



# More Equity and Less Red Tape

Rethinking the Comparability and Compliance Provisions in  
Title I of the Elementary and Secondary Education Act

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Robert Gordon    October 2008



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# Introduction

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## The New York experience and Title I of the Elementary and Secondary Education Act

New York City long funded its schools on an ad hoc basis. Schools might get more state and local money because of a powerful mid-level bureaucrat or local official. When Mayor Michael Bloomberg gained control of the schools in 2002, the city stopped allowing new special deals, but initially froze the old ones into place. As enrollments changed, schools received more or less money based mainly on staffing formulas—one teacher per 22 students, for example.

Because teachers at poor schools usually have less experience and therefore earn less than teachers at middle-class schools, this approach drove less money to low-income schools than middle-class schools. The system was also confusing: The city had some 90 federal, state, and local funding streams, each with its own rules for use. Different use restrictions limited the discretion of principals, as well as the understanding of the public about how schools were funded.

Under schools chancellor Joel Klein, the New York City Department of Education last year set out to change these practices. The initiative was called “Fair Student Funding,” and I led it in its first year. The department proposed to begin funding schools under a per-student formula. Instead of getting what it used to get, plus or minus, a school would get an amount based on its student population and their needs, say because of poverty or a higher number of English-language learners. Instead of getting a certain number of teaching positions at the core of the budget, a school would get a certain amount of money.

Using provisions of federal law explicitly aimed at cutting red tape, we also hoped to consolidate as many federal, state, and local funding streams as possible into a unified, general-use “pot” with fewer accounting requirements. This dovetailed with the city’s core strategy to drive student achievement: Maintain rigorous accountability for results, but empower principals with greater flexibility about how to achieve those results.<sup>1</sup>

Like efforts to adopt weighted student funding systems in other cities, ours ran into heavy opposition from two groups: middle-class parents, who feared the budgets at their students’ schools would be cut; and the teachers union, which feared that principals who

were forced to pay for teachers in real dollars would become less interested in hiring or retaining senior teachers.<sup>2</sup> Some advocates for greater school funding overall also worried that the effort would draw focus away from their agenda, especially after the settlement of long-standing state litigation over funding levels. These reactions were not surprising.

What was surprising was the skeptical response of officials at the State Department of Education. They did not embrace the aspirations for equity embodied in Fair Student Funding. In fact, officials expressed concerns that by shifting away from staffing formulas and giving principals more authority, we might jeopardize our state and federal funding, including funding for the education of disadvantaged children under Title I of the Elementary and Secondary Education Act. The problem was that if we combined funding streams, and if we no longer kept Title I dollars separate, then we could no longer track dollars adequately. As a result, we would risk losing state funding because we might no longer be able to show that schools were using state dollars for their intended purposes. And we would risk losing Title I funding because we could no longer show that the federal dollars funded programs that we would not otherwise have supported.

The New York City public school system receives nearly a billion dollars in Title I funds each year, and several billion dollars from the state. Cutting red tape was a nice idea, but nothing was worth jeopardizing these funds. We dropped the consolidation idea.

The state's position did not impede the rest of Fair Student Funding in that first year. But the opposition to the initiative had a larger impact. At a time when the department was undertaking many reforms that needed public support, we did not want a battle over one change to sink the entire agenda. The infusion of new state funding made possible a broad “hold harmless” approach that would increase resources in relatively under-funded schools, without taking away resources from relatively over-funded schools.

We increased the transparency of school budgets by consolidating many funding streams, though not as many as we had hoped, and by putting information on a new website. Initial reports from both the media and independent budget experts concluded that the measures improved equity and funding transparency, even if the results were not as far-reaching as they might have been. In the year since, wrangling triggered by the clash between the state lawsuit and the city reform has mitigated these impacts, but improvements remain.<sup>3</sup>

There are many lessons, positive as well as cautionary, to be learned from this history. This paper focuses on the implications for Title I. Title I ought to encourage as much fairness as practically possible, with as little red tape as practically possible. As lived by New York City, Title I is surprisingly indifferent to educational equity, yet depressingly focused on fiscal compliance.

