

Help Wanted

Flexibility for Innovative State Education Agencies

By Patrick Murphy June 2014

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Introduction and summary

State education agencies, or SEAs, are being asked—and in some cases, forced—to make operational changes in the name of school improvement. New laws and expectations are pushing them to play a greater role in managing school performance, displacing to a significant degree their decades-old responsibility for monitoring local school districts for compliance with federal and state programs.

Moving toward school improvement, however, requires a new way of doing things, often involving reconfigured priorities, staff positions, and processes within these agencies. This transition is taking place while overall state education department funding has remained flat, at best, or declined in many states. Consequently, SEAs are looking for ways to do more with less, shifting resources within the agency to align with new priorities. Ironically, the most visible force pushing SEAs to play a more substantive role in managing and improving school performance is also one of the biggest obstacles standing in the way of efforts to realign funds for that purpose—the federal government.

Two factors combine to create this situation. First, federal grants supply a surprisingly large share of the resources that support state-level education administration. Second, those funds come to the state with a number of strings attached—namely, reporting requirements and restrictions about how the funds are used. State education administrators looking to combine similar responsibilities and focus resources for school improvement are beginning to bump up against these restrictions. This paper examines what the federal government might do to get out of SEAs' way as they work to reinvent themselves. In doing so, it attempts to answer three questions:

- What role do federal dollars play in supporting the work of SEAs?
- What are the constraints that SEAs face in using or repurposing federal resources as they look to innovate and support improved student outcomes?
- What could be done to facilitate more flexibility from the federal level?

To answer these questions, we reviewed state and federal documents, interviewed state administrators and education regulatory law experts,¹ and drew on prior research. The paper first provides a context for understanding how SEAs have been forced to shift out of the role of compliance monitor and into that of performance manager. It then describes how state agencies allocate their resources and the critical role that the federal government plays in that distribution.

The SEAs that have undertaken the challenge of reconfiguring their departments to better contribute to improving schools and student outcomes have encountered significant challenges. Since it is unlikely that they will receive any new resources, these leading-edge SEAs have sought to repurpose existing resources to better manage performance. One of the biggest obstacles to realizing this shift is the federal government. Federal funds can account for about one-half of all of the administrative resources available to state education departments.² But the strings attached to those dollars make it difficult to allocate them to activities other than compliance. Some of these restrictions stem from the federal education programs themselves and how those regulations have been interpreted over time. As a consequence, state agencies have built individual program silos to satisfy the federal requirements but at the expense of flexibility. In addition, cross-cutting regulations designed to ensure that states do not generally misuse federal dollars create strong disincentives to look for ways that resources can be combined and focused on assisting schools and school districts.

Such controls are well intended and designed to ensure that states use the funds in accordance with the intent of the legislation, as well as guard against waste or abuse. Ironically, these restrictions provide almost no support to a state department looking to maximize its resources to improve student outcomes. Instead, the collective effect at the state level is a powerful set of incentives to maintain the status quo—a culture of compliance monitoring.

In order to get the federal government out of the way of innovative, reform-minded SEAs, this report offers a number of recommendations designed to reconfigure some of the incentives for SEAs seeking to prioritize the performance management of schools and districts. The recommendations range from the unlikely—such as a reauthorization of the Elementary and Secondary Education Act, or ESEA—to the more doable—such as issuing refined regulations and guidance from the U.S. Department of Education, or DOE. At a minimum, it should be possible for DOE to work with states to develop waivers for some of these restrictions.

In recent years, the federal government has encouraged states to play a greater role in helping districts and schools improve student learning. Embracing that priority represents a dramatic shift from a decades-long state-federal relationship that emphasized compliance. Existing federal regulations and guidelines, however, are some of the most significant obstacles standing in the way of SEAs making this cultural and procedural transition. And while regulations and their interpretation are seemingly small issues of policy implementation, they can and do create tremendous obstacles for state administrators. As a result, they have a huge impact, particularly when one considers that these regulations directly affect the distribution and use of tens of millions of dollars in any given state and billions of dollars nationwide.

Rising expectations and limited capacity

Looking to state departments of education to support school improvement is hardly a new idea. Two decades ago, the federal government directed SEAs to support low-performing districts and schools. The 1994 Improving America's Schools Act increased federal aid to states to develop systems of support for struggling districts and schools.³ A series of federal legislative and executive measures repeatedly affirmed the desire to have states take the lead in measuring student performance, identifying those schools that were not meeting established benchmarks, and devising ways to assist districts in turning troubled schools around.

The most prominent measure, No Child Left Behind, or NCLB—which reauthorized the Elementary and Secondary Education Act in 2001—made assessment and benchmarking mandatory, established goals for proficiency, and assigned consequences for schools that failed to meet those goals.⁴ Subsequent federal programs—such as Race to the Top, or RTT; the revamped School Improvement Grants, or SIG⁵; and the economic stimulus package—all reinforced the accountability and improvement themes and explicitly assigned the responsibility for implementation to state education departments. Even the Obama administration's flexibility waivers—which freed states from some of the more unrealistic requirements of NCLB—required SEAs to commit to specific plans for improving student outcomes.⁶ Without question, the state is a significant player in the realm of assessing and improving schools.

