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Full Committee Hearing on ESSA Implementation:
Perspectives from Education Stakeholders

Implementing Supplement not Supplant under ESSA

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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 Alexander, Ranking Member Murray, and Members of the Committee, thank you for the opportunity to testify today. I am Associate Professor at Georgetown University's McCourt School of Public Policy where I conduct research on US education policy with a focus on school finance redistribution and school desegregation. In the course of my research on Title I over the past fifteen years, I have analyzed finance data and interviewed state and district leaders and Title I directors. My research on Title I has been supported by the National Science Foundation and the Spencer Foundation, and published in peer-reviewed economics and policy journals.

Today I will explain how ESSA changes the definition of supplement not supplant, how the Department of Education proposes to regulate it, and the potential for that regulation to cause serious adverse consequences.

What is supplement not supplant?

Supplement not supplant is meant to ensure districts do not reduce the amount of state and local money a Title I school would receive if it did not participate in Title I—an important mission, given the history of the law and past abuses.

Prior to ESSA, compliance was typically determined on a cost-by-cost basis, evaluating whether each cost charged to Title I was “extra.” This compliance approach promoted inefficient Title I spending on low-impact, unaligned “add-ons.”¹

The cost-by-cost approach was also bad for equity. Districts could comply based on *what* they bought with Title I dollars, even if they were giving Title I schools less state and local money because they knew those schools would be getting Title I funds to make up the difference—exactly what the rule was always meant to prevent, and what ESSA's new requirements do prevent.

How does ESSA change supplement not supplant?

Under ESSA, to demonstrate compliance with supplement not supplant, districts must show *how* they distribute state and local funds to each of their schools, and that their methodology does not reduce a school's state and local funding *because of the school's participation in Title I*. Specifically, the law provides a test for compliance with supplement not supplant in Sec. 1118(b)(2):

“... 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 were it not receiving assistance under this part.”

¹ Gordon, Nora and Sarah Reber. 2015. “The Quest for a Targeted and Effective Title I: Challenges in Designing and Implementing Fiscal Compliance Rules.” *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 1(3), 129-147.

Last week teachers sent Secretary King a letter about their concern that “some states could misunderstand the law’s intent and use Title I for other purposes, including using it to replace state and local funding.” Though other provisions of ESSA are often described as “loosening things up,” ESSA’s supplement not supplant change raises the bar on equity and explicitly prevents exactly this concern. The Department already has excellent guidance on this point, because ESSA takes what was already an option for how Title I schoolwide programs could demonstrate how Title I funds were supplemental, and turns it into law for how *all* Title I schools *must* demonstrate Title I funds are supplemental.²

To make this requirement even more powerful, the Department of Education should require districts to make these methodologies publicly available. Then parents and voters would not only see how much is spent at each school—as newly required elsewhere in ESSA—but they would also see district priorities, as revealed through their funding mechanisms.

How is the Department of Education proposing to regulate supplement not supplant?

The Department has proposed regulatory language on supplement not supplant that is quite different from the statute. It relates to a different part of the law, comparability, which aims to promote equitable spending across schools and which Congress did not change. ESSA’s language on comparability, like earlier versions of ESEA, prohibits including “staff salary differentials for years of employment” in the determination of comparability. Sec. 1118(c)(2)(B).

The Department wants to require districts to use a methodology that results in each Title I school spending at least as much from state and local sources, in per-pupil dollars, as it does on average level in its non-Title I schools.

The remainder of my testimony focuses on the proposed rule, rather than the statutory language on supplement not supplant.

How much would the proposed rule cost districts to implement?

We do not have reliable evidence on how much this is going to cost districts.

Costs will be different for every district, largely based on what distributions of teacher experience across schools look like at the district level. To answer this question convincingly at a national level requires data that simply do not exist.

² U.S. Department of Education. July 2015. “Supporting School Reform by Leveraging Federal Funds in a Schoolwide Program.” Accessed 5/13/16 at: <http://www2.ed.gov/policy/elsec/guid/eseatitleiswguidance.pdf>

To know if each Title I school in a district spends at least as many state and local dollars per pupil as the average non-Title I school in the district, you would need to know how much state and local money per pupil each school gets, and which schools participate in Title I.

