



November 7, 2016

Secretary John King
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-2800

Re: Docket ID# ED-2016-OESE-0056-0001

Dear Secretary King:

On behalf of the 1.6 million members of the American Federation of Teachers, I write to provide comments on the U.S. Department of Education's proposed rules for the "supplement-not-supplant" provisions in the Every Student Succeeds Act.

AFT members work with children who attend schools in our nation's most vulnerable and under-resourced communities. There is no doubt that getting additional resources into disadvantaged schools—what we call "leveling up"—will help the students we work with every day. That is why, like the Obama administration, we believe we have a moral obligation to equitably fund our nation's public schools. This is the purpose of directing Title I funds to children who need it most, and, by pushing states and school districts to target their funds to schools with the most needs, it's the aspiration behind the supplement-not-supplant draft regulations.

Unfortunately, as those who work in schools—as AFT members do—can attest, there is no quick and easy accounting mechanism that can provide a real solution to funding inequities. Robbing Peter to pay Paul will not work. The only real way to achieve funding equity without taking money away from schools that are meeting their students' needs is for states and districts to level up funding at under-resourced schools so that their funding levels match or exceed funding at well-resourced schools. If the department can mandate all the options to meet supplement-not-supplant requirements, and can prescribe all of the exceptions that can exempt districts and schools from meeting these requirements, then it should assume it has the authority to require districts to level up spending as we have described. Otherwise, these regulations are an unfunded mandate from Washington that tells districts to spend more in schools with disadvantaged children without identifying or compelling the resources to do so.

American Federation
of Teachers, AFL-CIO

AFT Teachers
AFT PSRP
AFT Higher Education
AFT Public Employees
AFT Nurses and Health
Professionals

555 New Jersey Ave. N.W.
Washington, DC 20001
202-879-4400
www.aft.org

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PRESIDENT

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SECRETARY-TREASURER

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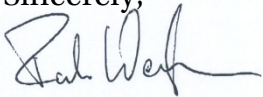
The American Federation of Teachers is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.



We're pleased that the proposed regulations clearly state that they do not require involuntary staff transfers or changes in collective bargaining agreements. These are critical checks and balances against destabilizing successful schools. However, we believe that this language should be strengthened and that the proposed timeline to accomplish funding equity is too short and sets up districts to fail.

Our specific comments on the regulations are below. They reflect the changes that must be made to these regulations in order to truly improve inequitable school funding. Without such changes, the regulations are not workable and will quickly erode educators', parents' and communities' support for the Every Student Succeeds Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Randi Weingarten", with a stylized, flowing script.

Randi Weingarten
President

RW:sah opeiu#2 afl-cio

**Comments from the American Federation of Teachers to the U.S. Department of Education
on proposed regulations regarding the “supplement-not-supplant” provisions
of the Every Student Succeeds Act
November 3, 2016**

Options for Compliance

The AFT is concerned that proposed Section 200.72(b)(1)(ii)(C), the option for a state-determined compliance test, puts onerous and subject-to-interpretation requirements on states to discourage them from choosing this option. For example, this state-determined option would require approval through a federal peer review process, and that peer review would have to decide whether the state-determined method “results in substantially similar amounts of State and local funding for Title I schools in the district” as would the other options.

Yet the department would retain almost total control over the individuals selected for peer review, who would likely be the arbiters of whether a methodology was “substantially similar.” This option has been portrayed as demonstrating the department’s flexibility, when, in fact, it may be the least flexible option of all.

AFT recommendation:

Remove language requiring approval by federal peer review. Strike “and has been approved through a Federal peer review process that relies upon peers such as professionals with expertise in school finance, State education officials, local education officials, and individuals who represent the interests of special populations of students” in Section 200.72(b)(1)(ii)(C)(1)(ii). Strike “as determined by a Federal peer review process” in Section 200.72(b)(1)(ii)(C)(2).

