Center for American Progress

Ensuring Equal Opportunity in Public Education

How Local School District Funding Practices Hurt Disadvantaged Students and What Federal Policy Can Do About It

June 2008

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Introduction by

John Podesta and Cynthia Brown

Papers by

Phyllis McClure
Ross Wiener
Marguerite Roza
Matt Hill

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The History of Educational Comparability in Title I of the Elementary and Secondary Education Act of 1965

Phyllis McClure

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Passage of the Act and Early History

Title I of the Elementary and Secondary Education Act of 1965 requires that schools receiving funds under Title I be comparable in services to schools that do not receive Title I funds. The public policy purpose: To ensure federal financial aid is spent on top of state and local funds to which all public school children are entitled. Title I was one of five titles in the legislation, which was introduced in Congress on January 12, 1965, and was passed by Congress on April 9, 1965.

President Lyndon B. Johnson signed the legislation on April 12, 1965 in front of the old one-room school house on his ranch on the banks of the Perdernales River. The new law was considered a legislative triumph because previous attempts to provide federal aid to primary and secondary education by Congress had always floundered on the "two R's," race and religion.

The first of the two obstacles, race, had been resolved the previous year with enactment of the Civil Rights Act of 1964, Title VI of which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin. All prior attempts at providing federal aid to pre-collegiate education had been stalled by the Powell Amendment attached to bills by Rep. Adam Clayton Powell II, chairman of the House Education and Labor Committee. The Powell Amendment prohibited the use of federal money to build racially segregated schools. Under Title VI school systems that operated racially segregated schools pursuant to state law were required to have acceptable desegregation plans in order to be eligible for federal funds. With the passage of the Civil Rights Act, Powell allowed ESEA to move forward to enactment.

The second impediment concerned federal funding of religious schools. Such aid to parochial schools rested on a constitutional minefield, but post-war inflation and enrollment surges affected religiously affiliated as well as public schools, especially in northern cities. The objection to aid for religious schools was removed by the creation of the so called "child benefit" theory. Under this approach, the Title I formula was designed to distribute its funds to *school attendance areas* having high concentrations of children from low-income families. All children residing in such a school attendance area were deemed eligible for services whether they attended the public school or the church-affiliated school in that attendance area.

Now, for the first time, there was federal aid for the nation's elementary and secondary schools. But controversies over how it was spent were soon to follow.

Dispute Over the Use of Title I

The short time for the legislation's passage through Congress was devoted primarily to working out the details of the Title I formula, which allocated federal funds to states and school districts based primarily on the number of low-income children ages 5 to 17. Little consideration was given to how the money would be used once it arrived in local school districts. Indeed, most supporters of the legislation inside and outside of Congress assumed that Title I was the money for school construction and teachers salaries that previous aid to education bills would have authorized.

Yet the bill that became law was the House passed version of P.L. 89-10 that had a definite categorical purpose. It provided in Section 201 of Title I that:

> *…in recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance…to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs…to meet the special educational needs of educationally deprived children.*

And the bill provided in Section 205 (a)(1) that

> *…payments under this title will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities)*
>
> > *(A) which are designed to meet the special educational needs of educationally deprived children in school attendance areas having high concentrations of children from low-income families and*
> >
> > *(B) which are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting those needs*

Not to be completely cut out of congressional action, the Senate Labor and Public Welfare Committee issued a committee report intended to "interpret" the statute and provide administrative guidance to the United States Office of Education in the Department of Health, Education and Welfare. That report encouraged general aid to schools, and liberalized the definition of eligible schools and children. The report also included a list of "allowable activities" that local school officials soon would cite time and again to justify their expenditures of Title I funds.

These alternative interpretations of the statute—general aid to school systems versus categorical aid to poor children—set the stage for the struggles within the Office of Education for the direction and mission of Title I. John F. Hughes, the first federal director of the Title I program, writes about the battles between the traditionalists and the advocates:

> *While the traditionalists, who generally ran the affairs of USOE, looked upon Title I as a welcome and major new source for funding the system, a new and unexpectedly tenacious group of advocates within the education establishment emerged as the proponents of Title I as a means for changing the establishment and its schools through serving the needs of deprived children.*[1]

These two forces waged battle over regulations, program guidelines, and basic criteria that would establish federal policy for the program. The Title I program staff drafted guidelines that would give substance to the categorical language—size, scope, and quality—of the statue, concentrate funds on a limited number of children, target project areas, approve project proposals, limit capital projects, and include private school children. Yet traditionalists in the Office of Education and the majority of chief state school officers were adamant that restrictions on state and local discretion be removed from federal guidelines.

The result: Guidelines were watered down, containing only mild references to using money on behalf of poor children. Traditionalists got all the concessions and won the day in the draft regulations and guidelines.

While those battles raged in federal offices and at state and regional meetings, the $1 billion federal appropriation for Title I began to deliver money to local school districts around the country in the 1965–66 school year. For most places, this new federal money was the most substantial money they had ever seen, and many went on a spending spree in order to use their allotment within the fiscal year.

With the weak federal guidelines and the state chiefs' objections to federal interference, districts spent on district needs, on new programs for all children, but also on installing teachers and materials in all-black schools that were previously available only in all-white schools. Local school authorities were aided by the National Audio-Visual Association whose members marketed all kinds of equipment. School districts bought the equipment in quantities irrespective of whether teachers knew how to use it, whether there was space for it, or whether there was sufficient electricity to operate more than the lights and one machine simultaneously.

The federal Title I staff's attempts to monitor federal expenditures were severely restricted under budget action in Congress and opposition by the state chiefs.[2] State Title I coordinators were powerless to exercise any authority over local project applications, unless their chief was more in sympathy with the focus on poor children. But auditors from the Department of Health, Education and Welfare turned their attention to how funds were being spent. Those audit findings, initially buried in the Department's desk drawers, were ultimately made public by civil rights groups.[3] This expose—"Title I of ESEA: Is It Helping Poor Children?"—published in 1969, helped turn Title I into a supplementary program targeting educationally disadvantaged students in high-poverty schools rather than on the general needs of entire schools or districts.

