Buechner Institute for Governance

Reauthorizing ESEA: A View from the West

Balancing Federal Priorities and Local Control in Colorado

School of Public Affairs
UNIVERSITY OF COLORADO DENVER

www.spa.ucdenver.edu/BIG

Acknowledgements

As with many projects of this scope, the work would not have been completed had it not been for the contributions of many dedicated professionals. We are grateful to those who shared their expertise and insights with us early in our process and to all who responded quickly to our statewide survey. We also are thankful to Annie Nelson at the University of Colorado Denver's School of Public Affairs for her patience and help in the beginning, and to the following personnel at the Colorado Department of Education who generously provided us with information, data, contacts and referrals: Trish Boland, Theresa Christensen, Cheryl Miller, Morgan Cox, Jill Hawley, Keith Owen, Alyssa Pearson and Martin Petrov.

We especially are grateful to our case study district interviewees, John Barry, Paul Coleman, Lisa Escarcega and Ed Vandertook, and to our advisory committee members who went above and beyond the call of duty to share their time, expertise and insights with us throughout this project. Our advisory committee members include:

- John Barry, superintendent, Aurora Public Schools
- Trish Boland, director, Elementary and Secondary Education Act (ESEA) Office, Colorado Department of Education
- Holly Brilliant, EDAC committee member, Title I director, Colorado Springs School District 11
- Anita Burns, federal program coordinator, East Central BOCES
- Patrick Chapman, executive director, Federal Programs Unit, Colorado Department of Education
- Nancy Connor, director of Grants and Administration, Denver Public Schools
- Jan DeLay, assistant director of Student Services and Federal Programs, Poudre School District
- Nora Flood, senior vice president of School Services, Colorado League of Charter Schools
- Tina Goar, rural field support manager, Accountability, Performance and Support Division, Colorado Department of Education
- Glenn Gustafson, deputy superintendent/CFO, Business Services, Colorado Springs School District 11
- David Hart, chief financial officer, Denver Public Schools
- Rhonda Holcomb, executive director, Federal Programs, Pueblo City School District 60
- Mark MacHale, superintendent, Montrose County School District
- Cindy Stevenson, superintendent of schools, Jeffco Public Schools
- Ed VanderTook, superintendent, Strasburg School District
- George Welsh, superintendent, Center Consolidated School District

This project would not have been possible without the generous support of the Walton Family Foundation.

The WALTON FAMILY FOUNDATION

Table of Contents

Appendices

Figures

Executive Summary

The Elementary and Secondary Education Act of 1965 (ESEA) was intended to break down the barriers that lie between disadvantaged children and high academic achievement. However, like many well-intentioned laws, ESEA has sometimes created new obstacles even as old obstacles are overcome. This report examines a particular challenge for implementing complex and constantly changing laws like the ESEA: the translation and mistranslation of federal law into state and local policy and practice. As with any federal law that affects a locality or state, on-the-ground implementation is deeply affected by the will and skill of the implementers, the capacity of the state and local implementing organizations to deliver on promises made at the federal level of government, and the material and human resources provided to transform national policy into state and local practice.[1]

The initial purpose of this examination was to inform the operations of a bipartisan working group headed by Sens. Michael Bennet (D-Colo.) and Lamar Alexander (R-Tenn.). This group was formed to investigate ways in which federal education regulation affects innovation and productivity in school districts and schools, and to gain a better understanding of regulations and practices that are overly burdensome, duplicative, difficult to implement as designed, discouraging to innovation or otherwise barriers to providing quality education. This information was intended to contribute to efforts to reauthorize ESEA, last reauthorized in 2002 as "No Child Left Behind."

The working group intended to focus its task by taking a bird's-eye view of the ways in which ESEA has played out in two states: Colorado and Tennessee. This is the Colorado report, referred to herein as the Colorado Study. For several reasons, Colorado is an especially instructive setting for an examination of the effects of ESEA. The state prides itself on innovation and has a long history of implementing district and state education reforms that foreshadowed subsequent federal education laws. "Local control" of instruction is a value enshrined in the state's constitution, representing the state's populist origins as well as Western cultural values such as individual responsibility and a mistrust of centralized authority. In addition, the state is home to an incredibly diverse set of school districts located in large urban areas, affluent and working class suburbs, mountain resorts, and small agricultural towns. Perhaps most importantly, as one of the nation's fastest growing states, Colorado is almost certainly a harbinger of future demographic trends.

This report was produced by researchers at the Center for Education Policy Analysis at the University of Colorado Denver's School of Public Affairs' Buechner Institute for Governance and funded by the Walton Foundation. Overseeing the efforts of these researchers was a sixteen-member committee of experts representing local school districts, the Colorado Department of Education, the Colorado League of Charter Schools and other educational organizations prominent in the state.

Before research began, committee members met to discuss the scope of this report. Members of this committee also participated in interviews that provided much of the information upon which this report is based. A statewide survey of local superintendents and finance directors provided a broader view of these challenges. Also, two in-depth case studies were conducted in the local school districts that serve the large and diverse suburban city of Aurora and the small town of Strasburg. Further interviews were conducted with U.S. Department of Education (USED) and Colorado Department of Education (CDE) personnel to ascertain whether perceived barriers are located in the law or in its implementation. Rounding out these efforts was an iterative literature review of state and federal education policies.