Need for More Flexibility for Magnet and Other Schools

We appreciate that the department addressed the needs of some specific constituencies. For example the draft regulations grant commonsense flexibility to small districts, and they allow districts to take into consideration costs associated with schools serving high proportions of English learners and students with disabilities, which may disproportionately affect their state and local funding allocations. However, these flexibilities do not encompass all of the various situations and anomalies in school districts throughout the country. For example, magnet schools may need more funding than average in order to operate their specialized programs. Another example is newly opened schools that may have relatively new staff, and as such, appear to be underfunded in the department’s proposed calculations.

AFT recommendation:

Add language giving flexibility to schools with special circumstances. After Section 200.72(b)(2)(iv), insert the following new provision: “(v) Special Circumstances – Any Title I school with special circumstances, such as a magnet school or a newly formed school, that, because of its special circumstances, receives disproportionately less state and local funds than the average of such funds at non-Title I schools in the LEA, shall not be considered in determining whether such LEA meets the requirements of this section. Such circumstances must be explained by the LEA to the State, and such explanation must be made available to the public, but these circumstances do not need approval by the Secretary.”

Lack of Accountability for Charter and Virtual Schools

We note that the necessary relief for small districts ensures that supplement-not-supplant becomes a regulation that only burdens large, traditional school systems. We are especially concerned that this would allow charter schools or virtual schools that are their own school districts to not be held accountable for inequitable funding, when such schools are consistently cited for lack of transparency and accountability.

AFT recommendation:

Require the department to report data on districts/schools excluded from compliance. A section should be added to the regulation requiring a report to Congress from the Department of Education detailing the number and percentage of schools and school districts, and their type—charter, virtual, traditional, etc.—that are excluded from having to comply with the regulation.

Timelines

As written, these regulations would require that by Dec. 10, 2017, states must either demonstrate or submit plans for demonstrating compliance. It is extremely unlikely that these regulations will be finalized before Dec. 10, 2016, which means that states will have less than one full year to comply with potentially extremely burdensome requirements. Even for states that may want to make constructive improvements to address funding inequities, these regulations essentially force states and districts to craft “on paper” accounting changes to demonstrate compliance.

The AFT is extremely concerned that the proposed timelines do not give districts a chance to level up funding at under-resourced schools. Without enough time to level up, the AFT predicts that school districts will move funding (which, for the most part, translates to personnel) among schools. We cannot underscore enough the fact that such shuffling of funds and personnel will only serve to destabilize schools and entire school districts. Without providing a longer timeline to implement the supplement-not-supplant regulatory requirements, coupled with an explicit statement in the regulations that states and districts

are expected to use such time to level up funding, these regulations will not fulfill their intended purpose of educational equity, but will further exacerbate such inequities.

We acknowledge that the law requires states to comply with supplement-not-supplant requirements two years after the date of ESSA's enactment, but we also believe that ESSA would not contain this two-year requirement if Congress had any indication that the Department of Education would draft such prescriptive regulatory requirements. If districts are expected to comply with such requirements, they need sufficient time to do so.

AFT recommendations:

Allow more time for compliance, with annual benchmarks. Within Section 200.72(b)(3), allow districts to demonstrate a plan for compliance by the 2021-22 school year (a reasonable five years after finalization of these regulations), and require that the plan include annual benchmarks toward compliance. Such benchmarks should demonstrate progress in leveling up funding at under-resourced schools so that their funding levels match or exceed such funding at well-resourced schools.

Require that extended time be used for leveling up funding. Within Section 200.72, explicitly state that districts, with support from their states, are expected to use the time between the date of enactment of the regulations and the deadline for full compliance (via state or local statute, policy, etc.) to make necessary changes in the form of leveling up funding at under-resourced schools so that their funding levels match or exceed such funding at well-resourced schools to be in full compliance by the 2021-22 school year deadline.

Rules of Construction and Staffing

The AFT appreciates the inclusion of language stating that these regulations “shall not be construed to require the forced or involuntary transfer of any school personnel” or to “alter or otherwise affect the rights, remedies, and procedures afforded to school or LEA employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employers and their employees.” However, such language could be strengthened, especially given the unworkable time constraints of the proposed regulations.

AFT recommendation:

Add specific language prohibiting forced transfers and alteration of collective bargaining agreements. Within Section 200.72(4), include language actually prohibiting districts from transferring school personnel or altering collective bargaining agreements in order to comply with these regulatory requirements.