This is less straightforward than it sounds, because most school districts allocate full-time equivalent staff positions, or FTEs, to their schools, rather than dollars. To know how many state and local *dollars* are spent, you need to use the actual salaries of those teachers in the school building, rather than district averages. But many districts have one data system linking teacher names to school buildings, and a separate data system with teacher names linked to teacher salaries. This is why the reporting requirement in ESSA will be so useful, and so challenging.

Some districts have systems in place already that could produce these numbers. The Department has not provided any cost runs from such districts.

Though most districts do not actually keep their records in a format amenable to producing these data, they have reported out such data to the federal government as required under the American Recovery and Reinvestment Act of 2009. The Department of Education conducted its first School-Level Expenditure Survey in 2009; in 2011, the relevant questions were asked again as part of the Civil Rights Data Collection. In each of the two available years of data, districts were asked to report expenditures, by whether or not they were related to personnel, at the school level. They were explicitly instructed to: “report *actual* school finance data for this school. *Do not report data based upon average teacher expenditures.*” They were also instructed to exclude federal funds from the school-level expenditures.

The Department’s own analyses that come closest to assessing the costs of the proposed rule use the 2009 data. The study noted:

“Because school districts typically do not have accounting systems that track expenditures at the school level and this was the first time such data have ever been collected on a large-scale basis, this effort faced challenges that may affect the accuracy and consistency of the data reported. ...the data collected through this study are not consistently defined across all states and districts, and are best used to examine resource patterns within districts rather than across districts.”³

³ Stullich, Stephanie. 2011. “The Potential Impact of Revising the Title I Comparability Requirement to Focus on School-Level Expenditures.” Policy Brief from the U.S. Department of Education, Policy and Program Studies Service. Accessed 5/13/16 at: <https://www2.ed.gov/rschstat/eval/title-i/comparability-requirement/comparability-policy-brief.pdf>

Therefore, the Department is proposing a rule at a point in time where the information needed to understand how it would actually affect districts and students is not reliable.

How could the proposed rule *worsen* school quality for poor students?

We can understand how the proposed rule changes incentives for district-level policy in a more general sense, even if we cannot reliably estimate how much it would cost districts nationally to comply. Districts seeking to comply with the new rule would take money out of their non-Title I schools in order to bring average spending down there, and use it to raise state and local spending in some or all of their Title I schools. How districts would do this would depend on local circumstances, particularly how teachers are spread across schools by experience. But many strategies districts are likely to turn to conflict with equity.

- All parties involved at negotiated rulemaking did not want to make districts do “forced transfers” of teachers. But if you need to move a lot of money around across schools, and you spend most of your money on teachers, it’s unclear how else to do it.
- Forced transfers isn’t just a union issue, it’s a quality issue. Title I schools could wind up with the teachers the non-Title I schools choose not to retain. If principals choose which teachers they retain, non-Title I principals will release their least preferred teachers into the pool for Title I schools to hire. While teacher spending at Title I schools would go up, average teacher quality at Title I schools could go down.

How else could districts get funds out of non-Title I schools and into Title I schools?

- **They could reduce existing efforts for economic or racial desegregation, or not take up new ones.** For example, recent events in Loudoun County are an example of how proponents of integration sometimes must argue against proposals that segregating high-needs students is beneficial because it gives them access to more resources.⁴ This effort to segregate students failed, but the proposed rule would give ammunition to similar efforts to segregate children because under the proposed rule, establishing or maintaining a more integrated school system could result in non-compliance if it results in a higher per pupil average in non-Title I schools.

⁴ Balingit, Moriah. March 20, 2016. “Separate but equal? Wealthy county’s plan would concentrate low-income, Hispanic students.” *Washington Post*. Accessed 5/13/16 at: https://www.washingtonpost.com/local/education/separate-but-equal-loudoun-plan-would-concentrate-poor-hispanic-students/2016/03/20/db6f2cca-e7a8-11e5-b0fd-073d5930a7b7_story.html.