Although the concept of a bigger role for states in school improvement has been well defined and constant, it has been far less clear that SEAs have the capacity to fulfill that vision. When the push for SEAs to play a more active role in school improvement began, most states were ill positioned and ill equipped to do so. Most of the examinations of state capacity and implementation of this new vision paint a relatively pessimistic picture. Researchers have found that SEAs face challenges in this regard, including limited resources, the absence of authority, waning political will, and long histories of local control.⁷

Research that has focused specifically on the resource question offers a bleak picture of existing state capacity. An initial examination of how SEAs allocate their resources found that the relative share of staff assigned to school improvement is modest compared to other activities—often less than 5 percent of the total staff.⁸ Other researchers reached a similar conclusion when they calculated the dollars available to states to assist low-performing districts using Title I funds.⁹

There are two obvious responses to the problem of limited resources. First, one could find more revenue. Given that the Great Recession led most states to cut funding, there was little reason for SEAs to expect help from the general fund. And although the federal government did provide some assistance with administrative set-asides that accompanied the stimulus dollars, the relief was only temporary. In the absence of more revenue, a second option for some SEA leaders was to look to repurpose existing dollars, shifting resources from the lower-priority compliance activities in an effort to free up money for school improvement. But conversations with innovative state education chiefs revealed that federal funding restrictions often stood in their way.¹⁰ Other research took the analysis one step further, observing that it was more than the mere presence of federal restrictions that made it difficult to shift resources toward improving student achievement. These investigations outlined a “multilayered compliance network” that creates confusion and compounds the problem.¹¹

This paper attempts to unpack this network of obstruction—both to illustrate how it hamstring innovative state education leaders, as well as to illuminate where changes could be made. First, however, it is necessary to understand how SEAs allocate their resources and the role that federal dollars play in supporting that allocation.

Federal dollars and state agency personnel

Determining the impact of federal dollars on state department operations is surprisingly difficult. There is no systematic reporting of the share of SEA personnel funded by federal dollars. And although all state budgets report how much is spent on K-12 education in one form or another, it is often difficult to extract the level of resources devoted to running the state education headquarters. Even more difficult is disaggregating those resources by program and the source of their funds. In general, this does not stem from a desire to conceal information. Instead, each state develops, over time, its own format and presentation for state budget documents. That format is driven by the demands of state legislators and other policymakers, not researchers. Regardless of the intent, determining how SEAs distribute their resources is a challenging and time-consuming task.

For the purposes of illustration, this paper draws upon data collected for two previous projects that quantified the capacity of SEAs.¹² The combination of the data sets is not perfect, as each study focused on a purposeful sample of states at slightly different points in time. The data collection, however, was systematic and used the same methodology and coding. These data suggest that the federal government has a sizeable effect on the distribution of SEA resources. Figure 1 presents estimates of the share of state agency staff funded by federal dollars for 13 states.

FIGURE 1
Federally funded positions in state education agencies

State	Federal full-time equivalent positions	Total full-time equivalent positions at state education agencies	Percentage that are federally funded	Fiscal year
California	831	1,737	48%	2010
Colorado	190	364	52%	2010
Florida	239	854	28%	2012
Louisiana	n/a	n/a	39%	2012
Maryland	392	698	56%	2012
Michigan	368	560	66%	2012
Minnesota	199	405	49%	2010
Nevada	65	154	43%	2012
New Jersey	199	655	30%	2012
New York	480	1,288	37%	2010
Tennessee	197	483	41%	2010
Texas	473	1,171	40%	2010
Washington	145	380	38%	2012

Note: The percentage for Louisiana is based upon the federal share of total dollars spent, not personnel counts.
 Source: Author's analysis of staffing data collected by request from 13 state education agencies.

As these data suggest, the federal share is substantial, ranging from 28 percent to 66 percent of the total SEA office staffing budget. The average for this group of states is 44 percent. When one considers that most SEAs also draw on other sources of revenue—such as fees and special funds—to support their administrative activities, it becomes clear that state general funds are not necessarily the dominant source for SEA resources. It is also worth noting that the fiscal years represented here, as well as in Figure 2 below, are FY 2010 and FY 2012, a period during which states reported declining state support for SEAs from general-fund dollars. While SEA budgets eventually flattened out, it is likely that the data used here may understate the current share that federal dollars contribute.¹³

Not surprisingly, federally funded staff positions are not evenly distributed across all of the SEAs programs. Figure 2 disaggregates the source of resources supporting SEA positions by function for the states where the data made such a calculation possible. Federal resources account for nearly all of the funding in some areas—for example, special education and school nutrition—while playing a nearly nonexistent role in others—for example, administration and teaching and learning.

FIGURE 2

Federally funded share of state education agency positions by selected functions

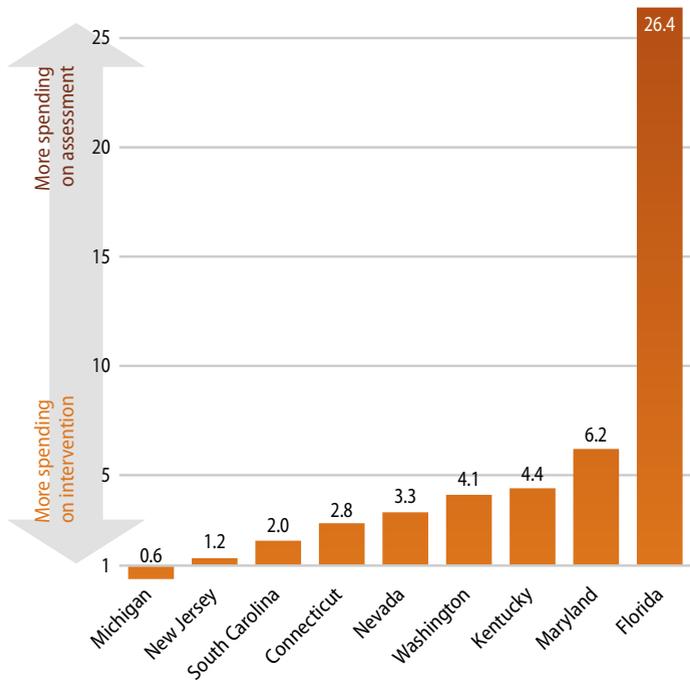
	Fiscal year	Administration	Community	Nutrition	Performance management	Special education	Teaching and learning
California	2010	20%	74%	79%	63%	85%	33%
Colorado	2010	45%	0%	89%	32%	99%	34%
Maryland	2012	69%	48%	95%	73%	85%	19%
Michigan	2012	37%	79%	95%	86%	94%	50%
Nevada	2012	31%	0%	100%	98%	36%	13%
New Jersey	2012	10%	49%	100%	36%	100%	20%
New York	2010	13%	77%	100%	45%	100%	52%
Tennessee	2010	18%	18%	100%	49%	100%	10%
Washington	2012	13%	53%	99%	46%	91%	32%
Average		28%	44%	95%	59%	88%	29%

Source: Author's analysis of staffing data for FY 2010 or FY 2012 collected by request from nine state education agencies.

