
Statement by Mr. Ryan Owens

**Hearing, "Supplanting the Law and Local Education Authority Through Regulatory Fiat"
U.S. House, Subcommittee on Early Childhood, Elementary, and Secondary Education
September 21, 2016**

Good morning Chairman Rokita, Ranking Member Fudge, and Honorable Members of this Committee. Thank you for the opportunity to participate in today's hearing. My name is Ryan Owens and I am the Executive Director of the Cooperative Council for Oklahoma School Administration – CCOSA. CCOSA is an incorporated not-for-profit professional association representing all of Oklahoma's public, private, and charter school administrators. With more than 2,700 members actively serving almost 700,000 students, CCOSA works each day to give voice the issues impacting educational attainment in the Sooner State.

The focus of today's hearing is the United States Department of Education's proposed rules on Supplement not Supplant under Title I of the Elementary and Secondary Education Act.

Since the 1970's a policy objective consistent with the focus of the ESEA has been to provide funds for low-income schools.

School districts in Oklahoma, over 66% of which are Title I schools, have grown accustomed to the various fiscal requirements under Title I Part A that include the current SNS compliance test - which essentially asks whether Title I funds were used to pay for something the district would have provided in the absence of those federal funds.

ESSA takes us away from this individual cost analysis and focuses the inquiry on how schools distribute their state and local funds to all school sites in order to determine if Title I funds are supplementing state and local funds in Title I schools.

The proposed ESSA Regulations requires districts to do two things:

1. Publish their methodology for allocating state and local funds in a format and language parents and the public can understand, and
2. Demonstrate that the chosen methodology gives each Title I school all the state and local funds it would otherwise receive if it didn't participate in Title I.

To satisfy the Department of Education's stated policy goal of reducing or eliminating funding gaps between Title I schools and non-Title I schools, the proposed rule gives schools four options to demonstrate that Title I schools would receive all the state and local funds they would otherwise receive. The bottom line for the proposed regulations is that LEAs would be required to equalize state and local spending among Title I and non-Title I schools in the district.

In the interest of brevity, I am not detailing the specifics of the USED proposal; I am focusing my comments on the realities that school districts and superintendents will face in implementing the rule, as proposed, and what it could mean for the students they serve.

Superintendents in Oklahoma, and across the nation, are acutely aware of the consequences of inequitable resource allocation. Prescriptive regulations like these are not the solution. Rather than revealing a new reality or truth, these regulations create new administrative burdens, encourage compliance driven decision-making, and rob communities of their ability to govern their local schools. In regard to the Department's goal of equitable resource allocation, it would be far more helpful for the Department to issue technical assistance that instructs states and districts about how to achieve this goal.

There are many unknowns about the proposed regulations.

LEGAL AUTHORITY TO ENACT PROPOSED RULES

Superintendents in Oklahoma are concerned that the proposed regulations reach far beyond the intent of the Every Student Succeeds Act. The ESSA does not require that LEAs equalize spending among Title I and non-Title I schools. Amendments along that line were considered throughout the eight-year reauthorization process and were ultimately left out of the law. ESSA merely requires LEAs to demonstrate that Title I schools receive at least as much state and local funds as they would otherwise receive if they weren't a Title I school. The proposed regulation, while noble in its intent, far exceeds the legal guardrails Congress has established for Title I funding. In this regard, CCOSA's position aligns with that of AASA, the School Superintendent's Association.

CENTRALIZATION OF DECISION-MAKING AND SPENDING

The proposed regulations will result in districts consolidating budgetary decision-making within the central office. Currently in Oklahoma site level administrators are given the flexibility to assess student needs and determine the amount of resources necessary to facilitate instruction. Under the proposed regulation, in an effort to equalize spending among Title I schools and non-Title I schools, district administration will have to override school-level decisions to ensure that there is a balance between Title I and non-Title I schools.

This is the antithesis of doing what is best for kids. Rather than looking at the needs of particular schools and budgeting accordingly, central office administrators will be devoting time to an arbitrary exercise of resource allocation, balancing, re-allocation of resources, re-balancing, etc. without regard to how the resources are to be used to benefit children.