Furthermore, because the proposed rule only judges equity and compliance based on Title I vs. non-Title I school status, districts might give pause to anything that could raise average per-pupil spending in non-Title I schools. This could include, but is not limited to:

- drawing more economically integrated school boundaries and giving additional resources to support economically diverse schools,
 - voluntary school desegregation efforts like magnet schools which typically cost more money,
 - transfer options or school choice options that allow low-income students to move from low-performing schools to higher performing schools, when the money follows the student,
 - efforts by municipalities to integrate affordable housing into neighborhood development through zoning requirements and provide additional resources to receiving schools.
- Districts could cut back on efforts to increase teacher diversity in Title I schools because increasing teacher diversity typically requires the recruitment of new, and therefore typically less expensive, teachers.
 - Districts could change which eligible schools receive Title I funds, either no longer serving schools that currently receive Title I, or distributing funds to additional eligible schools – not based on educational need, but based on compliance concerns.
 - Districts could remove or reduce specialized schools or programming if they raise the non-Title I average, such as schools that focus on career technical education, performing arts, or science and technology, as well as within-school programs that address specific needs such as autism programs, dyslexia programs, or gifted and talented programs. These types of programs are often used to increase racial or economic diversity within a district.
 - Districts could choose to eliminate existing, or not implement, pay for performance initiatives if they result in increased spending in non-Title I schools.

The rule creates a compliance assumption that Title I students are better off remaining in Title I schools that receive more state and local money. District practices to intentionally dilute high concentrations of poverty at the school-level, such as those described above, may run afoul of the proposed rule.

To understand the types of mechanisms listed above, one needs to consider how districts allocate resources.

How the incentives work: hypothetical Lincoln Public Schools example

It seems counterintuitive that a rule requiring districts to spend the same or more dollars per pupil in each of their Title I schools than the average in their non-Title I schools could result in making poor students worse off. However, to show the mechanics of these incentives, I have constructed a simplified example with a hypothetical school district, Lincoln Public Schools (LPS). Its three elementary schools are described in Table 1. In practice, the exact incentives will vary by district, mainly depending on how its teachers are distributed across schools by experience.

Table 1: Baseline enrollment

School	Title I school	% poor	poor students	non-poor students
Adams ES	Yes	80%	800	200
Main St. ES	Yes	75%	750	250
Union ES	No	40%	400	600

It shows each school has 1000 students. Adams ES is 80% poor, Main St. ES is 75% poor, and Union ES is 40% poor. Though all three schools are eligible for Title I funds under federal law, the district has chosen to serve Adams and Main St. but not Union, with Title I funds.

Staffing methodology

LPS weights poor students when determining how many teachers are assigned to each school – with the policy goal of having more FTEs in poor schools. The practice of using enrollment to assign teachers to schools is far more common than using enrollment to assign dollars to schools. In LPS’s methodology, each non-poor student receives a weight of 1.0, and each poor student receives a weight of 1.2. Each school’s weighted enrollment therefore is equal to its number of poor students multiplied by 1.2, plus its number of non-poor students (multiplied by 1).

LPS then assigns one full-time equivalent teacher (FTE) per 20 weighted students. 20 poor students = $20 \times 1.2 = 24$ weighted students, so would generate $24/20 = 1.2$ FTEs for their school. 20 non-poor students simply generate $20 \times 1 = 20$ weighted students and 1 FTE.

Table 2 shows each school’s weighted enrollment and the number of FTEs per school generated under this methodology.

Table 2: Baseline weighted enrollment and FTEs

School	Title I school	% poor	poor students	non-poor students	weighted enrollment	formula FTEs
Adams ES	yes	80%	800	200	1160	58
Main St. ES	yes	75%	750	250	1150	57.5
Union ES	no	40%	400	600	1080	54

It is well-established that high-poverty schools are disproportionately staffed by less experienced teachers. Because teacher salaries rise with experience, this means that a school with fewer experienced teachers will spend less per student than another school with the same teacher: student ratio.