Performance management is the activity of greatest interest to this discussion and is composed of two broad categories: assessment and intervention. Digging deeper into the state budgets reveals that in much the same way that funding sources differ from state to state, there is variation in how SEAs allocate performance-management resources. Some states devoted the majority of their resources—both federal and state dollars—toward assessment while others balanced their assessment expenditures with intervention expenditures. The ratio of assessment-to-intervention activities is presented in Figure 3. Most states spend significantly more on assessment activities. New Jersey, however, funds the two activities almost equally, spending only slightly more on assessment. Florida is an extreme outlier, spending more than \$26 on assessment for every \$1 of support services. Michigan is the only state in the group that reports spending more on intervention than assessment.

FIGURE 3
Spending on assessment compared to intervention

Ratio of assessment resources to intervention resources



Note: The ratio is the total dollars spent on assessment, such as testing and accountability, divided by the total dollars spent on intervention, such as providing support to low-performing schools. A ratio of 2 suggests the state spends twice as much on assessment as intervention. A ratio that is less than 1 indicates that the state spends more on intervention.
 Source: Author's analysis of expenditure data for FY 2012 collected by request from nine state education agencies.

Typically, when the federal government or state legislatures ask a state agency to take on new responsibilities, additional resources follow. That has not been the case with managing school improvement. Although Race to the Top and the stimulus dollars from the American Recovery and Reinvestment Act, or ARRA, provided a significant influx of federal money in the short run, that level of funding has not been sustained. SEAs are looking at a future with little expectation that new dollars will be forthcoming from any source. States that want to focus more on supporting low-performing schools are going to have to be creative in how they allocate their resources.

In other words, the size of the state education administrative pie appears to be fixed for the foreseeable future. Given this reality, if an SEA wants to make one slice of that pie larger, some of the other slices will be made smaller. Additionally, the above data suggest that making those shifts will necessarily require the use of federal dollars. And those federal dollars come with restrictions about how they can be

used. The following section describes some of those restrictions and how they get in the way of states' leading-edge efforts to repurpose resources so they can provide more support to improving schools and, ultimately, student performance.

Federal funds present obstacles to building state agency capacity

Despite federal regulation, grant competitions, and incentive programs, the enthusiasm for reconfiguring the SEA for performance management is uneven across states. Most states have either made modest changes to their agencies or are only contemplating what actions they may take. A handful of states, however, have already taken significant steps to reorganize their departments in concerted efforts to build school-improvement capacity. But administrators in these states are finding that shifting resources away from compliance activities to focus on school improvement is easier said than done.

For this report, senior administrators from four leading-edge states—Colorado, Louisiana, Minnesota, and Tennessee—were contacted to discuss how federal restrictions are affecting their efforts. These states were not chosen because they are a nationally representative group. Instead, their experience should serve as an indicator of what is to come when other SEAs look to build performance-management capacity within their departments.

Although their strategies and tactics for school improvement varied, the leading-edge SEA leaders reported a number of common frustrations when it came to repurposing resources tied to federal programs. They all acknowledged the need to ensure that federal funds were being used as Congress intended. At the same time, most noted that they found themselves tripping over the minutia of regulatory interpretations as they pursued the broader goal of improved student performance. These obstacles stemmed from both a lack of clarity in the guidance emanating from the U.S. Department of Education, as well as other government-wide restrictions. The result is described below—a set of misaligned incentives that discourage shifting resources away from compliance monitoring and encourage maintenance of the status quo within SEAs.

Working in silos

These states face a similar overall challenge. The prior emphasis on compliance monitoring led to the evolution of structures and practices that were oriented around specific programs, each functioning in its own silo. Oversight of federal Elementary and Secondary Education Act Title I programs, which are designed to support education for disadvantaged children, necessitated the creation of some sort of state-level Title I office. ESEA Title II programs, aimed at improving teaching, fell under the purview of a different group of administrators. And federal Individuals with Disabilities Education Act, or IDEA, activities were the responsibility of special education divisions with SEAs. Add to this group the other federal programs, as well as the myriad state categorical programs that have emerged over time, and it is easy to see how the compliance structure can become compartmentalized and cumbersome.

Additionally, the silo approach does not lend itself to school improvement. Most states currently do a reasonable job of identifying schools that are underperforming according to math and English language arts assessments. In an ideal world, the SEA would work with districts to determine the causes of underperformance and then help them align resources to address those programs. Instead, the silo approach causes the SEA to focus on a district's bookkeeping, making sure that the local agency can appropriately account for the dollars spent and provide a stated purpose that complies with federal requirements.

Consider the effect of a silo structure from the perspective of a district administrator. If the state's accountability program identifies a school in a district that is persistently failing to meet third-grade reading standards, the district administrator will want to amass all resources available and draw on current research to chart a path to improve student outcomes. The DOE's guidance on this topic argues for a coordinated response: "By making systemic changes that knit together services funded from all sources into a comprehensive framework, schools will have a better chance of increasing the academic success of all their students."¹⁴

Following this advice, the district would work with the school to develop a plan to address the problem, seeking to bring more attention to individual students and additional training for the teachers. The school principal and district may have developed a single, comprehensive plan to improve the school, but funding and

implementing that plan may require working with several different federal programs—for example, Title I, Title II, and others—and typically just as many state administrators. The time spent working with the state education department to ensure that both the planned activities on the front end and the reporting on the use of funds on the back end comply with the federal restrictions is considerable. Moreover, if there is a question that arises about one specific activity along the way, someone in the district office will have to identify the appropriate SEA staff to contact for an answer. Given this fragmentation, there is considerable support at the local level to find ways for the state to integrate the various funding streams and compliance requirements. At the very least, one would expect that the prospect of working with a single state administrator to develop a school-improvement funding strategy would be attractive.

