

February 1, 2019

Witness: Dr. Amy Fowler, private citizen

Topic: ESSA Information

Federal Education Funding Background: On Thursday, January 31, 2019 you heard testimony from the Agency of Education (AOE) related to ESSA implementation. As the Agency noted, the *Every Student Succeeds Act* (ESSA) is a federal law designed to provide greater funding for children who live in poverty, are learning English, are without home security or face any number of obstacles known to interfere in learning outcomes. ESSA is the most recent iteration of the *Elementary and Secondary Education Act of 1965* (ESEA), and replaces the No Child Left Behind (NCLB) Act of 2001.

Early federal authorizations under ESEA essentially gave communities with greater obstacles funds with little oversight and few expectations regarding those funds. NCLB was an earlier revision of ESEA that attempted to address the concern that funds being sent to states were not leading to improved outcomes and the expectation that state level accountability plans would drive improvements in learning for the students most in need of better learning opportunities. Vermont, like all states, accepted that access to federal funds is conditional on federal requirements for use of those funds.

For example, if Vermont wanted to receive ESEA funds from the federal government, it was obligated under NCLB to identify how schools were performing and whether or not schools met benchmarks for “Annual Yearly Progress” (AYP) towards goals. VT was also obligated to identify schools as “needing support” if they did not meet performance guidelines. If schools needed support, additional funds were given to those schools to aid improvement. Vermont complied with this law each and every year.

The original performance goal of NCLB specified that every student in every school should be “proficient” by 2014. Because Vermont had high performance standards relative to most of the nation, and because VT was one of few states that did not agree to evaluate teachers based on test scores in order to get a waiver from NCLB requirements, basically [100% of Vermont schools were identified in 2014](#) as needing improvement according to the law. Once every school was identified as being at some level of improvement, NCLB ceased to be an effective “triage” strategy, although VT still complied with the law.

The reauthorization of ESEA through ESSA, from the federal perspective, was designed to address this “triage” problem. Under NCLB, states had to support all schools that didn’t meet a particular benchmark with a finite set of funds- the more schools needing money, the less money for each school. When resources are so disbursed, including to schools that are very high performing, well-funded and have small equity gaps, the impact on learning for our students with the greatest needs is also diluted.

In contrast, under ESSA, the state is required to support the 5% of Title I schools “that are most in need of support” with that same finite set of funds. This is specified by statute (please see excerpt on last page). From the federal allocation of all Title I funds, the state is required to set aside 7% of the money it receives to support these schools with the greatest needs. As you heard yesterday, that is about \$2.5M for 12-15 schools. These schools receive this money every year for 3 years with the idea that a longer-term improvement strategy with predictable funds can lead to significant gains. The predictability supports longer term interventions that are likely to lead to greater and more sustainable improvements in learning.

Vermont Response to ESSA: Yesterday you heard testimony that because the Obama era regulations specifying a date were rescinded, the Agency was not bound by a specific date for publishing the results. It is true that in March of 2017, the NCLB regulations with federally specified dates were rescinded. However, after extensive stakeholder input, the Agency of Education determined that even though the

regulations didn't require it, it was desirable for Vermont to produce this data by Fall of 2018 to meet state obligations for reporting school quality information for Town Meeting. If districts don't know what resources are available in time to plan their budgets, they cannot effectively plan for the use of those dollars. In Vermont's federal plan, submitted on May 3, 2018, the state specified that the Agency would report data in Fall of 2018 and this decision was made based on Vermont's best interest, not federal rules. Documents related to Vermont's response to ESSA can be found on the [USDE Website](#). Once this plan was accepted by USED, it became binding.

In the [Vermont Plan](#), the state specified that "Vermont will make its first identification of schools requiring Comprehensive Support in Fall of 2018 based on student performance on indicators collected during the 2017-18 school year"(p.67). and that AOE would disburse the funds to Comprehensive Support Schools in compliance with the law. In approving Vermont's plan, USED wrote the following:

Vermont's consolidated State plan remains in effect for the duration of the State's participation in the programs covered by the plan. Each State is responsible for administering all programs included in its consolidated State plan consistent with all applicable statutory and regulatory requirements even if those requirements are not addressed in Vermont's plan. Vermont must periodically review and revise the plan as necessary to reflect changes in the State's strategies and covered programs. If Vermont makes significant changes to its consolidated State plan at any time, such as changes to its accountability system or long-term goals, Vermont must submit information about those changes to the Department for review and approval. (emphasis mine)

In March of 2018, the AOE submitted such an amendment to the plan to USED and received [approval](#) in June. That amendment included what AOE considered to be mostly technical corrections, but USED felt that one of them was a substantial change. The process of getting this approval required multiple meetings with Vermont's federal counterparts and considerable revision in order to both meet the requirements of the federal law and to execute the work the state determined- with considerable stakeholder input-- was best for the state and children.

The Agency testified yesterday that they are not able to identify schools until Spring due to the struggles with implementing the SLDS data system in time and that they intend to disburse the 7% of improvement funds to all Title I schools, about 210 schools, rather than spending those dedicated dollars in the few schools most in need of support. A change of this magnitude would need to go through that same amendment process, and any approved amendment would be posted to the USED website. My assumption, based on testimony yesterday, is that this request has been made. As of this morning, however, only the first amendment approved in June 2018 is there.

Ramifications for Vermont: Federal compliance aside, the Agency's recommended change raises concerns with respect to the civil rights intent of the ESSA, to the children who need supplemental support, and to Vermont taxpayers.