Misuse of Title I Leads to Comparability

These free-wheeling spending practices of school officials in the first few years accomplished what the categorical advocates had been unable to achieve in the policy battles. Their expenditures made the case for strong federal guidelines that would lead to curbing the abuses and establishing comparability requirements that state and local funded services for schools receiving funds under Title I be equivalent to such services for schools that do not receive Title I funds. Not only was federal money being spent on the general needs of school systems (general aid), it was also paying for goods and services that had previously been purchased with state and local funds.

That practice became known as supplanting, meaning the substitution of state and local funds with federal money. In contrast, Title I funds were intended to supplement, or add on to, state and local expenditures. The federal rule, Supplement/Not Supplant, or SNS, entered the Title I lexicon. The clearest example of supplanting was the use of Title I money in still-segregated southern school systems.

Especially, but not exclusively, in the South, many high-poverty schools eligible for Title I funds were black schools that had been victims of unequal expenditures under de jure systems of racial segregation. Title I began paying for teachers, aides, instructional materials, and equipment in black schools. These buildings were upgraded and wings were added to old buildings. They got cafeterias, libraries, and lunches. All these enhancements that had been provided by the district in white schools were charged to Title I in Title I, predominantly black schools.

All these improvements were occurring at the same time as districts were required, as a condition of receiving federal funds, to desegregate their schools. These practices led civil rights workers to charge that school officials were improving all black schools in order to entice parents and students to remain in those schools rather than attend previously white schools under the so-called "freedom of choice" school desegregation plans.

Nor were unequal and discriminatory practices exclusively a southern practice. Urban and northern districts engaged in the same behavior. The most notable example at the time was the celebrated case of *Hobson v. Hansen* involving the schools of the District of Columbia. Local activist Julius Hobson filed suit in 1967 against the District of Columbia superintendent, Carl Hansen, and the city school board. He alleged denial of equal educational opportunities for poor and black children in the allocation of resources and personnel, and the tracking of black children in to low level classes based on their presumed "ability."[4]

The case fell to Judge J. Skelly Wright of the U.S. District Court of the District of Columbia to adjudicate. Despite woefully inadequate data, much of it obtained from the schools directly, Hobson presented charts and other evidence showing unequal allocation of resources between predominantly black and poor schools in Anacostia and neighborhoods east of Rock Creek Park in favor of predominantly white and affluent schools west of the Park.

In 1969, Hobson was going beyond the relief he sought for racial integration in 1967. Now he sought equalization of resources. Just about the time Congress and the administration were wrestling with the comparability issue in Title I, Judge Wright ruled in favor of the plaintiffs and issued an order requiring by October 1, 1971 that:

> *…per pupil expenditures for all teachers' salaries and benefits from the regular D.C. budget in any single elementary school shall not deviate more than plus or minus five percent from the mean of all elementary schools.*[5]

Computation of expenditures per school was to include classroom teachers, special subject teachers—such as physical education, music, and art—and special education personnel for physically or mentally handicapped children. (The District of Columbia Public school system was at the time under court order to provide educational services for handicapped children who were denied any education in mainstream or special classes.[6])

The per-pupil expenditure measure, the judge ruled, summarized most other relevant distributions of educational resources. The record indicated a "striking differential" in per pupil expenditures of teachers' salaries and benefits between schools east and west of Rock Creek Park and that the differential had grown since the previous year. Schools west of the Park were 74 percent white and had a 26.7 percent advantage in teacher expenditures per pupil over schools in rest of the city, and particularly over Anacostia schools that were 98 percent black.

Wright focused on the cost of all teachers' salaries, including longevity pay, because he believed that all children were entitled to the services of experienced teachers regardless of the school they attended. Furthermore, the school administration had testified before Congress that it required additional funding for teachers salaries in order to attract better trained teachers who would be more effective in dealing with children in the system.[7]

Office of Education Reverses Lenient Policy

The first sign that the Office of Education was reversing its lenient policy was Title I Program Guide #44, which was issued on March 18, 1968. (An earlier Program Guide #36 attempted to curb the use of Title I funds for construction.) U.S. Commissioner of Education Harold Howe II issued the "Revised Criteria for the Approval of Title I ESEA, Applications From Local Educational Agencies." It reflected the language of Sec. 105 of the law and contained the first language explicitly prohibiting supplanting state and local funds with federal funds:

> *It is expected that services provided within the district with state and local funds will be made available to all attendance areas to all children without discrimination. The instructional and ancillary services provided with State and local funds for children in project areas should be comparable to those provided for children in the non-project areas, particularly with respect to class size, special services, and the number and variety of personnel. Title I funds, therefore, are not to be used to supplant State and local funds which are already being expended in the project areas or which would be expended in those areas if the services in those areas were comparable to those for non-project areas.*

Program Guide #44 also addressed a related supplanting matter that audits had revealed. Districts would spend Title I money in Title I project areas on a new program or service and then extend that same program to non-Title I schools with their own revenue. This was particularly common with the introduction of Kindergarten programs, then not part of most states' minimum foundation program. According to the guide:

> *It is intended also…that as services initiated in the project areas under Title I are extended to children residing in non-project areas the applicant will assume full support of those services under the regular school budget, this will release Title I funds to provide new activities for eligible children.*

The March 1968 statement of policy on supplanting was followed shortly by Program Guide #45, which was issued on June 14, 1968. It stated that documentation of supplanting could be considered a violation of Title VI of the Civil Rights Act as well as Title I and subject to federal audit and repayment of misspent funds.[8]

The upshot: Within three years of the Elementary and Secondary Education Act's enactment, the Office of Education had established policy and enforcement tools. Audits and repayments of misspent funds were ex post facto remedies for violations of the law, but there was no mechanism to prevent supplanting.