Yet New York's experience was not an anomaly. At one level, we were dealing with the “culture of compliance” that too often grips regulators. But at a more fundamental level,



the State Department of Education was doing what it was supposed to be doing. Specific features of federal and state law make many inequities a matter of indifference, and many reductions in red tape impossible to achieve.

This is especially troubling given the thrust of the No Child Left Behind Act. If we are going to ask high-poverty schools to succeed in educating poor children, then we need to make sure those schools get a fair share of resources. And if we are going to make strong demands for results, we need to give school districts the flexibility to achieve those results. We cannot tell school systems to achieve great things and then tie their hands about how to do it, or consume their energies in endless bean-counting exercises.

The combination of thick red tape and thin equity suggests the possibility of a reform: demanding greater fairness in the allocation of state and local dollars, but then offering greater freedom about how federal dollars are spent. More specifically, as part of the reauthorization of the Elementary and Secondary Education Act, Congress could tighten the “comparability” requirement in current law, which should drive equity but doesn’t, and at the same time weaken or eliminate the “supplement not supplant” requirement, which creates needless red tape and shouldn’t. In addition, the next administration should relax some of the regulatory bookkeeping requirements that make consolidation harder to achieve.

This tradeoff would increase the substantive pressure for equity but, on its face, reduce the demands for compliance. One question that would remain, however, is whether a more aggressive comparability requirement, focused on dollars rather than “services,” would itself cause a new set of administrative and political headaches that outweigh the benefits. Beefing up comparability should not create the heavy-handed mandates that eliminating “supplement not supplant” aimed to take away.

In the pages that follow, this paper will first explain why Title I provides so little drive for greater equity, and then examine why it provides so much need for red tape. With those details in hand, the paper will offer up the potential swap of a tighter comparability requirement and a weaker or eliminated “supplement not supplant” requirement, describing both benefits and pitfalls. This comparison will be followed by a detailed look at the challenges that a tighter form of comparability would face.

Without surveying all the design challenges regarding comparability, the paper concludes with some recommendations for how a comparability provision focused on funding levels could work on the ground. There are real reasons to worry that this approach could be both administratively and politically unworkable, but these worries can be addressed through one or more of a series of measures, including a substantial phase-in period, flexibility in allowing less than perfect comparability, and focus on equity among classes of schools rather than individual schools.

# The equity problem

Title I imposes three fiscal controls. First, districts must meet a “maintenance of effort” requirement, spending at least 90 percent as much state and local money this year as they did last year. Second, states and districts must use Title I money to “supplement not supplant” the funding they would otherwise provide. Third, the services funded in Title I schools with state and local funds must be at least “comparable” to the services in non-Title I schools.<sup>4</sup>

The first two requirements focus on the integrity of federal funds. If Washington provides a district with \$1 million for Title I schools, but the district in response takes \$1 million out of schools and puts it into roads, then Washington has funded roads, not schools. The “maintenance of effort” provision prevents this practice. Similarly, if a district shifts away funding for Title I schools by the same amount as Washington provided in Title I, then Washington has helped increase funding for middle-class schools, not poor schools. “Supplement not supplant” gets at this problem.

Neither of these provisions requires fairness in the allocation of state and local dollars. A district could provide half as much money for poor schools as middle-class schools, get Title I money, and then keep its own spending the same, using the new Title I dollars entirely for special programs in high-poverty schools. Even if the poor schools continued to get less money than the middle-class schools, this would not violate the “maintenance of effort” or “supplement not supplant” requirements.

That obvious injustice is addressed—but badly—by the comparability requirement. On its face, the law requires that districts receiving Title I funding provide “at least comparable services” to Title I schools and non-Title I schools. That sounds robust, but as finance experts like Marguerite Roza and Ross Wiener have pointed out, it isn’t. For one thing, the requirement can be satisfied through a series of bland written assurances about a common salary schedule, a policy to ensure equivalent staffing within districts, and a policy to secure equivalent curriculum and materials. These required equivalences conflate teachers and “other staff,” even though they are very different, and omit facilities altogether.