In this simplified example, consider only two types of teachers, experienced (paid \$75,000 per year) and inexperienced (paid \$35,000 per year). Table 3 shows the distribution of teachers by experience over the schools in LPS: 45% of teachers in Adams ES are inexperienced and 50% of teachers in Main St. ES, while 30% of teachers in Union ES are inexperienced.

Applying the salaries for experienced and inexperienced teachers, we can see how much each school is spending in dollars. To calculate school spending per pupil, divide this amount by the school's enrollment (not the weighted enrollment).

Table 3: FTEs, teacher experience and spending per pupil

School	Title I school	% poor	formula FTEs	% FTEs inexperienced	school spending PP
Adams ES	yes	80%	58	45%	\$3,306.00
Main St. ES	yes	75%	57.5	50%	\$3,162.50
Union ES	no	40%	54	30%	\$3,402.00

Table 3 shows how even though LPS is choosing to allocate more teachers to higher poverty schools by weighting poverty in its staffing methodology, the distribution of teacher experience in LPS means it is spending less in dollars per pupil in its Title I schools than its non-Title I schools.

Because there is only one non-Title I school in this example, Union ES, the average spending per pupil in LPS's non-Title I schools is simply spending per pupil in Union ES, \$3,402. Neither of the Title I schools, Adams and Main St., spends as much per pupil. LPS would therefore not comply with the proposed rule.

During negotiations, LEA and SEA representatives spoke about how they would have to move people around in order to comply. What does this look like in this example? There are several approaches.

Getting to compliance by concentrating poor students

The proposed rule requires LPS to get money into its Title I schools and out of its non-Title I school. Because its staffing methodology means poor students bring additional FTEs to a school than non-poor students, taking poor students out of Union and putting them into Title I schools will help LPS comply with the proposed rule. Table 4 shows how this would work in LPS.

Imagine LPS moves 250 poor students who previously attended (non-Title I) Union ES to (Title I) Main St. ES, and 250 non-poor student who previously attended Main St. to Union. It could do so in any number of ways: redrawing attendance boundaries, eliminating an intradistrict choice plan, or stopping an existing busing plan.

Table 4: Increasing economic segregation yields compliance

School	Title I school	% poor	poor students	non-poor students	weighted enrollment	formula FTEs	% FTEs inexp	school spending PP
Adams ES	yes	80%	800	200	1160	58	45%	\$3,306.00
Main St. ES	yes	100%	1000	0	1200	60	50%	\$3,300.00
Union ES	No	15%	150	850	1030	51.5	30%	\$3,244.50

Now, the average spending per pupil in non-Title I schools (Union ES) is \$3,244.50 and both Adams and Main St. exceed that, so LPS has achieved compliance with the rule. While increasing economic segregation across schools allows LPS to comply, there is strong research consensus that this is actively bad for economically disadvantaged students. This research base underlies the Department of Education’s new Stronger Together initiative, offering grants to school districts for voluntary economic desegregation plans.

In this simple example, I have not included any additional weights for students with disabilities or English learners, but such weights are common in practice and the same logic applies. The exact incentives facing a particular district will depend on its weights.

What if LPS does not want move its students around? What other options exist?

Getting to compliance by changing which Title I-eligible schools are served

In the baseline scenario described in Tables 1-3 (that is, before LPS moved students as described in Table 4) LPS had the option to serve one, two, or three of its three elementary schools, because at least 40 percent of students were poor in each school. LPS initially had been serving Adams and Main St., which were 80% and 75% poor, and choosing not to serve Union, that was only 40% poor. In practice,

districts vary widely in how they choose which Title I eligible schools, within the ranking and serving rules, and a policy like this one is not uncommon.

If LPS chooses to serve all its Title I eligible schools, the new rule would not apply so the district would not be in violation. It would, however, be reallocating federal funds from its highest poverty schools to its lowest poverty school in order to gain this exception.