Comparability Rule Established

The case that was most directly responsible for amending the statute to require comparability concerned misuse of Title I funds in several Mississippi school districts. Parents and civil rights lawyers took documentation of these abuses to the Senate Labor and Public Welfare Committee in the summer of 1969 to convince lawmakers that federal money was supplanting state and local expenditures and to demand that action be taken.

In the state's Cahoma County in the 1967–68 school year, for example, non-Title I schools, mostly white, received $324.71 per-pupil from state and local resources, while Title I schools (almost entirely the all-black schools) received $175 per pupil. In a school desegregation case involving Quitman County, the superintendent testified in federal court that Title I was going to black schools in an effort to equalize expenditures.[9] Federal officials went to Mississippi, an unprecedented action, to secure commitments from state officials that they would only approve local project applications that complied with federal requirements.

Back in Washington, and also in Mississippi, civil rights and poor peoples' advocates pressured the Office of Education to concentrate Title I on high-poverty schools and students. Public disclosure of the headline-grabbing purchases—portable swimming pools, mobile classrooms, a church, sewage disposal systems, band and football uniforms—brought disrepute to the federal government's Great Society program. James Allen, the new Commissioner of Education, moved to take advantage of the more hospitable climate in 1969 and 1970 for enforcement.

He created a Title I Task Force and asked it to develop a set of criteria and reporting requirements for comparability. A new program guide containing comparability criteria was drafted and cleared for issuance, but his action was preempted by Congress. John Hughes recalls:

> *At that moment the House and Senate conferees on the ESEA amendments were arguing their respective versions of the changes in Title I. A strong Senate provision on comparability had already been informally agreed to by the conferees but Allen's issuance of the guide alerted and excited House conferees, sparked by [Congressman] Roman Pucinski of Chicago… .*[10]

The Department of Education's comparability rules called for equalization of money and teachers on a quantitative basis. According to John Hughes, Rep. Pucinski (D-IL) was responsible for the seniority exemption in comparability. He wrote:

> *Comparability as a concept poses a threat to the big city tendency to assign their least qualified and poorest paid teachers to the inner-city, predominantly black or Spanish-speaking schools.*[11]

By the end of the 1960s, then, the stage had been set for the executive branch to enforce comparability and Supplement/Not Supplant regulations across the country, which led to further legislative action to buttress these enforcement actions.

The 1970s: Title I Amended to Include Comparability

In 1970, Congress added the requirement, Section 105 (a)(3), that:

> *State and local funds will be used in the local educational agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title.* Sec. 105 (a)(3).

That language is virtually identical to the words in current law, except that the phrase "in project areas" is replaced by "in schools." The Office of Education issued regulations requiring that each Title I school be comparable to the average of non-Title I schools on five measures:

- The number of pupils per certified teacher
- The number of pupils per other certified instructional staff, including principals, vice-principals, guidance counselors, and librarians
- The number of pupils per non-certified instructional staff, including secretaries, teacher aides, other clerical personnel
- Instructional salaries (less longevity) per pupil
- Other instructional costs-per pupil, such as textbooks, school library books, audio-visual equipment, and teaching supplies

The comparability regulations further provided that the state education agency should not approve a district's application for Title I assistance or make a payment under a previously approved application unless the district had demonstrated compliance with the comparability requirement. The Office of Education originally established November 1 of each year as the date for collecting comparability data. But that was changed in 1976 to allow each state to set its own deadline, as is the case today.

If a comparability report showed that one or more of a district's Title I schools were non-comparable, the district was required to file a plan showing how comparability would be achieved in the following comparability report. A five percent variance from the non-Title I school average was allowed for each Title I school on each measure.

For the vast majority of school districts with six or fewer schools, a comparability report could fit in 12 or 13 columns on a single page of 11" x 17" paper. But in the rural south, schools and districts were small and finances fairly simple. The comparability regulations exempted schools with fewer than 100 pupils. In large city districts, the task was more difficult and time consuming, primarily because of the number of schools but also because there were likely to be other staff, such as guidance counselors and librarians.

But overall, school finance was relatively uncomplicated. There was local revenue and the district entitlement under the states' minimum foundation programs, but no special programs or populations. The new comparability reporting rules were fairly easy for school districts to complete.

A large measure of the disparity, for example, between poor, black schools and formerly all-white schools, especially in the rural south, was due to salaries. Black and white school personnel did not have the same salary schedules in those days. Black teachers and principals were paid much less than their white counterparts. It is worth remembering that in the early 1970s race and sex discrimination in public employment was not illegal. This situation did not begin to abate until 1972 when Congress amended Title VII of the Civil Rights Act of 1964 to cover public employers, and enforcement by the Equal Employment Opportunity Commission and the Department of Justice began to take effect in the mid and late 1970s.

The initial comparability criteria were appropriate for their time. Like disaggregation of achievement scores today, they shined a spotlight on gross disparities and brought about correction. Throughout the decade of the 1970s changes were made to the comparability criteria, mostly in concessions to state and local officials who had the job of compiling comparability reports. The first change was to collapse the three separate categories of instructional staff, thereby eliminating the distinction between certified and non-certified staff. This left the following criteria in place:

1. Equal per-pupil ratios of instructional staff, within 105 percent of the average
2. Equal per-pupil ratios of instructional staff expenditures (less longevity) and within 95 percent of the non-Title I average
3. A policy for equal distribution of instructional materials

Other changes were made to comparability. The separate measure for instructional materials was changed to require a policy of equal expenditures. However, if a district was not comparable on the basis of the three remaining criteria, it was required to report actual data for supplies and equipment. The 5 percent tolerance was increased to 10 percent.