From the perspective of the SEA, breaking down the barriers between programs also is appealing. The ability to combine program dollars into a single plan of support for a school or district is both efficient and probably more effective. Emerging SEA reforms that work toward a more coordinated approach to supporting low-performing schools have two dimensions: structure and process. Organizationally, some state education departments have sought to combine expertise about multiple programs under a single program officer. That individual, whose salary is paid by federal funds, provides a one-stop source of support for schools or districts looking to draw on federal resources. Louisiana, Tennessee, and Colorado have begun to move in this direction.¹⁵ Regarding the shift in emphasis from compliance to school improvement, Jeffery Blanford, the chief financial officer for the Colorado Department of Education, observed, “It’s just a different kind of work.”¹⁶ And Patrick Chapman, Colorado’s federal program director, added that simplifying state-level support enabled district and school administrators to concentrate on “working with kids, not programs.”¹⁷

Procedurally, SEAs have tried to streamline compliance oversight by reducing the volume of reporting that districts must perform. Using technology, these agencies have been working on submission processes that will collect information that is common to multiple requirements once and then use that data to populate the reports required by the different federal programs. The goal is to minimize the time that districts spend on their report submissions, as well as consolidate the number of staff needed to oversee that process at the state level. Tennessee and New Jersey are two states that are relatively far down this path.¹⁸

Whether one calls it “comprehensive” or “holistic” or simply “coordinated,” there appears to be consensus around the notion that it makes sense for districts and schools to combine resources from multiple sources to address the deficiencies of underperforming schools. Kathleen Airhart, the deputy commissioner of the Tennessee Department of Education, noted that the federal government requirements to identify some students as Title I and others as special education eligible often means making artificial distinctions. “Kids who struggle are kids who struggle,” said Airhart.¹⁹

The processes and requirements of the federal government do little to encourage such a comprehensive, holistic approach. Instead, the structure of federal education requirements reinforces the silo mentality. Furthermore, other federal reporting requirements discourage combining resources because SEA officials fear that auditors will find states to be out of compliance.

Program requirements reinforce the silo mentality

Nearly all federal dollars distributed to state and local governments come with some strings attached. Education programs are no different, with the restrictions coming from the original legislation that authorized the programs or subsequent rules issued to implement them. Sometimes federal agencies will also issue guidance to accompany regulations in an effort to clarify how policymakers intended the programs to be run. In addition, grant recipients may formally or informally ask for clarification on particular points. This collection of strings—legislation, regulation, guidance, and queries—has been added to over time as policymakers and administrators attempted to further explain and specify intent. Not surprisingly, rather than resulting in additional clarity, the incremental evolution has had the opposite effect. SEAs’ interpretation of intent is now as much a function of institutional memory and bureaucratic lore as it is based on laws and regulations. (see “Fear of the bogeyman” text box)

Fear of the bogeyman

Senior administrators in all of the states contacted for this report offered some variation of a story about how a particular interpretation of federal regulations is handed down over the years without an identifiable origin. In each situation, the administrator could identify one person or a small group of veteran staffers who served as repositories for what could and could not be done as a consequence of federal restrictions. Finding documentation of the rulings, however, proved impossible.

For example, Steve Osborn took on the job of overseeing most of the federal programs administered by the Louisiana Department of Educa-

tion after working many years for charter school management organizations. Osborn reported that early on in his Louisiana Department of Education tenure, he would suggest ways to consolidate resources and streamline processes during meetings with staff, only to be met with resistance. He said, “In every single conversation, there was this mythical big bad actor [federal restrictions] that wouldn’t let us do the thing. . . . I eventually found out that it was almost all a misinterpretation.”²⁰

These interpretations of federal requirements appear to live on in SEAs as bureaucratic lore. Just as fictitious as the bogeyman, they nevertheless lead to defensive SEA decision making.

In many cases, the federal governments’ strings exist for good reasons. They often represent an attempt to placate the fears of federal officials. For federal programs, there are three broad concerns that grant restrictions try to address. The first concern is ensuring that the federal funds are used for their intended purpose. If a program is designed to provide additional resources to poor children, such as Title I, or English language learners, such as Title III, then it will include rules to define those populations and reporting requirements to demonstrate that the resources do indeed serve these populations. Similarly, if funds are supposed to be used for professional development of teachers, such as in Title II, then a district must demonstrate that they were not used for another purpose, such as buying textbooks or supporting the cafeteria fund.

Equity is the second concern, which has given rise to provisions that ensure students across states, districts, and schools are treated the same. Mathematical formulas typically govern the distribution of federal funds within a state in an effort to minimize SEA discretion and ensure that no one district benefits unfairly. Within the district, there are provisions to ensure that federal funds do not privilege one school relative to another. Under Title I, for example, districts are required to rank schools for the grade spans they will fund by degree of poverty, which is typically measured by the percentage of students who qualify for the federal free and reduced-price lunch program. This ranking is then used to distribute

funds, starting with the highest-poverty schools. Districts can vary the amount of assistance per pupil based on this ranking as well, with larger amounts of funding going to the schools with higher poverty levels. Title I allows a district to retain some funds to spend at the district level, but there are limits on how these funds can be spent.^{21*}

Finally, federal lawmakers want these federal grants to increase total available education resources and not be viewed as a way to offset the state or local contributions to K-12 education in general and over time. Consequently, “supplement-not-supplant” requirement has become something of a mantra for those overseeing federal programs. To ensure that the federal funds are truly additive, local districts must demonstrate that the funds are being used for activities that would not have otherwise occurred in the absence of federal funds.²² In addition, states must also prove that they are maintaining a certain fiscal level of effort from all state and local sources in order to receive certain federal funds. Federal funds also must be obligated before certain dates to guard against states or districts carrying funds over to future periods as a way to reduce their own contribution.²³

SEAs are the entities responsible for assuring that the federal dollars are used appropriately, equitably, and not as a substitute for state or local funds. As such, they must collect and maintain a considerable amount of information. Districts report who is served through federal programs—for example, the number of schools and students—and also describe the intensity of the effort—for example, the frequency of interventions and the number of teachers or aides added.²⁴ States often create separate accounting categories to more easily track the federal dollars through the system. In addition to collecting reports, SEA administrators may also visit districts to monitor compliance with federal program requirements.

