



Federal Compliance Works against Education Policy Goals

By Melissa Junge and Sheara Krvaric

While the federal government spends billions of dollars every year on federal education programs, federal policymakers and education advocates often lament that these programs do not achieve their intended results—specifically, increasing student academic achievement. To address this problem, policymakers and advocates typically debate the merits and drawbacks of broad federal education policies and various educational approaches, without examining the underlying federal compliance framework that directly impacts whether and how these policies can be carried out by states and school districts. Reforming little-known and little-understood federal compliance rules could lead to far better educational outcomes than broad changes in federal policy alone. Addressing these rules will improve conditions so schools and school districts can successfully implement programs that will raise student achievement.

Policymakers' discussions of "regulatory reform" often overlook fiscal and administrative compliance requirements that impact the day-to-day implementation of federal programs. This happens for two reasons. First, these compliance rules, by themselves, appear to be far removed from traditional education policy discussions, until one considers how they stifle effective programs. Second, states and districts are reluctant to raise questions or concerns about these requirements because they do not want to bring additional scrutiny to themselves. In this environment, it is critical for federal policymakers and education advocates to closely examine compliance rules and understand how they unintentionally hinder good program implementation.

In this *Outlook*, we provide examples of how the current compliance framework is often disconnected from larger federal policy goals and—perhaps more importantly—can get in the way of

states and districts trying to implement solutions that would lead to improved educational outcomes.

Key points in this *Outlook*:

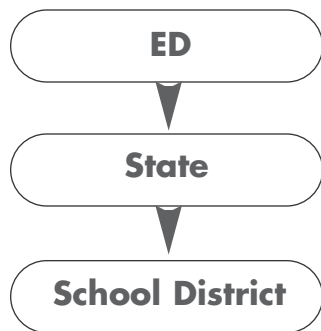
- Federal fiscal compliance rules can stifle innovation and hinder federal education programs from achieving their goals.
- States have authority and responsibility over how federal education programs are implemented and must repay federal money if districts spend funds incorrectly; thus, states often impose more restrictive rules than federal law requires.
- Congress and education policymakers should clarify and streamline these compliance requirements so schools can focus less on compliance and more on raising student achievement.

Melissa Junge (mcj@fededgroup.com) and Sheara Krvaric (slk@fededgroup.com) are attorneys and cofounders of Federal Education Group PLLC, an education law and consulting firm in Washington, DC.

What Rules Apply? The Burdens of a Multilayered Compliance Structure

Most major federal education programs are “state-administered programs,” in which the state is legally responsible for ensuring that school districts receiving federal funds comply with federal requirements. The state has a very important role, if not the primary role, in implementing federal education policies. Under federal regulations, states may layer additional compliance requirements on top of federal requirements, if they believe this will increase the likelihood of compliance. Adding to this complexity, while the US Department of Education (ED) publishes guidance, including general information about how federal law can be implemented, states have the authority to take a different approach in certain circumstances. This multilayered approach, while useful in protecting the state’s important role in these programs, creates confusion about how federal funds can be spent, which leads to increased burdens for both states and districts.

For example, in a state-administered grant program such as Title I or the Individuals with Disabilities Education Act (IDEA), ED awards funds to a state, typically through the state department of education, which is then responsible for allocating funds to school districts.



Under this structure, the state has wide-reaching authority and responsibility over how federal education programs are implemented¹ and is legally responsible for ensuring that school districts comply with all federal requirements.² This grants states the authority to impose additional rules on districts *on top of* what federal law requires—including the authority to restrict how districts use federal funds, even for things otherwise permissible under federal law. In other words, federal law sets the “floor” of what *can* be done with program funds, but states have the authority to be more restrictive. This multilayered approach to compliance makes it challenging

for state and local leaders to determine how federal funds can be spent in their state.