In addition, personnel for special education students and limited English language learners were excluded from comparability determinations. Other modifications included adding clerical personnel to the list of those included in staff determinations, and allowing states to "weight" certain staff if state law mandated higher expenditures for certain children, certain grade-spans, or other considerations.

When a few states instituted compensatory education programs that mirrored the purpose of Title I, expenditures of those funds in Title I schools were exempted from comparability calculations. Title I regulations also included specific record-keeping requirements pertaining to comparability, including the mandate that records be maintained for individual schools and that worksheets show the total number of instructional staff as well as their salaries due to longevity.

Although there were changes in the criteria over the decade of the 1970s, as well as complaints about burdensome federal regulations and paperwork, reporting and enforcement became a more or less normal part of administering Title I at the state and local levels. States instituted administrative procedures that local educational agencies were supposed to follow in filling out comparability forms. States were responsible for monitoring local districts and withholding Title I funds from districts or schools found to be out of compliance. It was a fact-intensive business.

Not surprisingly, though, there were many problems with inaccurate data and timely reports. State enforcement consistently lagged, and securing federal enforcement was always an uphill battle. Federal audits of Title I were the primary enforcement tool. They typically ran 35 to 50 pages, including recommendations for recovering millions of dollars—and prompting bristling, sometimes defiant, responses from state departments of education.

Incorrect data and computations and disputes over the status of particular teachers were often the basis of auditors' determinations of non-comparability. For example, the audit of the San Francisco Unified School district for the 1974–75 school year found 45 of the 71 Title I schools were not receiving state and local services comparable to non-Title I schools. The district had assigned 49 teachers to non-Title I schools, arguing that they were resource teachers paid by California's compensatory education program.

By examining personnel records and interviewing teachers, the federal auditors found that the positions in question were regular classroom teachers paid from general funds, not resource teachers paid by the state compensatory education program. Other issues that bedeviled comparability determinations in this audit and others were:

- Failure to use teachers' current assignments
- Failure to file comparability plans with the state by the deadline
- Incorrect comparability findings by state officials
- Continued allocations of Title I funds to districts out of compliance with comparability[12]

Comparability of services, however, was not the only subject of federal audits. Federal audits of states and large urban districts continued to find supplanting and general aid violations. The auditors recommended recouping millions of dollars. The Office of Education typically negotiated audit exceptions downward, but states were ultimately required to repay misspent Title I funds. An audit resolution process was created in 1978 under the statute to adjudicate disputes. An Education Appeal Board issued rulings. Final appeals could be taken to the Commissioner (later the Secretary) of Education (after the creation of the Department of Education in 1979).

In a 1975 study of the Office of Education's enforcement of comparability, supplanting, and general aid, the Lawyers' Committee for Civil Rights Under Law reported that the agency had issued 149 audits, of which 106 revealed audit exceptions requiring reimbursement for illegally spent Title I funds. Of the 106 audits where the audit agency had recommended reimbursement of illegally spent funds, the Office of Education had taken no enforcement action in 23 instances. In the 78 cases in which it had taken final action, the agency fully sustained the auditors' action in five cases—all involving audit exceptions of $10,000 or less. (Information on the remaining five audits was unavailable). In addition, in preliminary and final determinations covering 80 audits, the Office of Education had significantly reduced or dismissed its auditors' findings.[13]

Despite its many concessions to states' audit findings and the diffuse legal framework of Title I, the Office of Education did engage in enforcement through audits, compliance reviews, and orders for repayment of misspent funds. The federal enforcement effort got the message across: Title I is not all-purpose money. Local Title I coordinators could use federal guidelines and the threat of an audit to defend Title I money against sequester for other purposes by superintendents and school boards.

The federal government defended its interpretation of supplanting all the way to the Supreme Court in a case from Kentucky. With state approval, 50 school districts in Kentucky had placed first and second grade Title I students in separate classrooms of "readiness classes" with Title I teachers. Except for a few "enrichment classes," these students received their entire academic instruction, including the state-mandated curriculum, through Title I. In the words of the Court,

> *We agree with the Secretary that the readiness classes approved by Kentucky clearly violated existing statutory and regulatory provisions that prohibited supplanting. It is undisputed that Title I funds were used to pay substantially all the costs for the basic education of students in the readiness classes. Absent these classes funded by Title I, the participating students would have received instruction in regular classes supported by state and local funds.*[14]

The 1978 amendments and regulations contained very detailed comparability requirements, including the specific data required, setting the date of November 1 of each year as the time by which they should be collected, and requiring that local educational agencies file their comparability report with the state on or before December 1 in each fiscal year. On the seniority issue, these regulations specified as one of the criteria the total amount of the annual salaries of the instructional staff in each school minus the amount of those salaries based on length of service. The final regulations were issued the day before Reagan was inaugurated on January 20, 1981.

Comparability Ignored

The election of Ronald Reagan in 1980 brought about a reversal of active federal monitoring and enforcement of Title I. Comparability took the greatest hit. The Reagan administration did not succeed in repealing the Elementary and Secondary Education Act or converting Title I into a block grant, but the administration did succeed in relaxing the criteria for demonstrating comparability and the reporting requirements through the budget reconciliation process.

The Reagan administration orchestrated this reversal through the enactment of the Education Consolidation and Improvement Act of 1982, which renamed Title I as Chapter 1. The new law maintained the basic comparability requirement similar to Title I's language, but the original regulatory criteria were replaced by the provision that exists today. A local educational agency was considered in compliance with the requirement under Section 1120A (c)(2)(A) of the new Act if it had filed with the state educational agency a written assurance that it had established and implemented:

- A district-wide salary schedule
- A policy to ensure equivalence among schools in teachers, administrators, and other staff
- A policy to ensure equivalence among schools in the provision of curriculum, materials, and instructional supplies.