The state departments of education take these steps so they can demonstrate that they and the districts have complied with the federal requirements when the programs are audited. Moreover, SEAs know that it is not a question of if these programs are audited but when. In fact, the state administrators contacted for this paper pointed out that it was not uncommon for a program to be reviewed more than once in a given year, since a single program could be examined internally by SEA auditors, externally by state auditors, or by federal auditors. A negative audit finding—a determination that the agency has somehow failed to comply with the federal requirements—is a problem. The extent of the problem can range from embarrassment and a mandate to make changes to ensure compliance in the future in the best scenario, to persistent negative findings resulting in the loss of

federal funds in the worst case.

Ensuring compliance, then, is a complicated and relatively high-stakes exercise. One consequence of this system is that SEA personnel responsible for federal programs have a strong incentive to immerse themselves in the minutia of their particular portfolio. The rationale goes something like this: The more one knows about one's program or programs and the more one controls how districts use those program funds in the field, the more likely one is to emerge with a clean audit. Consequently, it is not surprising that administrators become territorial and insular with regard to their programs. And the net effect of multiple offices or program officers behaving in this manner is the creation and hardening of silos into, as Osborn noted, "a really ineffective service delivery model."²⁵

The tendency toward fragmentation is more than just a function of pathological bureaucratic behavior. The regulations and accompanying guidance issued by DOE are breathtakingly complicated. There are multiple tests for supplanting, and in general, they place the burden of proof on the district to demonstrate that the federal funds are, in fact, supplemental.²⁶ And it is possible for the same expenditure to pass the test one year but not the next. For example, a school district could use Title I dollars to hire new or additional reading specialists for Title I schools, satisfying the supplement-not-supplant requirement. But should the district find those specialists to be effective and want to scale up the effort for the remaining district schools using state and local dollars the following year, it is possible that an auditor would then deem the use of Title I funds to be supplanting nonfederal resources.²⁷

It is critical to note that the information collected to ensure compliance with federal law and to satisfy multiple auditors is divorced from federal efforts to hold schools accountable for the performance of students. The most recent reauthorization of ESEA, No Child Left Behind, requires states to administer annual tests in most grades, collect the data, establish cut scores, and then identify schools that failed to meet minimal standards. A school that misses those benchmarks is identified for improvement and districts must develop plans to address the deficiencies.²⁸ Of course, when districts begin to look for the resources to fund their plans, they find themselves back in the world of federal program silos and additional reporting requirements.

Other government requirements discourage aggregation

In addition to the requirements associated with specific programs, SEAs must also abide by regulations that cut across all federal funding recipients. These are not included in the original authorization language, but rather they are requirements set by Office of Management and Budget, or OMB, for the use of federal funds.²⁹ The OMB, part of the executive office of the president of the United States, establishes a number of requirements that govern how the federal government conducts its business.

In terms of this discussion, the federal time and effort requirements are the most notorious of these restrictions. These requirements, also known as time restrictions, require grantee agencies—both the SEAs and school districts—to ensure that staff time paid for by the federal grant is accounted for and documented. The motivation behind the time and effort requirements is similar to the program restrictions discussed above. The reporting requirements are predicated on the notion that in their absence, state and local governments might use federal resources for something other than their intended purpose.

The easiest way to satisfy time and effort requirements is to restrict personnel to working on only one federal program 100 percent of the time. For example, the Title I compliance officer would only focus on Title I issues—again, reinforcing silos. But, should an SEA want to create a school-improvement support position that focuses on poor students with special education needs—with 50 percent of that position’s compensation coming from Title I and 50 percent from IDEA dollars—they must track their hours and demonstrate that they have indeed split their time between the two programs. Katina Grays, a former attorney turned state education administrator, observed that one of the reasons she left the practice of law was to get away from the billable hours concept, in which law firms track the time of their associates, often in six-minute increments, in order to accurately bill clients for their work. Federal time and effort requirements, however, had thrust Grays back into the world of accounting for her time in painstaking detail.³⁰

It is tempting to dismiss a discussion of federal time and effort reporting as an arcane point of bureaucratic red tape that is only of interest to auditors and academics. But these reporting requirements create very real obstacles for SEAs looking to use multiple sources of funds to support school improvement and represent one of the most common negative audit findings reported.³¹ State education department timekeeping and payroll systems are often part of larger, statewide personnel programs, and as such, disaggregating how state school-improvement personnel spent their time to satisfy the federal restrictions may not be compat-

ible with existing systems. If an SEA wants to combine multiple sources of funding in a comprehensive approach to supporting failing schools, it may have to adapt its existing human resources system or possibly adopt new timekeeping software.³² Neither approach would be a trivial process.

SEAs also bump into problems with reconciling their state budget process with federal requirements. At the start of the fiscal year, departments typically must identify the source of funds—federal grants, state general-fund dollars, or other sources—that will cover their expenditures. These budgets will include a breakdown of the different federal funding streams, as well as the expected personnel costs associated with each. As the fiscal year progresses and state personnel report how they used their time, it is possible for the actual allocation to deviate from the budgeted amounts. Since time and effort requirements do not view federal dollars as fungible, SEAs may find themselves having to adjust how staff members are allocated in an effort to, as one SEA administrator put it, “true up” the actual figures with those promised in the budget.³³

Finally, it is again worth noting that time and effort reporting requirements are agnostic about whether the time spent was productive or made a contribution to improving student outcomes. Auditors review the reporting to make sure it has been prepared in accord with federal requirements. What SEA personnel do during the hours funded by federal dollars and whether the activity actually helps schools perform better is essentially irrelevant.