For example, ED issues guidance to explain the federal statutes and regulations that govern federal education programs. This helps states, districts, schools, and their auditors understand what *generally* can and cannot be done with funds in a given federal program, but it is not legally binding like a law or regulation. While federal guidance reflects ED’s current thinking about a program, it is only a starting point for determining how a specific state, district, or school can spend federal money. This is because ED’s guidance does not reflect any additional requirements states may choose to impose on their districts. Legally, once a state imposes a rule on a federal program, even if the rule is more stringent than federal law, school districts are legally bound to follow the rule as a condition of receiving federal funds from the state. Thus, what is permitted under federal law or encouraged by ED’s guidance may not be permitted in a particular state. Similarly, what is permitted in one state may not be in another. This creates substantial variability in the way federal programs are implemented across the country.

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Layering multiple levels of rules onto federal programs also makes it hard for state, district, and school leaders to tease out:

- What is actually required by federal law;
- Whether more stringent state-level policies regarding how federal funds can be spent are intentional, or whether they reflect historical administrative practices, or even occasionally a misunderstanding of federal requirements; and
- Whether and how federal funds could be deployed in a different or more effective way.

This presents a variety of challenges for those responsible for implementing federal education programs at the state, district, and school levels.

For example, states face the challenge of unraveling what rules apply when. The parameters of federal legal requirements can be unclear; additionally, ED and states have latitude to interpret the meaning of the statutory requirements in certain circumstances. Thus, states encounter situations where a rule is applied one way in one federal education program but differently in another, or where the same rule is applied differently by different federal oversight entities. In some cases, ED gives different advice on the same compliance rule when providing technical assistance to states.

In an environment where standards vary, states may feel compelled to “lock down” federal funds to minimize exposure to noncompliance findings and may inadvertently impose more restrictive rules than federal law requires. This is because states are legally responsible for repaying money in a state-administered program if a district spends funds incorrectly. The confusion regarding the baseline federal requirements makes it challenging for state education leaders to reduce state-imposed red tape on federal funds, or to use federal funds to implement innovative programs.

Districts face a different set of challenges. While districts are responsible for providing educational services to students, they often have the least authority in determining how federal funds are spent and the least access to federal and state policymakers. Therefore, state rules may make it difficult for a district leader to replicate a successful federal program from another state (since what is permitted in one state may not be permitted in another), or to access help from ED if the district believes the state is imposing rules that are inconsistent with federal law. This creates a challenging environment for district leaders wishing to use federal funds for new or innovative approaches to improving student achievement.

How to Avoid Policy Disconnects. Some of these challenges could be minimized by providing greater transparency about what federal law requires of states and districts, and what states require of their districts. This could be accomplished by:

1. *Drafting legislation that clearly articulates the parameters of federal requirements and compliance expectations that apply to each federal program.* For example, federal law requires states and districts to use Title I funds to provide extra services and supports that would not otherwise be provided with state or local funds—known as the “supplement not supplant”

requirement. However, the statute does not define how compliance with this requirement will be measured, which has led to a burdensome administrative test that may be inconsistent with the federal policy intent.³

2. *Formalizing the guidance process.* While ED’s guidance is not legally binding, it powerfully shapes the way ED programs are implemented and how states and school districts are monitored and audited. Public feedback should be part of the guideline-development process because it allows implementation concerns to be raised, and possibly preemptively addressed. Before guidance is finalized, a draft should be made public so questions and concerns are aired and addressed in the final guidance document.
3. *Requiring states to be clear about their state-level decision making and restrictions.* Title I currently requires states to identify all state-imposed rules, regulations, and policies,⁴ but this requirement is rarely followed or enforced. Clearly articulating which compliance requirements are federally imposed and which are state imposed would make it easier for states, school districts, and other education stakeholders to understand the origin of various policies. This could help facilitate reform of policies that create barriers to improving student achievement.

These proposed actions could help clarify what rules apply when and would help support states in their important, yet often overlooked, role in implementing federal education policy consistent with a state’s unique needs, culture, and concerns.