Deregulation resulted in still more changes. The 1982 changes completely gutted the enforcement scheme of previous years. The 1982 regulations, originally issued on January 19, 1981 were greatly scaled back. All of the detail regarding how to demonstrate comparability, the definition of eligible personnel, and the longevity clause disappeared. States and school systems could continue to compile comparability reports, but many states did not require that they be submitted. It was sufficient to sign a general assurance of compliance and keep data and/or the policy of equivalence on file should anyone ever ask for it. All federal auditing and enforcement of these fiscal restrictions on the use of Title I dollars effectively ceased for 20 years throughout the administrations of presidents Reagan, George H.W. Bush, and Clinton.

Congress reauthorized Chapter 1 in 1988, maintaining the more relaxed 1982 comparability language and the exclusion of longevity pay. The statute and regulations issued the following year instituted the option of either filing an assurance or adopting the staff/student ratio or the instructional salary/student ratio. The Department of Education tried to establish a firmer basis for comparability by proposing that states and local districts have standards that would actually ensure that their policies resulted in the provision of equivalent staffing, materials, and supplies. The federal government backed off, however, after complaints from states and districts about the need for flexibility, and the provision was eliminated in the final regulations.

The Clinton administration tried to make modest modifications to the comparability requirements, including elimination of the option of demonstrating comparability by a written assurance. It was largely unsuccessful, and the Department of Education backed off any efforts after Republicans captured control of Congress in 1995.

After the 1994 reauthorization, federal attention shifted to standards and assessments and to coordination of categorical programs at the state and local levels. The final regulations to implement the Improving America's Schools Act of 1994, issued on July 3, 1995, contained no comparability provision at all. Program monitoring called Integrated Program Reviews concentrated on working cooperatively with states to see how all federal grant programs worked together to support state and local reform efforts. All of Title I's requirements were just one of nine items in these reviews. The inspector general conducted no comparability audits.

Comparability guidelines shifted again after president George W. Bush took office in 2000. The Bush administration's successful enactment of the No Child Left Behind Act in 2002 led the Education Department to begin Achievement Focused Monitoring in 2003, but the monitoring guide did not mention comparability or Supplement/Not Supplant initially. Things began to turn around by mid-decade. Both the Department's inspector general and the General Accountability Office criticized the Department of Education for its lack of guidance to states and its incomplete oversight of states' monitoring responsibilities.

The Department did issue draft guidance on comparability in 2006, however its Office of Inspector General found in a 2008 report that the guidance required improvement in three areas:

- State monitoring did not verify that local educational agencies were using correct and complete data in compiling their comparability reports.
- Federal guidance did not make clear that reported expenditures must reflect actual and final staffing data, not budgeted figures or positions in calculating expenditures and staff per pupil.
- Federal guidance did not adequately convey the concept that schools had to be comparable before the addition of Title I funds for a school year, not halfway through or at the conclusion of the academic year.

The inspector general's office said that states should establish a specific deadline for determining comparability and correcting any imbalances. Nonetheless, the inspector general found that lack of state monitoring permitted an Arizona district to remedy imbalances at the beginning of the second semester and one Illinois district to correct staff positions as late as the end of the school year.[15]

To bring this brief historical narrative up to the present, the Department's Title I office issued in February 2008 new guidance that makes revisions and clarifications to existing statutory and regulatory comparability requirements. As discussed in the next section of this report, the single and most controversial issue in the 2008 guidance is the issue of determining comparability in a schoolwide program.

The Changing Title I Landscape

Title I is no longer a program focused solely on improving education for educationally disadvantaged students in high-poverty schools. It has become the vehicle for raising the achievement of the nation's students. Title I today serves many more schools and pupils than it did 43 years ago. In part this is the result of increased appropriations and in part it is due to the flexibility permitted and encouraged in the use of funds.

There have been two significant changes in the way the program operates. The first is the growth in the number of school districts in which all schools in the district or nearly all schools serving a particular grade span are Title I schools. There are no non-Title I comparisons for making comparability determinations.

The second change is the growth of schoolwide schools—schools that serve all students in a Title I eligible school with Title I funds, rather than serving only a particular group of students within the school. Schoolwide schools may—indeed are encouraged—to consolidate Title I, state, and local funds in one account or "pool" of money so that Title I funds, theoretically, become indistinguishable. These two features of Title I in school systems today require a new approach to defining comparability.

Title I Serves All Schools

In many urban districts today, Title I serves all elementary schools in the district. This has been true since 1995–96, when the allowance for schoolwide projects was lowered to 40 percent of students in the school being low-income. There are other school districts that serve only one grade span, such as a high school district or an elementary school district, in which every school is a Title I school. In such cases there are no non-Title I schools with which to compare each Title I school.

What does comparability mean in this circumstance? The law and guidance say only that the school district must demonstrate that these schools are providing "comparable services." The term "comparable services" is undefined. The February 2008 federal guidance provides several examples, including these:

- Where all schools in the district are Title I schools, the district uses the per-pupil amount of state and local funds allocated to schools as the basis for comparison.

- Using different grade spans within the district uses the amount per pupil of state and local funds allocated to schools in that grade span.

Interestingly, the January 19, 1981 regulations that the Reagan administration threw out had one answer to this question: Where all schools in the district or in a grade span were Title I, a district could determine comparability by showing that two conditions—a student/instructional staff ratio and an average per-pupil expenditure for instructional staff—prevailed.

Both the ratio and the expenditure had to be within a 5 percent variance of the average of that criteria for the group of schools having the lowest proportion of poor children. This essentially compares the poorest Title I schools to the average of the least poor Title I schools. In other words, is comparing a very poor Title I school to a less poor Title I school an accurate measure of comparability?

Title I Schoolwide Schools

The other difference from the original legislation is the operation of schoolwide Title I schools. Schools with percentages of poor students as low as 40 percent can operate as schoolwide programs. In the 2004–05 school year, schoolwide programs accounted for more than half (58 percent) of all Title I schools and 67 percent of all Title I funds.