Most notably, the law specifically exempts seniority-based differences in teacher salaries from comparability calculations. These differences are a major source of inequity among school districts. Taken together, these loopholes mean that districts can achieve

“comparability” even though high-poverty schools receive much less funding on average than low-poverty schools. This is what actually happens in many districts, from Ohio to Texas to California.<sup>5</sup>

This is why the New York regulators were acting according to plan. Because Title I speaks in terms of “comparability of services” and not funds, the law as currently written is indifferent to whether schools receive comparable funding from state and local sources. And because the law encourages districts to establish comparability with staffing ratios, a system that funds based on those ratios, and requires districts to hire based on those ratios, may be operating in safer legal territory than one that does not. In short, the regulators didn’t care because the law doesn’t care.

# The red tape problem

Title I historically required districts to spend Title I dollars on identified poor children through “targeted programs,” such as tutors and “pull-out” classes for those children alone. As educators recognized that poor children needed better schools, not just more programs, Congress changed that requirement to allow “schoolwide programs.” In schools with enough poor children (the current threshold is 40 percent), administrators can develop a “comprehensive plan” for serving all children, poor and non-poor. Schools then no longer need to tag dollars to students. According to Phyllis McClure, schoolwide programs account for nearly 60 percent of Title I schools and two-thirds of Title I children.<sup>6</sup>

But the compliance story remains complicated. Title I still generally requires that dollars be spent on a school’s “educational program,” which excludes spending on building maintenance and custodial services. To meet that requirement, among others, schools must ordinarily comply with the Office of Management and Budget’s Circular A-87. Circular A-87 outlines detailed requirements for which costs may be funded and how those costs must be documented and itemized, by both the district and individual personnel.<sup>7</sup>

In theory, Congress has encouraged districts to escape these requirements by “consolidating funds,” or combining certain federal, state, and local funds in a unified pool at the school level. Districts that consolidate funds this way no longer need to obey federal limits on uses or federal requirements for accounting, since the federal funds are no longer distinct from the state and local funds. Consolidation never exempts a district from federal health, safety, civil rights, or similar laws. In addition, some programs, such as migrant and Indian education, have special rules governing consolidation.<sup>8</sup>

This is the consolidation that we tried and failed to accomplish in New York. But the Big Apple has plenty of company. A U.S. Department of Education Inspector General report in 2005 found that among 76 districts surveyed, only 9 were consolidating funds. Most states are not encouraging consolidation either, notwithstanding Congress’s intent.<sup>9</sup>

There appear to be three reasons that consolidation does not occur more often. The first is cultural: administrators still focus on tracking inputs rather than encouraging excellence. The recent U.S. Education Department Inspector General report cited state officials worrying, for example, about the “perception that funds are not being used to serve the intended population.”<sup>10</sup> Another recent media report quotes state officials saying that



schools consolidating funds “need to be scrutinized more closely.”<sup>11</sup> More scrutiny for consolidation makes consolidation less likely.

Second, as long as states maintain separate requirements for their own funding, state law can prevent consolidation of federal and state programs. The Department of Education allows districts to consolidate only federal funds, but this option yields few benefits from an accounting perspective—costs still need to be tracked according to most federal accounting requirements.<sup>12</sup>

Finally, the Government Accountability Office noted in a 2003 report that the federal “supplement not supplant” mandate complicates consolidation.<sup>13</sup> Districts know how to avoid a finding of supplantation when they are funding particular services with state and local dollars; the districts just make sure not to reduce the non-federal funding for specific services and at the same time direct new federal dollars to the same services. But when it comes to whole schools with consolidated funding, the exercise becomes more complicated. If there is any state or local funding reduction, then federal dollars will in some sense need to replace state dollars.

The state and district need to argue that their own budget cut was driven by a real shortfall, not a desire to substitute federal for state dollars. But this is a challenging inquiry into administrative intent, dependent on a counterfactual: What would the agency have done if weren’t getting the money that it is in fact getting? The Title I experts in New York City worried about how this inquiry, conducted at the state or federal level, might impact local funding.