Impact of OMB Requirements on Federal Education Program Implementation

States and districts must comply with numerous federally mandated Office of Management and Budget (OMB) cost principles and audit requirements that apply generally to all recipients of federal grants—from transportation to health to education grantees. These rules are wide ranging⁵ and touch on such broad issues as procurement and contract administration, inventory management, financial/cash management, internal controls, and time-and-effort documentation requirements. States, school districts, and charter schools that spend more

than \$500,000 per year in federal funds must be audited annually on the above items.⁶

States and school districts must follow these rules *in addition* to the specific rules contained in federal education statutes.⁷ These rules are little known to education policymakers and are rarely taken into account when discussing federal education policy, yet they have substantial influence on the way federal education programs are implemented. At times, these rules hinder education-specific federal policy goals.

For example, federal law requires personnel paid with federal funds to keep time-and-effort records to track the time they spend on federal programs. The purpose of these records is to ensure salary charges to federal programs are appropriate. While this is an understandable requirement in theory, in practice it can be a barrier to the effective implementation of comprehensive education programs. Complying with time-and-effort requirements is easiest when an employee works on a single federal program, but difficult when an employee works on an initiative supported by multiple funding sources—such as a comprehensive early literacy program, a Response-to-Intervention model, or a school improvement initiative. This results in federal programs being operated in silos. While Congress has encouraged states and districts to adopt more comprehensive approaches to educational improvement and to move away from a “silo” mentality—through Title I’s schoolwide program model and certain school improvement initiatives, for example—districts may be reluctant to do so because of time-and-effort compliance requirements.

This reluctance is understandable because time-and-effort requirements are one of the most common sources of federal audit findings. The Office of Inspector General (OIG) reported that between 2003 and 2009 it issued findings in nearly 70 percent of the audits that included a review of salary costs.⁸ In 2010, the OIG questioned \$107 million for a single school district based on findings that the district failed to maintain adequate time-and-effort records.⁹

How to Avoid Policy Disconnects. States and districts would benefit greatly from clarity on which OMB requirements apply to them and how to comply with those requirements, which could be accomplished by:

1. *Providing states and districts with clear guidance on how to comply with federal cost-principle requirements in the education setting.* While federal cost principles

apply to all grantees, recipients of federal education funds would benefit from specific guidance on how the rules apply to education programs. The guidance should take into account questions from state and local staff responsible for implementing federal programs.

2. *Where appropriate, encouraging federal agencies, such as ED and the OMB, to provide states and districts with flexibility to develop alternate methods of compliance that would work better in the education environment.* Federal law specifically permits federal agencies to develop such alternate methods.¹⁰

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The Role of Federal Enforcement and Compliance Oversight Activities

It is hard to overemphasize the number of federal compliance requirements that apply to states and districts. The OIG once estimated that Title I alone contained 588 discrete compliance requirements, and even this number does not provide a full picture.¹¹ There are other requirements in the Elementary and Secondary Education Act (ESEA) that affect Title I, including other federal laws (such as IDEA) that interact with Title I, program regulations, administrative regulations, and federal grants-management requirements. In addition, as discussed above, state and local requirements are layered on top of federal rules.

ED’s program offices, the OIG, and other federal agencies are responsible for overseeing compliance with these extensive federal requirements.¹² Compliance responsibilities have a substantial influence on what states and districts do with their money. Accepting federal funds means consenting to significant oversight. For example:

- All recipients that spend more than \$500,000 per year of federal funds must conduct an annual

organization-wide audit of their federal program administration, including a review of their internal systems such as procurement, payroll, inventory, and financial management.

- ED's OIG conducts audits of state and local activities, which include program implementation as well as compliance with the fiscal requirements and the administrative systems described above.
- ED program offices conduct monitoring visits to review state and local compliance with federal requirements.
- The General Accountability Office, the investigative arm of Congress, conducts reviews of state and local activities in response to congressional requests.
- States conduct monitoring activities of federal programs at the district and school levels.