(Schools that elect not to adopt the schoolwide approach or are below 40 percent low income operate as so-called targeted assistance schools. Those schools operate much as all Title I schools did in the early days of the program. Individual students are "targeted" for remedial assistance by an instructor paid with Title I funds).

Programmatically, a schoolwide school by definition considers all students eligible for Title I services. Title I dollars do not need to be traced to Title I-eligible children. Schools may—indeed are encouraged to—coordinate federal funds with state and local revenue and spend the consolidated funds for any educational activity included in their schoolwide program plans, and on any student or group of students in the school. In this environment, school officials do not have to track Title I dollars or identify specific services funded by Title I.

Title I is, in effect, general aid in most high-poverty schools. The Department of Education, especially the inspector general's office, has been quite aggressive in advocating fund consolidation in order to promote programmatic flexibility. This advocacy of total fund consolidation raises many issues, but on comparability specifically the Education Department maintains that each school operating a schoolwide program must receive all the state and local funds it would otherwise receive to operate its educational program in the absence of Title I, Part A or other federal funds.

The Department's February 2008 guidance contains examples of how districts can demonstrate comparability in schoolwide schools[16] (see Appendix).

The 2008 guidelines also illustrate how comparability can be documented in situations in which all schools in the district or in a grade span are to operate schoolwide. For both cases where there are no non-Title I schools, the examples create comparison schools within the district.

For example, a district could compare student/instructional staff ratios between high (less than 60 percent) and low (less than 40 percent) Title I schools, or it can compare student/instructional staff ratios in each school to the district average.

Still another way to demonstrate comparability is to show that every school in the district is receiving a total and a per-pupil amount of state and local funds within the 90-to-110 percent range of the district-wide amount. Either way, though, the new 2008 rules re-introduced comparability evaluation requirements.

Skepticism and Confusion

Although the schoolwide option and fund consolidation have been an option since 1994, the idea has apparently been slow to catch on. A 2000 audit by the Office of the Inspector General found that 10 of 15 states surveyed did not allow schoolwide programs to combine funds, and none of 16 school districts contacted combined funds. A 2008 analysis of the fund consolidation issue reported that many states thought that the flexibility offered by the new guidance was not worth the accounting headaches. A tension existed between federal flexibility options and reporting requirements pressed on states and districts by state legislatures and accountants. School people felt caught in the middle: How were they going to defend themselves legally if they could not account for dollars separately?[17]

The GAO proposed another answer to the question of how to insure fiscal equity for Title I schools in cases where schools and districts pool all dollars in one schoolwide account. In a 2003 report, the agency proposed that Congress consider repealing the Supplement/Not Supplant provision for schoolwide programs and substitute other fiscal accountability provisions such as Maintenance of Effort.[18]

The MOE provision requires that a school system maintain at least 90 percent of its aggregate state and local education expenditures or the per-student expenditures for the preceding year as a condition for receiving any Title I money. The GAO was especially interested in whether the fiscal requirements of the law protected the integrity of Title I in a time of economic retrenchment and cuts in state and local education budgets.

GAO found a great deal of confusion on the part of local and state school officials about the various fiscal requirements of Title I—MOE, Supplement/Not Supplant, and comparability. This confusion was attributed to the absence of any federal monitoring or even published guidance on these matters for many years. Misunderstanding was also due to the changed landscape in which Title I operates today.

Glendale (Arizona) Elementary District is an example GAO selected to illustrate how difficult it is for school officials to defend against charges of supplanting. This district has six schools, all of them Title I schoolwide programs. The whole notion of what supplanting means, according to GAO, is unclear because all federal, state, and local funds are pooled. If a state or district should discontinue a program or service and Title I schools use their federal money to continue the activity, is that considered supplanting?

Because the amount of federal, state, and local funds going into a schoolwide program is known, perhaps a better test for Supplement/Not Supplant compliance is a year-to-year comparison of the total amount of funds allocated to all Title I schools. That test would amount to a MOE requirement at 100 percent. School officials argued, however, that that test was more stringent than the normal 90 percent, that is, the 10 percent allowance for comparability.

Should Reform Trump Comparability?

We should not lose sight of the forest while examining the trees here. This is a real and present issue as Title I presses not just schoolwide reform but district accountability and reform. If the provisions of the No Child Left Behind Act press states to transform their public schools and coordinate efforts at all levels—federal, state, and local—how can flexibility with dollars be provided and still maintain the supplementary nature of the federal dollar?

GAO cites a real case in point, the operation of Title I in the San Diego (California) Unified School District under superintendent Alan Bersin in the late 1990s and early 2000s. Bersin wanted to completely restructure the reading program in all elementary schools without violating Supplement/Not Supplant guidelines. That policy involved pooling Title I and non-Title I funds in order to implement the reading program in all elementary schools. A group of Title I parents filed a complaint with the California Department of Education arguing that the district was violating comparability.

The state agreed with the parents and ordered San Diego to develop a plan that would comply with federal comparability requirements. The superintendent appealed to federal officials at the end of the Clinton administration. The Department granted a Title I waiver to San Diego based on a leap of faith that Bersin's reform plan would raise student achievement.

Here we have the ultimate irony. Title I parents perform their role as Title I watch dog. The state actually acts to enforce the law. And the federal government, the supposed guarantor of Title I as a categorical program, waives comparability and Supplement/Not Supplant regulations.

Comparability Within and Across Districts

Throughout its history, comparability has always been defined as a within-district measure. What would be the implications if comparability compared schools across district lines? Where and when would it be appropriate to adopt such a measure?

A study for the congressionally mandated National Assessment of Title I, published in 2000, devoted one chapter to examining the comparability of base resources for Title I and non-Title I schools within the same district and across districts. This analysis included all personnel expenditures (including seniority pay) and full-time equivalent staff from non-Title I sources, instructional, and non-instructional staff using 1997–98 school year data.