Without consolidation, schools not only must continue to spend their funds in the Title I categories, but also must continue to engage in extensive compliance activities. In a recent audit, for example, the Education Department’s Inspector General warned Columbus, Ohio, that it would have to return \$210,000 unless it provided time and effort certifications for 85 employee transactions, including signed certifications when and how long employees had worked on Title I programs. There was no allegation that the employees had been spending Title I dollars on drivers to take them to the mall, or even that dollars had been spent on the wrong students or schools.

The problem was that the employees had not documented that their educational hours were spent on Title I activities in accordance with OMB Circular A-87. Had Columbus already consolidated funding streams, this documentation would not have been required—federal and state dollars would have been commingled, making separate tracking impossible and therefore unnecessary. But, because Columbus had not consolidated its funds, its compliance practices were inadequate.<sup>14</sup>

# A potential swap: more equity and less red tape

If Title I today pushes for too much compliance and too little equity, a reordering could make sense. GAO suggested one trade in its 2003 report: Eliminate the “supplement not supplant” requirement, but strengthen the “maintenance of effort” requirement. GAO wasn’t specific, but perhaps it meant this: Rather than letting districts cut up to 10 percent of funds from year to year, let them cut only 5 percent or 2 percent; in exchange, stop trying to force districts to prove what they would have done in the absence of federal funding.

As the Department of Education noted in its response to GAO, the problem with this approach is that “maintenance of effort” operates at the level of the district, not the school. The GAO’s solution might ensure that more dollars stay in the district, but would not ensure that enough dollars stay in the school. If we are worried about high-poverty schools getting shafted through accounting games, that’s a big problem.

There’s another tradeoff that might make more sense: strengthen the comparability requirement, and weaken or drop the “supplement not supplant” requirement. Along the lines suggested by Roza and Wiener (and explored in more detail below), the comparability shift would mean requiring districts to establish that Title I schools receive not comparable state and local *services*, but comparable state and local *funds*. With this stronger mandate in place, the “supplement not supplant” requirement would become less necessary.

Once we know that districts are providing comparable levels of funding for high- and low-poverty schools with state and local dollars, we have a strong assurance that the districts are not taking advantage of Title I dollars to lower their own commitments. It is still hypothetically possible that districts could be playing games. Perhaps, for example, a district would have provided not only equal resources, but greater resources, for poor schools without federal dollars. Or, more troublingly, perhaps districts will supply additional state and local funding to non-Title I schools at a time or in a fashion that avoids notice under a one-time comparability determination. But the gains from addressing those cases, through an inherently murky counterfactual inquiry (what would the district have done if it had not received federal funds?), are likely outweighed by the gains from reducing the accounting burdens and impediments to consolidation created by the “supplement not supplant” requirement.<sup>15</sup>

While eliminating the “supplement not supplant” inquiry would encourage more districts to cut red tape by consolidating funds, Congress or the next administration could sensibly

go a step further. It would make sense to offer the fiscal flexibility of the current consolidation provision even to districts that don't consolidate state and federal funds. The federal government has already effectively conceded that those controls are not essential by encouraging Title I consolidation. And this concession seems correct: What really matters is that dollars be spent on poor children, not that they be spent on the subclass of efforts to help poor children that are currently allowable under Title I.

As Columbus learned the hard way, unless you consolidate, you don't get more flexibility under current rules. Yet many districts lack the freedom to consolidate because of state limitations on funding streams. It is unclear why these districts should in essence be penalized with additional federal accounting constraints as well. Washington could grant the freedom from accounting requirements as a general matter, at least absent evidence that particular districts are misappropriating funds. States may still choose to impose further requirements on districts, but at least that choice will not be abetted by federal policy.

# Making a tighter comparability provision work

This proposed swap makes sense only if you like both halves. Many in Washington have expressed concerns about a robust form of comparability that requires equity in funding, and particularly in per-pupil funding. Some of these concerns are political, and not unlike the objections offered by middle-class parents in New York City. Other concerns are administrative, and not unlike the objections to new red tape described above. These concerns are serious. Giving them their due yields a better understanding of how an enhanced comparability provision would need to work.