The risk of having to repay money for noncompliance places enormous pressure on states and districts. States in particular feel pressure because if a district mispends federal funds, the state is responsible for repaying the money to the federal government. Even if local-level noncompliance does not lead to monetary repayment, ED has other enforcement tools that impose considerable burdens on states, such as limits on the use of funds, additional reporting, additional oversight, and high-risk designations. States use the same enforcement tools on their districts. Understandably, this enforcement pressure tends to incentivize a culture of compliance.

Even if the identification of noncompliance does not lead to sanctions, the mere threat of an audit or monitoring finding is powerful. Most findings are publicly available—many are reported in the newspaper—and this has consequences for the people involved. Accordingly, the results of federal oversight activities can be more influential than federal statutory language or congressional intent.

For example, Congress authorized states to streamline the applications districts must submit to receive federal ESEA funds. The goal was to minimize the amount of information districts must submit to the state, thus reducing paperwork and administrative burden. However, ED encourages states to use the application as an oversight tool to help ensure compliance with federal requirements. ED has issued monitoring findings to some

states during its reviews for having insufficient applications.¹³ These monitoring findings, along with concerns about other compliance requirements based on audit findings from the OIG and other entities, have pushed many states to gather a significant amount of information through the application process. As a result, rather than becoming less detailed as Congress intended, applications have become increasingly more detailed, sometimes resulting in districts having to submit hundreds of pages of information to access ESEA funds.

ED and the OIG have little discretion to change their oversight and enforcement activities. Federal law requires them to oversee the administration of federal education programs, so they must ensure states and districts are adhering to their statutory responsibilities. Thus, the focus on compliance at all levels is understandable. Part of accepting federal funds is accepting the responsibility to be good stewards of public money, but the current compliance structure causes states and districts to spend a disproportionate amount of time on technical compliance issues that may not reflect federal policy priorities.

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For example, while education policy conversations often focus on assessing student progress, implementing accountability for student achievement, and ensuring teachers are appropriately supported and qualified, some of the most common audit and monitoring findings deal with:

- Time-and-effort requirements (see the section above);
- Developing adequate internal control systems and audit trails to document that each transaction was conducted properly (for example, procurement and contract administration, inventory management, and grantees following their own internal procedures);
- Supplement-not-supplant requirements; and

- Equitable services (that is, the requirement to use federal grant funds to provide services and other supports to private schools).

Since these are the issues that get states and districts in trouble, it is natural that these are the areas where they invest their resources. If policymakers want states and districts to use their resources differently, then all compliance requirements must support and reflect this.

How to Avoid Policy Disconnects. Congress and other education policymakers should:

1. *Closely examine all existing compliance requirements, whether statutory, regulatory, or OMB requirements, to ensure they are consistent with federal policy objectives and worth spending the time to enforce at the federal level and comply with at the state and local level.*
2. *Eliminate federal compliance requirements that do not directly relate to achieving federal educational policy goals.*¹⁴
3. *Ensure federal requirements are aligned and not duplicative across programs.* For example, the ESEA has required schoolwide program plans that contain specific elements, including planning for professional development and parental involvement activities. Many of these are similar to elements that must be included in other types of plans both inside and outside Title I, such as school improvement plans, separate parental involvement plans, and professional development needs assessments. Streamlining these components, or at least ensuring districts or schools only have to address each concept once, would go a long way toward reducing compliance risks and administrative burdens.

Conclusion

As policymakers consider issues such as accountability and teacher qualifications for the upcoming ESEA reauthorization, it is important to thoroughly examine the fiscal and administrative compliance rules governing federal education programs. Though often overlooked, these rules powerfully shape how states and school

districts implement federal programs, and ultimately impact what happens in the classroom.