What might this look like in Oklahoma?

Destroying stability within classrooms and among schools is a major concern. Last minute movement of staff and other resources is likely in districts with multiple sites, such as Oklahoma City and Tulsa.

The proposed rule is focused on teacher salaries as part of the calculation for equitable resource allocation among Title I and non-title I schools. How will districts in Oklahoma satisfy this requirement given that our state is in the midst of an unprecedented teacher shortage? Due to our state's budget crisis Oklahoma schools have eliminated over 1,500 teaching positions and still have over 500 vacancies. According to our state's school boards association, the majority of Oklahoma districts are indicating that Special Education, High School Science, and Elementary teaching positions are the most difficult to fill. How will districts using long-term substitute teachers, emergency certified teachers, or larger class sizes satisfy a requirement for equalized spending when the needed resource, teachers, do not exist?

The proposed rule would likely lead to the elimination of programs and initiatives that increase student and/or parent choice. Many of our best enrichment programs come with one common theme - variability of costs. If the proposed rule becomes law, cost variability will no longer be tolerable due to the need for uniform spending among Title I and non-Title I schools.

The proposed regulation becomes unworkable in a state like Oklahoma where we offer students and parents choices such as online coursework, concurrent enrollment, language immersion programs, advanced placement electives, and Career and Technology programs.

This proposed rule incentivizes a "one-size fits all" approach to district programming because uniformity will make compliance easier. This is detrimental to students as it leads to the elimination of specialized schools and specialized programs. These specialized programs exist for Title I and non-Title I schools in Oklahoma. For example, John Marshall Mid-High School in Oklahoma City Public Schools, a Title I school, offers students the opportunity to participate in a Finance Academy. Students learn about the finance industry and have an opportunity to work with accounting students to file income tax statements at no cost for eligible Oklahomans. In addition these students work at a credit union located inside the school. This is the type of specialized program that is at risk under the proposed rule.

ENFORCEMENT IS LEFT TOTALLY SILENT

What happens under the proposed rules if a district does not meet one of these options? The rule is silent on this issue. What is the penalty for non-compliance?

KEY TERMS ARE LEFT UNDEFINED

The proposed regulation is silent about the meaning of key terms. For example, what does it mean for a district to allocate “almost all” of its state and local funds to schools? What is included in these calculations?

Recently in one Oklahoma school, there was a profoundly disabled student that was required to be served out of state. The annual cost for these services exceeded \$250,000 per year. Would these costs be included in a compliance calculation for equitable fund distribution? If so, how would the district attempt to “equalize” the effects of this allocation among other schools?

Will local bond levies and/or maintenance of the physical plant be included in these cost calculations? Will other sources of revenue be included such as School Activity Funds, Gifts, Donations, etc.?

Many districts in Oklahoma have bond issues that will continue to be active when the proposed rule goes into effect. Local voters have participated in the creation of these initiatives and approved them at the ballot box by more than 60%. Will the proposed rule seek to override the decision of local voters by equalizing construction and/or improvement spending among Title I and non-Title I schools? If so, the proposed rule undermines local support for future bond issues as it will get harder to pass bonds that are in compliance with the rule.

Will auditors simply come out and look at a district’s calculation and compare that to what the auditor thinks the regulation means? The lack of clarity in the meaning of key terms in the proposed rule increases the risk of uneven enforcement of the rule. States, schools, and the Department of Education must work from the same set of assumptions.

CONCLUSION

Educators work every day to open a world of possibilities and opportunity for their students. ESSA recognized that those closest to students and schools have the best hope of improving learning conditions. The regulations proposed by the Department of Education take away the very flexibility ESSA guarantees.

I respectfully ask that the Department revisit these proposed regulations and require of schools only what ESSA requires of LEAs, to demonstrate that Title I schools receive as much state and local funds as they would otherwise receive if they didn’t participate in Title I.