One argument is that comparability does not matter because money does not matter. Kate Walsh of the National Center for Teacher Quality states that, for all the worry about excluding experience-based pay differentials from the comparability calculation, “experience is not just a poor proxy for effectiveness; it is a false proxy.”<sup>16</sup> But this is an overstatement. On average, teachers do improve over their few years, though gains level off after that. Experience is a weak predictor of success, but it is still a predictor.<sup>17</sup>

This means that a system that regularly allocates more experienced teachers to higher-income schools will, other things being equal, deliver better educations to higher-income children. And comparability does not even achieve “other things being equal.” Additional aspects of the rule, such as treating teachers and teachers’ aides the same way, compound inequities. Finally, there is a point of principle here: Absent a compelling practical argument, poor children ought to get their fair share of a school system’s resources. It isn’t right for a government agency lightly to spend less on poor children than on children who are not poor.

A more troubling concern is that Title I comparability provides too crude a conception of equity—distinguishing children based only on whether they are poor. There are other differences among students that we wish to honor. Some students need to learn English and some do not, for example. These differences may not neatly cut along the lines between Title I and non-Title I schools. We would not want to undermine schools’ ability to provide additional funding for all kinds of high-need students, not just Title I students.

There are other examples of diversity among schools that an overbroad comparability provision could undermine. Gifted and talented programs can be thinly veiled programs of self-segregation for middle-class students, but they can also be legitimate forms of enrich-

ment for the high-achieving students that our schools too seldom cultivate. Do we want to shut off higher funding for these programs, unless they are in Title I schools?

And small schools typically have higher administrative costs per student than large schools; a school with two campuses and two cafeterias has a claim to extra money for an added staffer to cover the second lunchroom. There is a good argument that schools should not receive supplemental funding for these costs (it's nice, having a smaller school), but the argument is not so obviously strong that the federal government should prohibit funding for the extra employee. This is not the sort of matter of fundamental justice with which Washington typically gets involved.

Related to these practical concerns is a political issue. Anybody who has lived through an effort to equalize funding at the local level knows the challenge of redistributing funds. In an imaginary world where middle-class parents were required to send their children to public schools, and where federal law required equalized spending between states and districts as well as within districts, these particular perverse consequences would be less worrisome. But just as the possibility of corporations moving jobs overseas limits corporate tax rates, the possibility of parents taking their children out of public schools or diverse districts limits equalization within districts. Should middle-class parents respond to efforts at improving equity by withdrawing their children from public schools or diverse districts, those school systems will lose revenue and support. The biggest losers will be poor children whose parents have nowhere to go.

While these concerns are serious, there are several structural reasons that even a robust comparability agenda could address them. First, school systems have myriad ways to improve their use of money. This makes it possible to equalize resources while maintaining or lifting achievement in well-funded schools. A robust conception of comparability will create new pressure for schools to improve their resource allocation, which can be a good thing for all children.

For example, when districts budget schools in positions, principals (or whoever is making personnel decisions) can treat teachers the same way regardless of whether they cost \$40,000, \$60,000, or \$80,000. It's as though, rather than paying for a lawyer or a painter out of his or her pocket, a consumer paid with a coupon for "one lawyer" or "one painter." This system encourages much less sensitivity to value. Yet for any school, there are tradeoffs between hiring more experienced but more costly teachers and paying for other goods. Budgeting in positions hides those tradeoffs, while budgeting in dollars puts them in the open, forcing administrators to make decisions that will use resources to lift student achievement as effectively as possible.

Likewise, the rigid salary schedule has a weak relationship to enhancing learning. Districts typically reward teachers for only two things: increasing experience and getting a master's degree and further training in education. As noted above, experience is linked to teacher

effectiveness in the early years; a master's degree, many studies show, has no link to effectiveness.<sup>18</sup> By spending such large sums on these raises unlinked to achievement, districts are failing to act in ways targeted to attracting and retaining effective teachers. These inefficiencies are bad for all students, at all schools, regardless of income.