As demonstrated by the examples in this *Outlook*, the current compliance structure is a significant barrier to fulfilling federal policy goals. In addition, fiscal and administrative requirements often lead to expensive and time-consuming compliance processes that are not related to improving student achievement or school success. In the current fiscal environment, where state and school leaders are expected to do more with less, ensuring that the federal compliance structure supports educational improvement strategies is vital to maximizing the effectiveness of ESEA funds. While protecting public money is an important interest, and compliance rules play a role in that objective, it is essential to identify disconnects between federal education policy objectives and federal compliance requirements. Addressing these disconnects will ultimately foster conditions that better protect public funds and lead to improved educational outcomes for students.

Notes

1. 34 C.F.R. § 76.770.

2. 34 C.F.R. § 80.40.

3. For additional information, see Melissa Junge and Sheara Krvaric, "An Examination of How the Supplement Not Supplant Requirement Can Work against the Policy Goals of Title I" (conference paper, "Tightening Up Title I," Center for American Progress and AEI, Washington, DC, March 11, 2011), www.americanprogress.org/events/2011/03/TitleI.html (accessed July 20, 2011).

4. See section 1903 (a).

5. For a practical discussion of how to comply with these requirements, see Melissa Junge and Sheara Krvaric, *Managing Title I and Other State-Administered Grants: Five Core Principles for Compliance* (Palm Beach Gardens, FL: LRP Publications, 2010), www.shoplrp.com/product/p-300612.html (accessed July 20, 2011).

6. See the Single Audit Act, OMB Circular A-133, and its accompanying annual Compliance Supplement at OMB, "Circulars," www.whitehouse.gov/omb/circulars_default (accessed July 20, 2011).

7. These rules are contained in OMB circulars known as "Federal Cost Principles." OMB Circular A-87 applies to states and school districts. See OMB, "OMB Circular A-87 Revised," www.whitehouse.gov/omb/circulars_a087_2004 (accessed July 20, 2011).

8. See ED, OIG, *Final Management Information Report, State and Local No. 09-01* (Washington, DC, July 21, 2009), www2.ed.gov/about/offices/list/oig/auditreports/fy2009/x05j0005.pdf (accessed July 20, 2011).

9. See ED, OIG, *Philadelphia School District's Controls over Federal Expenditures* (Washington, DC, January 15 2010), www2.ed.gov/about/offices/list/oig/auditreports/fy2010/a03h0010.pdf (accessed July 20, 2011).

10. See OMB, "OMB Circular A-87 Revised, Attachment A, A(2)(b)," www.whitehouse.gov/omb/circulars_a087_2004#atta (accessed July 20, 2011).

11. See compliance requirements within Title I, Part A of the No Child Left Behind Act at ED, OIG, *Final Management Information Report, State and Local No. 06-01* (Washington, DC, March 29, 2006), www2.ed.gov/about/offices/list/oig/auditreports/s06e0027.pdf (accessed July 20, 2011).

12. In certain situations, federal agencies are also responsible for enforcing compliance with state and local requirements. For

example, if school districts do not follow state and local procurement rules when spending federal funds, they are subject to federal audit findings. See the following OIG audit reports: *Philadelphia School District's Controls over Federal Expenditures* (Washington, DC, January 15, 2010), <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2010/a03h0010.pdf> (accessed July 20, 2011); and *Adequacy of Fiscal Controls over the Use of Title I, Part A Funds at Dallas Independent School District* (Washington, DC, 2009), www2.ed.gov/about/offices/list/oig/auditreports/fy2009/a06h0011.pdf (accessed July 20, 2011).

13. ED has also given monitoring findings to states whose applications were perceived as being too burdensome.

14. ED's OIG has made similar recommendations. See ED, OIG, "An OIG Perspective on Improving Accountability and Integrity in ESEA Programs" (ED-OIG/S09H0007, Washington, DC, October 2007), www2.ed.gov/about/offices/list/oig/auditreports/fy2008/s09h0007.pdf (accessed July 20, 2011).