[1] Goggin, 1986

The report concludes with recommendations shaped by advisory committee members who were provided an opportunity to review the gathered information prior to drawing their conclusions. These conclusions are intended to directly impact decisions about future legislation and the oversight of federal education agencies and programs. The ultimate goal is to ensure that a law designed to remove obstacles to high-quality education is not building barriers instead.

When the current version of ESEA, No Child Left Behind (NCLB), was enacted in 2002, a patchwork quilt of standards, assessments and school ratings systems covered the nation's schools. That situation has been completely transformed in the decade since, with 43 states and the District of Columbia having adopted the Common Core State Standards, and 43 states signed on to implement new multistate assessments aligned to those standards. As a result, the landscape for high quality, fully aligned educational standards, assessment and accountability systems is vastly different than it was in 2002. NCLB put the infrastructure for these systems in place, and states have had more than ten years of experience in implementing the new requirements.

Now is the time to substantially rethink the administrative framework of ESEA that supports the educational goals set by these new systems. The next reauthorization of ESEA should recognize the expanded scope and goals of federal education policy as well as the transformed landscape of educational systems at the state and district level. This report aims to inform the reauthorization by identifying barriers that limit ESEA's ability to improve student achievement in Colorado schools.

Colorado has been on the cutting edge of many NCLB reforms and recent ESEA waivers. As such, it makes an ideal setting for this study.

A. Major Findings of the Colorado Study

- **Districts want more flexibility in making decisions about and administering federal funds.** When asked to identify the greatest challenge in implementing Title I of the ESEA, district leaders cited the perceived lack of flexibility in using funds. Title I funds are an important funding source for Colorado school districts, and districts are grateful for the funds and believe them to be important in closing achievement gaps. However, they feel stymied in using those funds to achieve the greatest impacts. Another issue for Colorado's smaller districts was that federal ESEA funding is often so limited (because numbers remain small even when growth is exponential) and so costly to administer that they sometimes question whether the funds are worth the administrative efforts.

- **Districts and states do not take advantage of all the flexibility they currently possess.** The study found several reasons why flexibility is not fully utilized. One important reason is that district administrative systems and processes were built to accommodate prior accounting and reporting requirements. For instance, current law allows Title I Schoolwide schools to consolidate multiple sources of federal funds, which would significantly decrease their administrative burdens. But school officials from a wide variety of districts report that their district-level accounting practices made it difficult if not impossible to consolidate the funds. Changing over to new systems is prohibitively expensive for many districts.

Some districts may not be aware of the flexibility opportunities available to them. For example, Colorado is an Ed-Flex state, which allows districts to request several types of waivers allowing for more flexible use of funds. When asked if their district used Ed-Flex, most said no, and 35 percent said they did not know. Colorado's state department of education also has not aggressively pursued opportunities under Ed-Flex, steering districts instead to a single type of waiver directed at schoolwide consolidation of funding (which, as discussed above, can be challenging for districts). Other states have granted waivers for other important areas in which Colorado districts want flexibility, such as waivers related to administrative regulations.

Additionally, the state and its districts may decide not to take advantage of flexibility for reasons related to underlying values and assumptions about certain aspects of the law. For example, although the Obama administration's waiver process allows districts to eliminate NCLB's requirement that they fund supplemental educational services for students at low-performing schools, Colorado's State Board of Education chose to maintain the program because of its commitment to parental choice. On the other side of the spectrum, some Title I administrators at state and district levels are loath to give the green light to greater flexibility when they feel it may compromise disadvantaged students.

Finally, the strategic use of waivers presupposes a certain level of sophistication and resources. Many Colorado districts struggle to understand compliance requirements as they currently exist, let alone devise the most strategic use of available waivers.

- **Rules for administering ESEA funds may be obsolete and/or out of line with the current emphases on student outcomes.** ESEA has several provisions that require districts to show that federal funds are not being used to substitute for existing state and local funds. One of these rules, known as **supplement-not-supplant,** was designed to ensure that federal funding added to state and local revenues rather than replacing it as a funding source. This well-intentioned rule has become problematic for the administration of both Title I and Title III funds. For example, supplement-not-supplant prohibits districts from expending federal funds to comply with the requirements of state law. Innovators like Colorado thus have a perverse incentive with respect to state education reform; once an innovation becomes state law, federal funds can no longer pay for it, even if the state law was prompted by national priorities.

  Another issue is the requirement of cost-by-cost accounting for targeted assistance programs, which then become compliance-driven rather than outcome-driven. Supplement-not-supplant rules for Title III—the ESEA component that supports instruction for English learners—essentially prevent Title III dollars from being spent on the activities most directly related to gaining language proficiency and are so strict that one district official said it was becoming "a funding source that cannot be spent."