Faced with a need to increase funding in some schools without hurting the quality of education in others, a district will have an incentive to reconsider these practices and get more educational bang for its buck. But a district will be able to accomplish this goal by different means. Unlike the House Discussion Draft last year,<sup>19</sup> a suitably flexible provision would require comparability of overall funding, not comparability of teacher salary funding.

This would mean that districts could compensate high-poverty schools with low-paid teachers in many ways. Weighted funding would be one option; pure per pupil funding, without weights and with targeted programs separate, would be another. If they wished, schools could also continue funding based on positions, but provide additional funding streams, beyond the position-based allocations, that make up the losses to the high-need schools. And whether or not maintaining positional allocations at the school budget level, schools could modify their salary schedules to provide bonuses to teachers in high-need schools, which would in effect drive more dollars to these schools. There are probably still other options. The best approaches promise to improve not just equity, but also achievement.

Thus, one reason not to fear comparability is that the transformations it triggers need not be zero-sum for students. There are also additional considerations. A comparability provision can only do so much to threaten the advantages of middle-class schools. Students with middle-class peers perform better in school, and funding equalization does not address school zoning or choice. Nor does equalizing public dollars have any effect on private fundraising for schools, a little-researched but often powerful source of additional dollars in more affluent neighborhoods.

In addition, federal policymakers can adopt new policies aimed at modestly increasing equity between districts and between states. These policies would reduce the incentives for middle-class parents to move from more diverse to less diverse districts. If taken too far, these policies can bring their own negative consequences, including parents opting out of the public system. But the recent history of Title I, including improvements in its formula, suggests we could make many modest improvements before triggering those negative results.<sup>20</sup>

The federal government also can take several steps to ensure that enhanced comparability becomes neither a political nor a bureaucratic nightmare. Considering two districts in detail, Roza found that, over seven years, natural attrition could bring salaries even in schools with many senior teachers down to district averages.<sup>21</sup> We know that many schools achieve excellence with a mix of senior and junior teachers. The desire to increase financial equity in high-need schools without sacrificing quality in low-need schools suggests a



substantial phase-in period for more robust comparability. This is all the more critical in a troubled economy, where new money to drive into high-need schools will be scarce. Over that time, districts can and should have real plans for meeting the legal norm. As Roza and New York City’s Joel Rose have suggested, mandated disclosure of real spending per child in districts would be another sensible step in the interim.

A stronger comparability provision can provide room for “play in the joints” in other ways. For one thing, federal law will need to tolerate less than complete equality of funding. A 100 percent equity requirement would be too high given the many innocuous sources of funding differences. And districts likely need the freedom to exclude from calculations dollars in programs or funding streams that are targeted at high-need students and that cut across the Title I/non-Title I line, such as special education and English language education.

Although broad exclusions for low-need but high-cost “gifted and talented” initiatives invite abuse, another approach could allow legitimate variation. The comparability inquiry could focus not on individual schools, but on classes of schools—for example, comparing Title I and non-Title I schools, or comparing bands of schools distinguished by poverty levels. Because the law’s central concern is discrimination against poor students as such, and particularly the discrimination that results from funding based on average salaries, this approach seems tailored to that concern. Added funding at a handful of non-Title I “gifted and talented” programs or small schools, for example, becomes less problematic so long as we know that, in the aggregate, non-Title I schools are not receiving added funding.

Even among high-need schools, the underfunding of a few Title I schools relative to the typical non-Title I school is not so worrisome if we know that other Title I schools are funded more generously. The class-based approach assures rough justice and addresses the fundamental concern with inequity based on income, without requiring fine calculations of certain complexity and uncertain value.

The downside of this approach is that a focus on groups of schools can hide inequities among schools. Some Title I schools may have powerful political patrons, while others do not. Averaging will cover up those inequities. It is surely desirable to address these cases. Whether the benefits outweigh the costs is a tougher question.

# Conclusion

While Washington needs to be wary of micromanagement and unintended consequences, Congress also has a unique responsibility, grounded in the 14th Amendment of the Constitution, to clear away government-created barriers to equal opportunity. As a nation, we tolerate inequalities in wealth and income that are unusual in the developed world. We do so in large part because we believe schools can level the playing field. When high-poverty schools don't get their fair share of public resources, they have much more trouble fulfilling the functions we ask of them.