Right now, the communities with our children with greatest needs know they are struggling. They are making plans, sometimes in the face of great fiscal adversity, for how to improve children's education. As they put together budgets, they are weighing their wish list against what their communities can financially support. Without certainty about federal funds, and without certainty of sufficient funds to make a substantive difference, these schools have a constrained ability to plan effective interventions. Some of these schools may defer a needed intervention because they don't believe their budget will pass-placing the most vulnerable at risk. Others will take on the tax burden for an intervention and decrease Vermont's affordability. If these schools knew that they had \$100-300,000 dollars each year for the next three years to support improvement, they could make informed decisions and select from a different menu of interventions to address the needs of their deserving children.

Elementary and Secondary Education Act, ESSA revision

Relevant Section: (all emphasis mine)

SEC. 1003. [20 U.S.C. 6303] SCHOOL IMPROVEMENT.

(a) STATE RESERVATIONS.—To carry out subsection (b) and the State educational agency’s statewide system of technical assistance and support for local educational agencies, each State shall reserve the greater of—

(1) 7 percent of the amount the State receives under subpart 2 of part A; or

(2) the sum of the amount the State—

(A) reserved for fiscal year 2016 under this subsection, as in effect on the day before the date of enactment of the Every Student Succeeds Act; and

(B) received for fiscal year 2016 under subsection (g), as in effect on the day before the date of enactment of the Every Student Succeeds Act.

(b) USES.—Of the amount reserved under subsection (a) for any fiscal year, the State educational agency—

(1)(A) shall allocate not less than 95 percent of that amount to make grants to local educational agencies on a formula or competitive basis, to serve schools implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d); or

(B) may, with the approval of the local educational agency, directly provide for these activities or arrange for their provision through other entities such as school support teams, educational service agencies, or nonprofit or for-profit external providers with expertise in using evidence-based strategies to improve student achievement, instruction, and schools; and

(2) shall use the funds not allocated to local educational agencies under paragraph (1) to carry out this section, which shall include—

(A) establishing the method, consistent with paragraph (1)(A), the State will use to allocate funds to local educational agencies under such paragraph, including ensuring—

(i) the local educational agencies receiving an allotment under such paragraph represent the geographic diversity of the State; and

(ii) that allotments are of sufficient size to enable a local educational agency to effectively implement selected strategies;

(B) monitoring and evaluating the use of funds by local educational agencies receiving an allotment under such paragraph; and

(C) as appropriate, reducing barriers and providing operational flexibility for schools in the implementation of comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d).

(c) DURATION.—The State educational agency shall award each subgrant under subsection (b) for a period of not more than 4 years, which may include a planning year.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State from allocating subgrants under this section to a statewide school district, consortium of local educational agencies, or an educational service agency that serves schools implementing comprehensive support and improvement activities or targeted support and improvement activities, if such entities are legally constituted or recognized as local educational agencies in the State.

(e) APPLICATION.—To receive an allotment under subsection

(b)(1), a local educational agency shall submit an application to the State educational agency at such time, in such form, and including such information as the State educational agency may require. Each application shall include, at a minimum—

(1) a description of how the local educational agency will carry out its responsibilities under section 1111(d) for schools receiving funds under this section, including how the local educational agency will—

- (A) develop comprehensive support and improvement plans under section 1111(d)(1) for schools receiving funds under this section;
- (B) support schools developing or implementing targeted support and improvement plans under section 1111(d)(2), if funds received under this section are used for such purpose;
- (C) monitor schools receiving funds under this section, including how the local educational agency will carry out its responsibilities under clauses (iv) and (v) of section 1111(d)(2)(B) if funds received under this section are used to support schools implementing targeted support and improvement plans;
- (D) use a rigorous review process to recruit, screen, select, and evaluate any external partners with whom the local educational agency will partner;
- (E) align other Federal, State, and local resources to carry out the activities supported with funds received under subsection (b)(1); and
- (F) as appropriate, modify practices and policies to provide operational flexibility that enables full and effective implementation of the plans described in paragraphs (1) and (2) of section 1111(d); and

(2) an assurance that each school the local educational agency proposes to serve will receive all of the State and local funds it would have received in the absence of funds received under this section.

(f) **PRIORITY.**—The State educational agency, in allocating funds to local educational agencies under this section, shall give priority to local educational agencies that—

- (1) serve high numbers, or a high percentage of, elementary schools and secondary schools implementing plans under paragraphs (1) and (2) of section 1111(d);
- (2) demonstrate the greatest need for such funds, as determined by the State; and
- (3) demonstrate the strongest commitment to using funds under this section to enable the lowest-performing schools to improve student achievement and student outcomes.

(g) **UNUSED FUNDS.**—If, after consultation with local educational agencies in the State, the State educational agency determines that the amount of funds reserved to carry out subsection (b) is greater than the amount needed to provide the assistance described in that subsection, the State educational agency shall allocate the excess amount to local educational agencies in accordance with—

- (1) the relative allocations the State educational agency made to those agencies for that fiscal year under subpart 2 of part A; or
- (2) section 1126(c).

(h) **SPECIAL RULE.**—Notwithstanding any other provision of this section, the amount of funds reserved by the State educational agency under subsection (a) for fiscal year 2018 and each subsequent fiscal year shall not decrease the amount of funds each local educational agency receives under subpart 2 of part A below the amount received by such local educational agency under such subpart for the preceding fiscal year.

(i) **REPORTING.**—The State shall include in the report described in section 1111(h)(1) a list of all the local educational agencies and schools that received funds under this section, including the amount of funds each school received and the types of strategies implemented in each school with such funds.