

November 3, 2016

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

Docket ID ED-2016-OESE-0056

Dear Mr. Butler:

The Wisconsin Department of Public Instruction (DPI) appreciates the opportunity to comment on the Department of Education's (ED) proposed regulations regarding the supplement not supplant (SnS) requirement under Title I of the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA).

DPI strongly supports the equity intent of the proposed rule and appreciates the focus on equity that ED is promoting. Wisconsin, however, cannot support the rule as written. While we are working hard to address equity through the ESSA in our work in Wisconsin, these proposed regulations will work against us in that effort. The rules conflate two distinct requirements under Title I, SnS and comparability of services provided. In doing so, the options outlined in the rule will cause resource redistribution within school districts without regard to the educational considerations necessary to close gaps and increase student achievement.

All children, regardless of their background, should graduate prepared for postsecondary education and work. This is the mission of the Wisconsin Department of Public Instruction's work around ensuring every child is a graduate. For instance, I have created an Equity Council to focus on equity in ESSA. We took our state teacher equity plan, required under Title I, and identified school districts with the biggest gaps in the distribution of experienced and qualified teachers. We are right now working with those districts to increase the equitable distribution of teachers in front of low-income students and students of color. We built closing gaps as a priority area in our accountability system. We focused on instructional practices that our data demonstrates is closing gaps and made those available to school districts. We are working at every turn to address equity in education.

The regulations as proposed, however, will harm students in both Title I and non-Title I schools partially by being incredibly burdensome on the people who should be focusing on educating students. They impose a methodology, expressly prohibited under ESSA, that will direct funding for schools. They will take day-to-day decision-making authority away from schools and those closest to students in order for school districts to determine compliance with arbitrary spending requirements. This will create an untenable situation in the operation of school districts trying to accomplish their educational mission.

Our specific concerns about the proposed regulations are listed below in greater detail.

1. *The proposed regulations require local educational agencies (LEAs) to allocate “almost all” available state and local funds to schools, but does not define that term.*

Proposed 200.72(b)(1)(B)(ii) requires LEAs to allocate to schools “almost all State and local funds available to the LEA.” It is not clear what this means. There are a whole host of questions around this definition. For instance:

- Does this definition include restricted revenue sources that are required to be used for specific purposes? If so, would a school have to turn back these funds if it means a violation of SnS?
- Is it meant to include debt or pension obligations?
- What about services or costs that are not school-based? For example, benefit costs to employees may vary by school as will transportation costs. Assigning these types of costs to schools may distort the information being collected and has little to do with educational quality.
- What about money spent at the district level that isn’t tied to an individual school outside of the school district? For instance, in Wisconsin we have a large number of community-based providers of four-year-old kindergarten. How would these expenses be accounted for?

This last point may be addressed in part under section 200.72(b)(2)(iv) that allows some districtwide expenses to be exempt, but as currently drafted this exemption isn’t clear as to what meets this definition versus what is a current expense.

2. *The per-pupil formula option is so restrictive and narrow that it is unworkable.*

In Wisconsin we distribute funds to school districts, not schools within a district. Our school funding formula allocates to school districts an amount of money under general school aids that school districts can spend as needed. In the interest of transparency, all school districts are required by [state statute](#) to hold public hearings and approve school district budgets, which includes money allocated at the school level prior to November. It would be impossible for school districts to meet the requirement in the proposed rule without upending state statutes whose sole purpose is to create transparency and accountability for the public in school district budgeting.

Additionally, we are unaware of any school district that uses a per-pupil funding formula internally to the district to allocate almost all available funds to a school. Requiring an equalized per-pupil spending amount won’t account for variations that can occur due to:

- Special education obligations
- Unique health and safety needs (e.g. school nurses, counselors, psychologists, social workers, security services, etc.)

- Specialized educational programs that may be located at one school, but for which access is provided across multiple schools. For instance, a technical education program offered at one building but accessible to all students in the school district.

Moreover, this option will require teacher reassignments. You can't have equalized per pupil spending without accounting for teacher costs. We are unclear how this will be done. School districts are hiring people at multiple points in a year. How are they to ensure compliance at any one point? They may be in compliance in August, but not in October or January. We are unsure how ED is planning on addressing this fact. Additionally, contracts can't be adjusted after they have been signed, thus limiting a school district's options. Furthermore, this rule will drive teacher assignments based on financial, and not educational, needs.

The jarring effect of moving from a budgeting system that most school districts in Wisconsin use now to a per-pupil amount will cause significant resource disruption in schools without corresponding public input or an educational rationale.

3. *The resource formula option is impracticable, raises more questions than it answers, and is counterproductive to achieving educational goals.*

This particular option for meeting SnS requirements would require a school district to use in its schools a formula to ensure each Title I school receives an amount of state and local funds at least equivalent to the sum of:

- The average districtwide salary for each category of school personnel multiplied by the number of personnel in each category assigned to the school, **and**
- The average districtwide expenditure for non-personnel resources multiplied by the number of students in the school.

Given the special consideration later in the proposed rule that the rule is not meant to infer required teacher transfers, this formula assumes there will be more resources made available to the school districts. Local school districts in Wisconsin operate under strict state imposed annual revenue limits. This means a district cannot raise more annual revenue than allowed under the cap without going to the voters in a referendum. Thus, there is no possible way to meet this formula option without required staff transfers and resource redistribution. These decisions would likely have to occur at the district level, removing building-level decision making over hiring. Again, critical staff and resource decisions are being driven by an arbitrary formula that doesn't take into account any educational purpose.