The political and administrative challenges of increasing equity are real, but so too is the moral imperative. Congress can and should act on that imperative in smart, practical ways—pushing for fairness, while reducing compliance demands unrelated to equity or achievement. To achieve a wiser balance, this paper has suggested a few ideas. They should not be the last.

# Endnotes

- 1 The Department's original proposal was described in New York City Department of Education, "Fair Student Funding: Fair Funding for All" (January 2007), available at [http://schools.nyc.gov/NR/rdonlyres/0C814298-8331-4ED1-9513-9EDFD705B424/17943/Fair\\_FundingWEBfinal.pdf](http://schools.nyc.gov/NR/rdonlyres/0C814298-8331-4ED1-9513-9EDFD705B424/17943/Fair_FundingWEBfinal.pdf). All of the Department's Fair Student Funding materials are available at <http://schools.nyc.gov/AboutUs/BudgetsFairStudentFunding/FSFKeyElements/default.htm>.
- 2 See, e.g., Jackie Bennett, "Klein's Unfair Fudging," Edwise, April 6, 2007 available at <http://edwise.org/klein%e2%80%99s-unfair-fudging>; Ivan Pereira, "Parents Grill Klein Over School Changes," *Queens Chronicle*, Feb. 15, 2007, available at [http://www.zwire.com/site/news.cfm?newsid=17856468&BRD=2731&PAG=461&dept\\_id=574902&rfi=6](http://www.zwire.com/site/news.cfm?newsid=17856468&BRD=2731&PAG=461&dept_id=574902&rfi=6).
- 3 The Department's own summary of the first year implementation is the "Press Powerpoint" available at <http://schools.nyc.gov/AboutUs/BudgetsFairStudentFunding/Materials/PreviousMaterials/default.htm>. A press account is David M. Herszenhorn, "Pupil Needs Shape Budget for Schools in New York," *The New York Times*, May 9, 2007, available at <http://www.nytimes.com/2007/05/09/nyregion/09schools.html>. The city's Independent Budget Office produced a report on Fair Student Funding's initial impacts, "New Funding Formula Seeks to Alter School Budget Disparities," October 10, 2007, available at <http://www.ibo.nyc.ny.us/>.
- 4 *Elementary and Secondary Education Act*, sec. 1120A, codified at 20 U.S.C. 6321.
- 5 This discussion draws heavily on Marguerite Roza and Ross Wiener's contributions to "Ensuring Equal Opportunity in Public Education" (Washington: Center for American Progress, June 2008) available at <http://www.americanprogress.org/issues/2008/06/comparability.html>.
- 6 This paragraph relies on Phyllis McClure, "The History of Educational Comparability in Title I of the Elementary and Secondary Education Act of 1965" (Washington: Center for American Progress, June 2008), available at [http://www.americanprogress.org/issues/2008/06/comparability\\_part1.html](http://www.americanprogress.org/issues/2008/06/comparability_part1.html).
- 7 See the U.S. Department of Education's non-regulatory guidance, especially questions E-5 through E-8, in "Title I Fiscal Issues: Maintenance of Effort Comparability: Supplement, Not Supplant Carryover, Consolidating Funds in Schoolwide Programs Grantback Requirements" (U.S. Department of Education, Revised February 2008), available at <http://www.ed.gov/programs/titleiparta/fiscalguid.pdf>.
- 8 The provision for consolidation is ESEA sec. 1114(a), codified at 20 U.S.C. 6314(a). The encouragement for consolidation is in sec. 1111(c)(9)-(10), codified at 20 U.S.C. 6311(c)(9)-(10).
- 9 See the Final Audit Report, "The U.S. Department of Education's Activities Relating to Consolidating Funds in Schoolwide Programs Provisions," Dec. 29, 2005, available at <http://www.ed.gov/about/offices/list/oig/auditreports/a07f0014.pdf>.
- 10 *Ibid.*, p. 10.
- 11 Andrew Brownstein, "Officials Pessimistic About Benefits of Schoolwide Funds Consolidation," *NCLB Advisor*, May 2008.
- 12 *Ibid.*, see summary table.
- 13 See U.S. General Accounting Office, "Disadvantaged Students: Fiscal Oversight of Title I Could Be Improved," GAO 04-477 (February 2003).
- 14 See U.S. Department of Education, "Columbus City School District's Compliance with Financial Accountability Requirements for Its Expenditures Under Selected No Child Left Behind Act Programs" (June 20, 2007), available at <http://www.ed.gov/about/offices/list/oig/auditreports/a05g0031.pdf>. This opinion is helpfully discussed in Ethica Extra's newsletter, Issue 8, June 2, 2008, available at <http://www.ethicallc.com/newsletter>.
- 15 If some additional protections seem necessary, one option would be to establish maintenance of effort requirements for aggregate groupings of Title I and non-Title I schools. The share of funding to Title I schools in one year would need to be maintained in the next. This would provide a further barrier against gaming with supplemental funds that appear after the comparability determination. It would still avoid the supplement-not-supplant inquiry.
- 16 Kate Walsh, "Robbing Peter to Pay Paul: The Case Against Comparability" (National Council on Teacher Quality, Sept. 2007), available at [http://www.nctq.org/p/publications/docs/robbing\\_peter\\_to\\_pay\\_paul\\_20080316034427.pdf](http://www.nctq.org/p/publications/docs/robbing_peter_to_pay_paul_20080316034427.pdf).
- 17 See, e.g., Robert Gordon, Thomas J. Kane, and Douglas O. Staiger, "Identifying Effective Teachers Using Performance on the Job," (Washington: Brookings Institution, April 2006), available at [http://www.brookings.edu/views/papers/200604hamilton\\_1.pdf](http://www.brookings.edu/views/papers/200604hamilton_1.pdf).
- 18 See Steve Aos, Marna Miller, and Annie Pennucci, "Report to the Joint Task Force on Basic Education Finance: School Employee Compensation and Student Outcomes" (Washington State Institute for Public Policy, December 2007), available at <http://www.wsipp.wa.gov/pub.asp?docid=07-12-2201>.
- 19 Ross Wiener, "Strengthening Comparability: Advancing Equity in Public Education" (Washington: Center for American Progress, June 2008), at pp. 54–55, includes the House provision.
- 20 For some suggestions, see Goodwin Liu, "Improving Title I Funding Equity Across States, Districts, and Schools," *Iowa Law Review*, March 2008.
- 21 See Marguerite Roza, "What If We Closed the Title I Comparability Loophole" (Washington: Center for American Progress, June 2008), available at [http://www.americanprogress.org/issues/2008/06/comparability\\_part3.html](http://www.americanprogress.org/issues/2008/06/comparability_part3.html).