Misaligned incentives

The combined effect of these requirements creates an environment in which, from the SEAs’ perspective, there is little incentive to reorganize in an effort to better support school improvement. Combining support and funding it out of multiple program streams increases the chance that auditors will determine that the SEA is not complying with the federal funding guidelines.

There are clear incentives for SEAs to err on the side of caution and maintain the status quo. In this case, caution means placing the emphasis on compliance, quite possibly to the detriment of efficacy in terms of improving student achievement. As Melissa Junge, an attorney who specializes in federal education law, described the situation, “Look at it this way: You don’t have to pay money if you don’t meet performance goals. But you [can] lose money if your compliance is found to be lacking. So tell me, what’s going to be a bigger priority?”^{34*}

Trying to do both—organizing a comprehensive effort for school improvement while putting in place the processes to satisfy federal reporting—can be costly. Blending funds may make it difficult to demonstrate that programs still reach target populations and are supplemental to existing state and local expenditures. SEA employees would also spend a significant portion of their hours satisfying time and effort requirements. At the same time, the SEA would still be expected to perform its own compliance oversight relative to the local districts. Since the state department would be devoting more resources to supporting low-performing schools, it would have to find productivity improvements to fulfill its compliance function. Fall short on any of these fronts, and several different state and federal program auditors could file an adverse report.

There is little incentive for state officials to even explore the possibility of institutionally coordinating similar or related programs. Doing so only raises the risk of drawing attention. If officials make a formal inquiry and receive guidance from their federal counterparts stating that a planned consolidation would not be permissible, they have created one more item for auditors to review.³⁵ In the presence of multiple layers of requirements and restrictions and in the absence of any clear guidance as to what they can and cannot do, innovative SEA administrators are faced with a situation in which it is far better to beg for forgiveness rather than ask for permission.

SEAs seeking to reallocate their resources to build capacity for school improvement face numerous challenges. Ironically, the strings that accompany federal dollars represent one of innovative state leaders' biggest obstacles to reinventing their agencies.

Recommendations to balance state oversight and innovation

For the past decade, the federal government’s message to states has been consistent: Identify the lowest-performing schools and fix them. Although states were able to build the capacity to assess the performance of schools relatively quickly, SEA school-improvement capacity has lagged. Since it is unlikely that SEAs will benefit from dramatically increased funding anytime soon, building this capacity will require the repurposing of existing resources. Unfortunately, when innovative SEAs start down this path, they quickly bump into the reality of federal program and grant restrictions.

There are a number of actions that would reduce some of the obstacles that states face. Ideally, changes would be made to encourage SEAs to combine resources and develop comprehensive approaches to school improvement instead of the current system that discourages blending effort and resources.

The recommendations here are presented roughly in the order of descending implementation difficulty. Even the recommendation that is easiest to implement, however, represents a heavy lift in political terms. These recommendations are not exhaustive, but they do span the spectrum of the types of changes that would improve the SEAs’ ability to reallocate resources to better support school improvement.

Reauthorize ESEA to support state school-improvement capacity

No Child Left Behind represents the last reauthorization of the Elementary and Secondary Education Act. The 2002 law introduced new provisions requiring states to identify low-performing schools and, as written, hold them responsible for a lack of improvement. The general goal was laudable, but the specifics were flawed. Most importantly, NCLB grafted the overarching goal of accountability—with its emphasis on outcomes and performance—on a set of federal programs that focus on inputs, detailing how dollars are to be used and distributed. This detail provides the basis for the SEA silos discussed above.

The most obvious route to reducing confusion and sending a clear message to both the U.S. Department of Education and SEAs would be for Congress to draft and pass new legislation, complete with new structures and provisions to make it easier for states to use federal resources to build their school-improvement capacity. This legislation could maintain the emphasis on accountability but provide the bulk of federal funds to states based on a formula, complete with weights to provide additional resources for targeted groups, such as poor children, children with disabilities, and other student groups down to the school level. SEAs would then have much more leeway in terms of how those resources would be used to support student improvement.

Such an approach would represent a dramatic departure from the role established for the federal government by the original version of the Elementary and Secondary Education Act that passed in 1965. It would, however, prioritize student outcomes over regulatory compliance. It also would give the states the opportunity to dismantle the silos in the education departments and allocate federal resources to emphasize support for school improvement. Such an approach would also require a significant shift in the current political landscape, as there appears to be little consensus as to what the federal role in K-12 education should be.

Codify new regulations

Federal agencies can revise existing regulations at any time, as long as authorizing language exists. Therefore, it is conceivable that DOE could embark on a new rule-making process to clarify program rules and make it easier for SEAs to reconfigure their departments and funding to provide more comprehensive support for school improvement. In particular, new rules could offer more latitude in demonstrating that the funds have been used as intended and articulate a more straightforward supplement-not-supplant test.³⁶

Responsibility for time and effort reporting, however, falls outside of the purview of DOE and resides with the Office of Management and Budget. The OMB could revamp this set of requirements,³⁷ although the implications of any changes would extend well beyond SEAs, as this requirement applies to grants to nearly all types of state and local governments. Interestingly, there are some public entities that do not fall under this set of restrictions. Education attorneys* Melissa Junge and Sheara Krvaric note that the OMB allows higher education institutions to

use their existing personnel timekeeping and reporting systems to satisfy time and effort documentation requirements.³⁸ It is likely that shifting SEAs and even school districts to this alternative standard could be accomplished through the president’s executive authority.

Issue new, clear guidance

In theory, DOE could issue new guidance that provides even more examples and additional clarification for how the laws and regulations should be interpreted. On one hand, issuing new guidance is attractive since it does not require the passage of laws nor engaging the rulemaking process. It is difficult to place a lot of faith in the issuance of more guidance, however. DOE has already issued considerable guidance in an effort to clarify interpretations. In practice, it is not obvious that the situation has improved, and adding another layer of verbiage could further cloud the issue. At a minimum, it may be worthwhile to attempt to clarify for auditors what is expected with regard to some of the most confusing features of the federal restrictions, such as supplement-not-supplant tests.³⁹ A good starting point would be for DOE to explicitly say which former interpretations have been superseded and which guidance is currently in effect.