A comparison of staffing, including longevity or seniority pay, from non-Title I resources in Title I and non-Title I schools showed that Title I elementary schools had a smaller average class size (21.4) than non-Title I schools (22.5), but the average salary for classroom teachers was 12 percent lower in Title I schools ($36,090) than non-Title I schools ($40,458). The higher teacher salaries were attributable to the longer years of teaching experience in the non-Title I schools (16.1 years) compared to the lower 13.3 years in the Title I schools.

There was little difference in degree attainment discerned by the study, with 40 percent of teachers with master's degrees or higher in Title I schools versus 43 percent of teachers on that measure in non-Title I schools.

Contrasted with that analysis of the non-Title I resource base across all elementary schools is another analysis in the same study looking at comparability between Title I and non-Title I schools in high- and low-revenue districts. All districts in the study's sample were divided in thirds, and the highest third and the lowest third were used for comparison. The differences between high- and low-revenue districts were much greater than the differences between Title I- and non-Title I schools within the two district revenue groups (see table below).

As the table shows, the greatest disparities for Title I and non-Title I schools are **between** districts, not **within** districts. Notice that Title I schools in high-revenue districts are much better off than their counterparts in low-revenue districts. Perhaps the traditional measure of comparability only within districts is a poor comparison.

TITLE I INEQUALITIES REMAIN
Comparability in High- and Low-Poverty Districts

	PERSONNEL EXPENDITURES PER PUPIL	AVERAGE CLASS SIZE	AVERAGE SALARY
All Districts			
Title I schools	$3,611	21.4	$36,090
Non-Title I schools	$3,807	22.5	$40,458
High Revenue Districts >3rd			
Title I schools	$4,931	21.7	$47,438
Non-Title I schools	$4,927	20.8	$47,855
Low Revenue Districts <3rd			
Title I schools	$3,068	20.9	$33,047
Non-Title I schools	$3,165	22.8	$36,163

U.S. Department of Education and American Institutes of Research, *Study of Education Resources and Federal Funding- Final Report,* Table IV-9, p. 61, (Washington D.C. August 2000).

Conclusions

The Department of Education now includes an explicit question about comparability and Supplement/Not Supplant in its regular compliance monitoring. Those monitoring reports may now be viewed online.[19] In general, federal officials find that state and local authorities use the wrong data for making comparability calculations.

In addition, they have found that states do not certify that districts have achieved comparability prior to releasing the coming year's allocation. This federal monitoring is educating many state and local officials about the requirements of comparability and is finding and hopefully correcting significant violations. The record also shows that federal monitors must pay follow-up visits to state departments of education to verify that the corrective action was implemented.

The question now is whether the current requirements are sufficient to ensure that Title I schools receive an equitable share of base resources. This survey of the history of comparability should illuminate several key principles as current Title I activists search for a new and improved strategy for securing the fiscal integrity of Title I funds.

- Comparability is the only law that currently operates to prevent and correct intra-district inequities in school spending. For that reason alone it is well worth maintaining and strengthening. The criteria for assessing comparability should be as relevant to local circumstance as they are to implementing a key federal purpose.

- A single approach to assessing comparability is not necessarily useful in all times and situations. Neither the 1971 nor the 1981 rules for comparability seem appropriate or workable today.

- Redefine the criteria used to measure comparability. Should comparability measure services or dollars? Or both? Should criteria differ by grade span, configuration of the Title I program, or other function? Would the percentage of out-of-field teachers be a more appropriate measure for secondary schools than a ratio of students to instructional staff?

- Consider tradeoffs. Should a school be penalized because the principal insists that half of her faculty be novice, lower-paid teachers from Teach for America in place of the former instructors with higher seniority? When, if ever, should the promise or reality of reform trump an equitable resource base?
- Keep it simple. States' small set-aside from Title I Part A for administration is spent on all Title I requirements, including standards, assessments, and accountability. Be realistic about the burden and cost that state enforcement will require.

Appendix

U.S. Department of Education Non-Regulatory Guidance: Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement/Not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; Grantback Requirements

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B-6. If an LEA uses student/instructional staff ratios or student/instructional staff salary ratios to measure comparability, how can the LEA determine which staff are paid with State and local funds in a schoolwide program in which there is no requirement to track Federal funds to particular activities?

As this guidance indicates, there are a number of ways for an LEA to demonstrate that its Title I schools are comparable. Two of the most common measures are student/instructional staff ratios and student/instructional staff salary ratios. These measures assume that an LEA is able to differentiate those instructional staff who are paid from State and local funds from those paid with Federal funds, because comparability determinations only focus on the use of State and local funds. In a schoolwide program school, however, the school is not required to track the expenditure of Federal funds to particular activities. Rather, the school may consolidate its Federal funds with its State and local funds and spend the consolidated funds for any activities included in its schoolwide program plan. As a result, an LEA might not be able to determine which instructional staff to include in its comparability determinations.

There are several ways an LEA may demonstrate comparability in a schoolwide program school:

- If the LEA does not consolidate its Federal funds or continues to track expenditures of those funds to particular activities, the LEA would calculate comparability for its schoolwide program schools the same as it would for its targeted assistance schools.
- The LEA may determine the percentage that Federal funds constitute of the total funds available in a schoolwide program school. The LEA would assume that the same percentage of instructional staff in the school was paid with Federal funds and delete those staff from its comparability determinations.
- The LEA may use a different measure for determining comparability in schoolwide program schools that is not dependent on identifying instructional staff paid with State and local funds. In each case, the non-Title I schools compared would be the same, but the method used for comparison purposes would be different.

Endnotes

1 John F. Hughes and Anne O. Hughes, *Equal Education—a New National Strategy*, (Indiana University Press 1972) p. 32–33.

2 Ibid., p. 54–55.

3 Ruby Martin and Phyllis McClure, *Title I of ESEA: Is It Helping Poor Children?,* NAACP Legal Defense and Educational Fund, Inc. and the Washington Research Project (Washington DC 1969).