This option also raises more questions than it answers due to a lack of clarity. For instance:

- Are benefits included in salary calculations?

- How are initiatives like performance pay or stipends for additional work to be addressed? What about signing bonuses?
- What about differences between the high school and elementary levels? Are we supposed to spend less on high schools and more on elementary schools?
- What about schools with specialized programs?
- How do we address significant spending that is occurring in stages, such as initiatives that are phased in by schools?
- What about capital improvement projects? Are those part of non-personnel resources?
- What happens if there is a natural disaster (e.g. fire, tornado, flooding) that necessitates significant spending on a non-Title I school building?

Given the many questions this option presents, we also have concerns about how we would be held accountable for our oversight responsibilities as well as the risk of audit findings as auditors apply their own interpretations.

4. *The state-established option for compliance lacks clarity.*

ED's efforts to provide some flexibility here are appreciated. This option, however, would seem to only reinforce some of the same issues we have already noted. It is a funds-based compliance test that has to be substantially similar to the first two options and still has to demonstrate equalized spending between Title I and non-Title I schools. Moreover, it then must still be approved through a federal peer-review process.

Not only is it unclear what the department means with a term like substantially similar, but the only conclusion we can draw is that we would have to prove similar results with a state-developed test. This would undoubtedly mean running the first two options laid out in the rule to see how they compare to the state developed one. This would be a huge burden for states.

5. *The special rule allowing LEAs to use any methodology that results in spending at least as much in Title I schools as non-Title I schools is problematic and not inclusive of the many different populations of students that needs special supports.*

This option again requires an equalized level of spending. Yet, we do want to acknowledge that ED has added several exceptions here and we appreciate attempts to recognize that some students cost more than others to educate. The list of students included here are students with disabilities, English learners, and low-income students. This list should be expanded to include students in foster care, homeless students, and students with mental health needs being served in school.

As stated previously with the other options, formulas dependent on equalized levels of spending do not take into account special programs that may be housed in one school due to the focus of the school or the school serving as a center for the school district.

6. *The proposed regulations create a vast administrative burden.*

The regulations will create significant compliance and reporting burdens at both the state and local level. At the local level, districts will undoubtedly need to run each of the methodologies available to them under the rule to determine what works best for their situation and then reassign staff and reallocate expenditures to comply. This is more than just filling out a few forms. At the state-level we anticipate significant work around technical assistance to school districts and documenting compliance by school districts.

As if all of this weren't complicated enough, districts will have to comply with one set of tests for Title I, A, but other sets of tests for SnS in other federal programs. This will create confusion.

7. *The proposed regulations require a methodology, contradicting the statutory language in ESSA.*

Section 1118 (b)(4) of ESSA states "PROHIBITION.—Nothing 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."

The options ED has proposed in this rule violate this prohibition. A plain read, and the dictionary definition, of the term methodology is a system of methods; and a method is defined as a particular procedure for accomplishing or approaching something.

LEAs will be required under ED's proposed rule to use the procedures established under the rule to allocate state and local funds. There is simply no way around this. Even if there were, the prescriptive nature of the proposed rules are in direct conflict with the oft stated intent by members of Congress to provide more flexibility to allow for more innovation at the state and local level to meet the unique needs of states and local school districts.

8. *The proposed regulations appear to place state and local funds for schools under federal auspices.*

The proposed rule is unprecedented in conditioning the receipt of federal funds on the manner in which state and local funds are allocated. ED is using a small portion of a school district's budget, its federal dollars, to control the vast majority of a district's budget, its state and local funds. Thus the federal government, not the state, local school board, or school staff, will be driving budget and spending decisions.

ED has taken great strides to focus on and advance equity for students. Wisconsin appreciates ED's efforts in this regard. Nevertheless, we cannot support these regulations. The proposed rules are so focused on dollar for dollar spending that they lose sight of the fact that different students have different needs, and in pursuing greater equity decisions based on educational needs matter.

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Instead of the direction ED has laid out, Wisconsin echoes the recommendation proposed by the Chief Council of State School Officers (CCSSO). We recommend regulations that would require LEAs to:

- Distribute state and local funds to schools using a methodology that does not take a school's Title I participation into account;
- Publish their methodology for distributing funds;
- Demonstrate that they followed their published methodology; and
- For LEAs with Title I schools identified for comprehensive support and improvement (CSI), consider the effect of their methodology on those schools when developing support and improvement plans.

As noted by CCSSO, and with which we are in agreement, this proposal will work in conjunction with, and build on, ESSA's equity tools. Specifically:

- ESSA requires LEAs to report per-pupil amounts, which will tell the public *how much* an LEA spends per-pupil in each school. Our recommended regulations will enhance this information by giving the public insight into *how* the LEA distributed state and local funds to schools.
- ESSA requires LEAs to identify resource inequities to be addressed through implementation of support and improvement plans for certain low-performing schools. Our recommended regulations help to make this requirement meaningful by requiring LEAs to consider whether their methodology for distributing funds to schools creates resource inequities in CSI schools.

Wisconsin believes our recommended proposal would meet SnS requirements and enhance equity by shining a spotlight on district decision-making and creating greater transparency. If you have any questions about our comments please contact [Jonas Zuckerman](#), Title I Director, Wisconsin Department of Public Instruction.

Sincerely,



Tony Evers, PhD
State Superintendent

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