LPS could also choose to no longer serve Main St. ES with Title I, instead serving only Adams. In this case, the average spending per pupil in non-Title I schools now would come from the average of Adams and Union rather than just high-spending Union alone (see Table 3). Low-spending Main St. now pulls down this average to \$3,282.25 (the \$3,402 PP at Union + 3,162.50 PP at Main St., divided by two), making Adams—which still would be spending the same amount as before, \$3,306 per pupil—now spending more than the average in the district’s non-Title I schools. Adams therefore meets the rule. By not serving Main St., LPS is no longer required to meet any particular threshold spending per pupil at the school, though it remains a high-poverty school. Overall, this change makes LPS compliant.

Increasing weights on poor students in staffing methodology

LPS may well want to keep Title I funds in Adams and Main St. because these are its highest poverty schools, without spreading them to Union, or increasing economic segregation in its schools. If it is committed to having a consistent and transparent staffing methodology (that is, it doesn’t want to use its formula and then take some fractional position out of Union in a post hoc manner to spread over Adams and Main St.) it might think increasing the weights on student poverty would help.

In this example, even if LPS increase the weight on poor students from 1.2 to 1.4, it would fall short of meeting the proposed rule. Table 5 shows how this change in weighting would affect FTEs and spending per pupil across the schools, assuming that the fraction of inexperienced teachers remains constant at each school.

Table 5: Weighting poor students 1.4 instead of 1.2

School	Title I school	% poor	poor students	non-poor students	weighted enrollment	formula FTEs	% FTEs inexp	school spending PP
Adams ES	Yes	80%	800	200	1320	66	45%	\$3,762.00
Main St. ES	Yes	75%	750	250	1300	65	50%	\$3,575.00
Union ES	No	40%	400	600	1160	58	30%	\$3,654.00

The average spending per pupil in the non-Title I schools is still determined by Union ES, now \$3,654. The additional weight brought Adams above that level but not Main St., so LPS would not be in compliance, even after adding 19.5 FTEs as dictated by the new staffing methodology.

Forced transfers

All parties involved in negotiations did not support the use of forced transfers of teachers and collectively bargained agreements prohibit them in many cases. However, LPS could solve its compliance problem by forcing teacher swaps: Adams and Main St. could each trade five inexperienced teachers to Union for five experienced teachers. Table 6 shows the allocation of teachers and dollars before and after that forced transfer.

Table 6: Forced transfers achieve compliance

BEFORE FORCED TRANSFER					
School	weighted enrollment	formula FTEs	inexp. FTEs	exp. FTEs	school spending PP
Adams ES	1160	58	26.1	31.9	\$3,306.00
Main St. ES	1150	57.5	28.75	28.75	\$3,162.50
Union ES	1080	54	16.2	37.8	\$3,402.00
AFTER FORCED TRANSFER					
School	weighted enrollment	formula FTEs	inexp. FTEs	exp. FTEs	school spending PP
Adams ES	1160	58	21.1	36.9	\$3,506.00
Main St. ES	1150	57.5	23.75	33.75	\$3,362.50
Union ES	1080	54	26.2	27.8	\$3,002.00

Table 6 shows what happens when 10 experienced teachers are moved out of Union. Five of these teachers are placed in Adams and 5 in Main St. They are replaced at Union with 5 inexperienced teachers from Adams and 5 inexperienced teachers from Union. Because of the salary differentials, the new spending per pupil in non-Title I Union is now lowered to \$3,002.00, and Adams and Main St. each spend more, complying with the proposed rule.

Recommendations

Given the history of Title I, stakeholders are absolutely right to want to know how equity will be ensured. ESSA’s statutory language does so by forcing districts to describe their resource allocation method and to show it does not penalize Title I schools because of their participation in Title I.

The statutory language prevents districts from using federal funds to replace state and local revenue in Title I schools. At the same time, it allows local school districts to design programs specific to district needs. The Department’s proposed rule either requires one specific methodology (a weighted student funding formula)—and the law prohibits a federally-defined methodology—or a lot of post-hoc moving around

of funds, actually forcing districts to move *away* from consistent and transparent funding allocations.

The Department should work with states to make sure districts understand this rule now applies to *all* Title I schools. And they should require districts to make these methodologies publicly available to improve transparency and make accountability local and meaningful.

Thank you for the opportunity to comment on this important topic.