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## About the Author

Robert Gordon is a Senior Fellow at American Progress, where he focuses on education and domestic policy. While on leave from the Center in 2006 and 2007, Robert served as a senior advisor to the chancellor of the New York City Department of Education, leading an overhaul of the city's multi-billion dollar school budgeting system and developing new human capital initiatives.

Prior to joining American Progress in 2005, Robert was domestic policy director for the Kerry-Edwards campaign. He previously worked for Senator John Edwards (D-NC) as Judiciary Committee counsel, legislative director, and policy director on his first presidential campaign. Earlier in his career, Robert was a law clerk for Justice Ruth Bader Ginsburg and a Skadden Fellow at the Juvenile Rights Division of the Legal Aid Society in New York City, where he represented children in abuse and neglect proceedings. Robert also served in the Clinton White House as an aide to the National Economic Council and the Office of National Service, helping craft the legislation creating AmeriCorps.

Robert writes frequently about education, health, regulatory, and anti-poverty policy. His work has been cited in the nation's major newspapers and published in *The New Republic*, *Slate*, the *American Prospect*, *Washington Monthly*, *Education Next*, and *Education Week*. Robert also has been a nonresident fellow with the Brookings Institution's Hamilton Project, and he serves as a foundation consultant and a board member for the Music National Service Initiative. Robert graduated from Harvard College with highest honors and from Yale Law School.

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