a district might take in order to comply with the rule – such as moving expensive but less effective teachers to Title I schools, or cutting entire programs such as music in a district in order to free up money for Title I schools. Without taking these types of choices into account, a true cost-benefit analysis is impossible.

ESSA's New School-Level Financial Data Reporting Requirements

Finally, ESSA contains a critically important new reporting provision that requires school districts to report per-pupil spending data at the school level. This will result in much greater transparency, but it will take time to implement.

In order to do this reporting well, many districts will have to improve or obtain new accounting and financial management systems. All districts will need further guidance from ED on how to allocate costs to schools that are typically captured at the district level such as special education staff, transportation, and maintenance costs.

By not waiting for districts to get good per pupil spending data, ED is putting the cart before the horse with the proposed rule. ED could help districts develop good and transparent systems that generate reliable spending information which would give communities the important information they need to shine a light on inequity where it exists. Instead, ED is proposing a complicated rule that has the negative implications—for both equity and efficiency—that I discussed above.