Waive some compliance requirements

The Obama administration sought to address some of the shortcomings of NCLB—while still maintaining an emphasis on improving schools and student performance—by granting ESEA flexibility waivers. The waivers provide relief from some of NCLB’s unrealistic expectations—for example, having all students score proficient on assessments by 2014. At the same time, states were required to present relatively detailed proposals for how they plan to improve student outcomes, particularly for the lowest-performing schools.⁴⁰

One principle specifically identified in the ESEA flexibility guidance from DOE was to “reduce duplication and unnecessary burden[s].”⁴¹ This principle, however, was primarily concerned with the state education departments reducing the regulatory burden for local school districts. The waiver process offered little relief to state agencies from federal compliance requirements and, in some instances, arguably introduced some new restrictions on the SEAs.

Consistent with this principle, DOE could waive some of its funding requirements for states that propose acceptable alternatives. States could develop their own metrics to demonstrate that the resources are being used to assist the intended populations and that they are a supplement to other funds. For example, Figure 1 above reports that 56 percent of Maryland Department of Education, or MDOE, personnel are supported by federal funds. Currently, the MDOE must keep track of the time spent by individuals working on federal programs on essentially an hourly basis. But it may be possible for MDOE to certify federally funded positions, or shares of positions, annually and show how those individuals serve the intended purpose of the federal programs. Then, MDOE could use department-wide staffing tables to demonstrate that state funds are not being supplanted by federal dollars.

By giving states the chance to propose their own measures, the SEAs could start with their plans to coordinate resources and activities and then identify how best to demonstrate compliance in a way that complements their efforts to provide services to districts. At a minimum, opening the door to compliance waivers would provide an opportunity to experiment with different ways to satisfy the intent of the laws while enabling states to have a say in how that could be done. One consequence might be that a state could propose a way to reconcile the equity provisions with the safeguards designed to demonstrate that federal dollars are not being used to offset state and local resources.

Conclusion: Closing a gap

Stephen Osborn observed that there is a need to close the gap between the U.S. Department of Education's goals and program compliance officers' reality.⁴² The federal government has been looking to SEAs to take a more active role in managing school improvement. And while federal dollars account for a major share of the resources available to the state departments, most of those funds are not used for supporting districts to improve student performance. If SEAs are going to build their capacity to improve schools, they must reallocate existing resources, including some federal dollars. The states that have started down this path, however, quickly bumped into federal restrictions about how those funds can be used. Federal compliance requirements are some of the biggest obstacles for reform-minded SEAs.

In a very real sense, one could argue that the march of school reform has slowly been working its way upward. The charter school movement focused on education at the site level, arguing for a different school model. As charters began to take hold, it became apparent that many school districts were ill equipped to manage a mixed portfolio of traditional and nontraditional schools. Consequently, many district offices have begun to change, spinning off some functions and decentralizing decision making in other areas, while at the same time placing a greater emphasis on student outcomes. More recently, some SEAs have begun to assert their role in improving schools, a shift that has required considerable restructuring and reform.

While they still represent a minority of the states, these leading-edge SEAs have undergone significant changes in how they are structured and how they function. The federal government could accelerate this process by supporting SEAs that are trying to redefine their roles. This would be an important step to shrink the gap between the themes federal education officials have promoted and the DOE's day-to-day interaction with states.

** Correction, June 25, 2014: This report has been corrected to clarify information about district-level use of Title I funds. This report has also been revised to clarify a quote from Melissa Junge. The updated quote is "But you [can] lose money if your compliance is found to be lacking." This report incorrectly identified Melissa Junge and Sheara Krvaric's occupation. They are attorneys.*