4 The entire saga of the fight for equal education and comparability in the District of Columbia is told in Joan C. Baratz, "A Quest for Educational Opportunity In a Major Urban School District: The Case of The District of Columbia," A Report Prepared for the D.C. Citizens for Better Public Education, under NIE Grant No.-G-000201, August 1975.

5 *Hobson v. Hansen*, 327 F.Supp 844 (DDC 1071).

6 *Mills v. Board of Education of the District of Columbia* , 348 F.Supp 866 (1972).

7 Baratz, p. 152.

8 US Office of Education, Program Guide # 45, Misuse of Title I Funds by Supplanting State and Local Funds, June 14, 1968.

9 Martin and McClure, p. 18.

10 Hughes, p. 56.

11 Ibid., p. 106.

12 Department of Health, Education and Welfare Audit Agency, *Report on Review of Comparability of Services Provided in ESEA Title I Schools as Reported by San Francisco Unified School District for School Years 1973–74 and 1974–75*, September 24, 1976.

13 Letter from J. Harold Flannery, Lawyers' Committee for Civil Rights Under Law, to Commissioner T.H.Bell, U.S. Commissioner of Education, August 29, 1975, p. 2–3.

14 *Bennett v. Kentucky Department of Education* , 470 U.S. 656 (1985).

15 Office of the Inspector General, U.S. Department of Education, Final Management Information Report State and Local No.08-01.

16 US Department of Education, *Non-Regulatory Guidance: Title I Fiscal Issues: Maintenance of Effort, Comparability, Supplement, Not Supplement, Carryover, Consolidating Funds in Schoolwide Programs, Grantback Requirements,* (Revised) February 2008, available at http://www.ed.gov/programs/titleiparta/fiscalguid.doc.

17 Andrew Brownstein, *NCLB Advisor,* " Officials Pessimistic About Benefits of Schoolwide Funds Consolidation," p. 1 Vol.3, No.7 May 2008.

18 General Accounting Office, *Disadvantaged Students: Fiscal Oversight of Title I Could Be Improved,* GAO-03-377, 2003. www.gao.gov/htext/d03377.html.

19 State Monitoring Reports, available at http://www.thompson.com/public/nclb/monitoringreports/monreports.html.

About the Authors

Matt Hill

Matt Hill is currently working for the Oakland Unified School District as the executive officer for strategic projects. In this role he oversees the District's strategic planning process and helps manage the strategic projects for the district. Prior to this role he was the program manager for Expect Success, the school district's $43 million reform program that consists of over 20 initiatives. Prior to joining Oakland Unified, Mr. Hill worked in Black & Decker's Business Development group, where he redeveloped the strategic planning process for the hardware and home improvement division. Mr. Hill also worked as a strategy consultant with the Johnson and Johnson UCLA Management Fellows program for Head Start and healthcare executives. Previously, he worked for Accenture as an analyst, and then as a process consultant in the financial services industry, where he worked on technology and strategy projects. He holds a B.S. in business administration from the University of North Carolina, and an M.B.A. from the UCLA Anderson School of Management. In addition, Mr. Hill serves on the board of directors for the Children's Council of San Francisco.

Phyllis McClure

Phyllis McClure's professional career has centered on school desegregation and Title I of the Elementary and Secondary Act of 1965. That involvement began in the 1960s in the Office for Civil Rights of the Department of Health, Education and Welfare and at the U.S. Commission on Civil Rights. She continued her career commitment to educational equity for poor and minority students at the NAACP Legal Defense and Educational Fund in 1969 until 1994. Throughout those years she played a direct role in monitoring enforcement of Title I and Title VI of the 1964 Civil Rights Act. This involved conducting workshops on Title I for black parents and community groups, investigations, filing complaints about misuse of Title I funds and the adverse racial effect of ability grouping on black students, and studying the implementation of school desegregation plans. She was co-author of the 1969 report "Title I of ESEA: Is It Helping Poor Children?"—an expose about the initial failure of Title I to spend federal money on the educational needs of disadvantaged children in high-poverty schools. Ms. McClure then served on the U.S. Office of Education's Title I Task Force in 1969–1970 that helped create the first rules on comparability. Ms. McClure holds a B.A. from the University of Connecticut, an M.A. in history from the University of California-Berkeley, and an M.P.A. from the John F. Kennedy School of Government.

Marguerite Roza

Marguerite Roza, Ph.D., serves as a research associate professor with the Center on Reinventing Public Education at the University of Washington. Dr. Roza's research focuses on education spending and productivity in the context of education policy. Recent research has documented the real dollar implications of education policies once realized inside schools and across schools within districts. Her calculations of dollar allocations and cost equivalent tradeoffs have implications for education finance policy at all levels in the education system. Her work has been published by Education Sector, the Brookings Institution, Education Next, and the Peabody Journal of Education. Dr. Roza earned a Ph.D. in education from the University of Washington. Prior to that, she served as a Lieutenant in the U.S. Navy, teaching thermodynamics at the Naval Nuclear Power School. She has a B.S. from Duke University and has studied at the London School of Economics and the University of Amsterdam.

Ross Wiener

Ross Wiener is vice president for program and policy at the Education Trust, a national, non-profit organization focused on closing achievement gaps in public education. Prior to joining The Education Trust, Mr. Wiener served as a trial attorney in the civil rights division of the U.S. Department of Justice. As an attorney in the educational opportunities section, he investigated and prosecuted violations of federal civil rights laws in schools and school districts across the country, including cases involving desegregation, disability rights, harassment, and the adequacy of services to limited-English proficient students. Mr. Wiener received a B.A. with honors in history from the University of Wisconsin-Madison, a law degree with high honors from the George Washington University Law School, and clerked for Judge Kermit Victor Lipez of the U.S. Court of Appeals for the First Circuit.

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