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Endnotes

- 1 The administrators interviewed specifically for this project included Kathleen Airhart, the deputy commissioner for the Tennessee Department of Education; Jesse Montano, the deputy commissioner for the Minnesota Department of Education; Patrick Chapman, the executive director for the Office of Elementary and Secondary Programs in the Colorado Department of Education; Stephen Osborn, the assistant superintendent for student programs for the Louisiana Department of Education; Katina Grays, the executive director for consolidated planning and monitoring for the Tennessee Department of Education; Jeffery Blanford, the chief financial officer from the Colorado Department of Education; and Chris Foley, the chief financial officer from the Tennessee Department of Education. The interviews also included Melissa Junge and Sheara Krvaric, both lawyers at the Federal Education Group.
- 2 Author's analysis of staffing data collected by request from state education agencies.
- 3 *Elementary and Secondary Education Act of 1965*, as amended by Public Law 103-382, October 20, 1994.
- 4 *Elementary and Secondary Education Act of 1965*, as amended by Public Law 107-110, January 8, 2002.
- 5 The American Recovery and Reinvestment Act of 2009 altered the SIG program as it was originally conceived in the Elementary and Secondary Education Act of 2001, requiring SEAs to take on additional responsibilities.
- 6 Under the new flexibility, there are still accountability, intervention, and support requirements, but states have more discretion in selecting metrics. In brief, there is now more flexibility on how to reform and what to reform but not complete freedom. See U.S. Department of Education, *ESEA Flexibility* (2012), Title I-A, Section 1116, available at <http://www.ed.gov/esea/flexibility/documents/esea-flexibility-acc.doc>.
- 7 For example, see Gail L. Sunderman and Gary Orfield, "Do States Have the Capacity to Meet the NCLB Mandates?," *Phi Delta Kappan* 89 (2) (2007): 137-139; Andrea Boyle, Kerstin Le Floch, and Susan Bowles Therriault, "State Systems of Support Under NCLB: Design Components and Quality Considerations" (Washington: American Institutes for Research, 2008); Michael Gottfried and others, "Federal and State Roles and Capacity for Improving Schools" (Santa Monica, CA: RAND Corporation, 2011).
- 8 Patrick Murphy and Monica Oujidani, "State Capacity for School Improvement: A First Look at Agency Resources" (Seattle: Center on Reinventing Public Education, 2011).
- 9 Brenda J. Turnbull and Leslie M. Anderson, "State Capacity to Implement Title I." Working paper (Washington: Center for American Progress and American Enterprise Institute, 2011).
- 10 Cynthia G. Brown and others, "State Education Agencies as Agents of Change: What It Will Take for the States to Step Up on Education Reform" (Washington: Center for American Progress, 2011).
- 11 Melissa Junge and Sheara Krvaric, "How the Supplement-Not-Supplant Requirement Can Work Against the Policy Goals of Title I: A Case for Using Title I, Part A, Education Funds More Effectively and Efficiently" (Washington: Center for American Progress and American Enterprise Institute, 2011).
- 12 Murphy and Oujidani, "State Capacity for School Improvement"; Ashley Jochim and Patrick Murphy, "The Capacity Challenge: What It Takes to Support School Improvement" (Seattle: Center on Reinventing Public Education, 2013).
- 13 Many states cut their SEA budgets in FY 2012, when the last stimulus funding for education ended. According to the Center on Education Policy, 26 states faced funding declines between FY 2011 and FY 2012. However, it appears that things bottomed out in 2012, with most states expecting flat funding for their operations in FY 2013. See Nancy Kober and Diane Stark Rentner, "State Education Agency Funding and Staffing in the Education Reform Era" (Washington: Center on Education Policy, 2012).
- 14 U.S. Department of Education, *Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, Not Supplant; Carryover; Consolidated Funds in Schoolwide Programs; Grantback Requirements* (2008), p. 49, available at <http://www2.ed.gov/programs/titleiparta/fiscalguid.pdf>.
- 15 Kathleen Airhart, phone interview with author, October 17, 2013; Jeffery Blanford, phone interview with author, December 12, 2013; Stephen Osborn, phone interview with author, November 26, 2013.
- 16 Blanford, phone interview with author.
- 17 Patrick Chapman, phone interview with author, December 12, 2013.
- 18 In New Jersey, the governor instructed the education commissioner to inventory all of the local education agency reporting requirements. In its final report, the Education Transformation Task Force made 40 recommendations to the state department that included a list of 428 specific changes in reporting on September 5, 2012. See New Jersey Education Transformation Task Force, "Final Report" (2012), available at <http://www.state.nj.us/education/reform/ETTFFinalReport.pdf>. In May 2013, Tennessee established the Consolidated Planning and Monitoring Division with the explicit charge of streamlining local reporting to the state using a web-based interface. See Airhart, phone interview with author.
- 19 Airhart, phone interview with author.
- 20 Osborn, phone interview with author.
- 21 34 C.F.R. § 200.77.
- 22 20 U.S.C. § 1120A(b), "Federal Funds to Supplement, not Supplant, Non-Federal Funds."
- 23 20 U.S.C. § 1127.

- 24 U.S. Department of Education, *Consolidated State Performance Report, Part 1 and Part 2* (2013), available at <http://www2.ed.gov/admins/lead/account/consolidated/index.html>; U.S. Department of Education, *Part B State Performance Plan (SPP) and Annual Performance Report (APR)* (2013), available at <http://www2.ed.gov/policy/speced/guid/idea/bapr/2014/index.html>.
- 25 Osborn, phone interview with author.
- 26 *Elementary and Secondary Education Act of 1965*, as amended by Public Law 107-110 § 1120(A); Junge and Krvaric, "How the Supplement-Not-Supplant Requirement Can Work Against the Policy Goals of Title I."
- 27 This example is taken from Junge and Krvaric, "How the Supplement-Not-Supplant Requirement Can Work Against the Policy Goals of Title I." Should the district decide not to scale up the program, it is also possible that an audit could find it in violation of the requirement that it provide "comparable" services to all schools due to equity concerns.
- 28 U.S. Department of Education, *Consolidated State Performance Report*.
- 29 These requirements are addressed in Office of Management and Budget, *OMB Circular A-87* (The White House, 2004).
- 30 Katina Grays, phone interview with author, October 17, 2013.
- 31 Junge and Krvaric, "How the Supplement-Not-Supplant Requirement Can Work Against the Policy Goals of Title I."
- 32 Sheara Krvaric, phone interview with author, December 6, 2013.
- 33 Chris Foley, phone interview with author, October 17, 2013; Blanford, phone interview with author.
- 34 Melissa Junge, phone interview with author, December 6, 2013.
- 35 Many state education administrators feel that the responses from the federal government on these issues are uneven and not systematic.
- 36 The Center for American Progress has published other recommendations related to the federal supplement-not-supplant policy requirement. In particular, see Raegen Miller, Frederick M. Hess, and Cynthia G. Brown, "Reauthorization of the Elementary and Secondary Education Act Offers a New Chance to Improve Education" (Washington: Center for American Progress, 2012); Junge and Krvaric, "How the Supplement-Not-Supplant Requirement Can Work Against the Policy Goals of Title I."
- 37 Office of Management and Budget, *OMB Circular A-87*.
- 38 Federal grants to higher education institutions fall under the requirements of OMB Circular A-21, whereas OMB Circular A-87 applies to SEAs.
- 39 The Federal Education Group and Mass Insight's School Turnaround Group addressed this issue in detail when they jointly submitted comments to the OMB regarding ways to improve the education grant oversight process. See Federal Education Group, PLLC and Mass Insight Education School Turnaround Group, "Joint Comments on Advanced Notice of Proposed Guidance" (2013).
- 40 It is difficult to imagine a situation that would be less certain than the one that exists in 2014, with the majority of states functioning under different waivers and some states still falling under the requirements of NCLB. It is hardly surprising that, when surveyed, a majority of states report apprehension about what the future holds in this regard. See Jennifer McMurrer and Nanami Yoshioka, "States' Perspectives on Waivers: Relief from NCLB, Concern about Long-term Solutions" (Washington: Center on Education Policy, 2013).
- 41 U.S. Department of Education, *ESEA Flexibility*.
- 42 Osborn, phone interview with author.

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