  Comparability requires districts to show that they are spending as much on disadvantaged students as on other students. Districts can show this by demonstrating that staff-to-student ratios are the same across schools, but this obscures the dollars actually being spent at schools due to differences in teacher salaries. Many recent reports have called for requiring districts to compare actual school-level expenditures, but most districts and schools are not equipped to provide this level of analysis.

Maintenance of effort requires districts to demonstrate that state and local funds for education do not decrease by more than ten percent annually. This requirement seems to be obsolete, except in cases of severe fiscal crisis.

Rank order funding rules are designed to ensure that districts allocate Title I funding first to schools with the highest poverty rates and then to other schools in descending order of poverty. However, Colorado districts found this element to be overly prescriptive, interfering with district priorities and their ability to identify specific schools where the funding could make the most difference in student achievement.

- **Districts are frustrated by current requirements for set-asides for supplemental educational services (SES).** Colorado is one of the few states that has not requested a waiver from this requirement, although the state has made adjustments that better suit the state context. Colorado's districts believe that this money is not well spent, and that without the ability to direct SES they are unable to align it with other district initiatives designed to improve achievement. Rural districts in particular report being prey for scams and poor-quality providers.

- **Title II funds focused in improving teacher quality are greatly appreciated, but are viewed as insufficient to ensure the delivery of high-quality professional development or to provide adequate levels of staffing.** Many districts in Colorado have challenges designing or accessing high-quality professional development or, in larger districts, bringing effective training to scale.

- **Title III is viewed as contradictory, inflexible and underfunded.** Currently, 15 percent of students in Colorado are English language learners, ranking the state near the top in the nation for percentage of English language learners. Many of the districts located in the Denver metro area have experienced especially high growth, and several have student populations in which 40 percent or more of students are not proficient in English. This is a huge need for the state, but the funding provided under Title III is viewed as miniscule compared to the administrative burden associated with it. There is no option for consolidating funds for English language learners, and the accountability elements of Title III are not aligned with those in Title I. Finally, although Title III allows smaller districts to receive Title III funds as a cooperative, the small amount of funding and large geographic distances makes this option fairly worthless for districts.

- **The administrative burden associated with ESEA funding is challenging, especially for smaller districts.** While districts understand and appreciate the need to account for federal funds directed at disadvantaged students, they chafe at what they perceive to be an overwhelming reporting burden relative to amount of funds received. This is particularly true for smaller districts. Some districts suggested differentiating administrative requirements based on several factors, such as the size of the district or whether the district has shown positive student performance.

  In addition, districts are required to administer Title I funds for eligible students at private schools within their jurisdiction for neglected and delinquent youth served by other institutions located in their jurisdictions, and for charter schools they authorize. District leaders who participated in the Colorado Study reported that they expend a disproportionate amount of time and resources on a relatively small number of students as they monitor these funds. On the other side, charter school representatives report wide variance in district motivation and ability to administer federal funds for charter schools.

- **The state and districts may be receiving different messages on English learners from different federal government agencies.** When it comes to ESEA guidelines, Colorado districts perceive that one federal agency's rules may contradict the rules of another agency, which may in turn contradict the rules of the state. For example, when it comes to deciding which students are defined as English learners, districts report that they have received conflicting guidance from USED and the Department of Education's Office of Civil Rights. Fear of violating Office of Civil Rights requirements for English learners is affecting the state's willingness to offer districts additional flexibility on Title III funds.

It should be noted that the Colorado Study did not ask for input on the general accountability framework of ESEA. Colorado, like many other states, has obtained waivers from much of the NCLB framework in exchange for developing a robust and comprehensive state accountability framework—one that has served as a model for other states. This accountability framework is working well for Colorado. In addition, this study assumes that ESEA reauthorization will permit Colorado to continue using its framework.

B. Recommendations

Based on the findings from the Colorado Study and the input of the stakeholders on the study advisory committee, it is recommended that the next ESEA reauthorization incorporate the following changes:

1. **Fiscal requirements should be entirely rethought and aligned with the policy goals of the new ESEA**. Many of the current fiscal requirements are holdovers of past authorizations and disconnected from current outcomes-based accountability. Accountability is essential, but the ways in which states and districts are held accountable can evolve over time. At a minimum, ESEA reauthorization should consider the following recommendations:
    a. **Redesign the comparability requirement** to ensure that it achieves the goal of equity in intra-district allocation. This will likely require substantial investment by districts and schools in accounting systems that permit the tracking of school-level actual expenditures. Funding should be provided to assist in the transition to the new systems.
    b. **Eliminate or revise Title I's supplement-not-supplant requirement**. The supplement-not-supplant provision is difficult and administratively burdensome to demonstrate. The rule also creates perverse incentives that discourage innovation and expansion of programs at the state and district level. For these reasons, this restriction should be reconsidered in a reauthorization of ESEA. At the very least, the test for supplement-not-supplant should be revised so that it is "Title I neutral," meaning it simply requires districts to demonstrate that funding distribution is unaffected by the availability of Title I dollars. In addition, supplement-not supplant should not apply to state and local initiatives that are consistent with federal education priorities.
    c. **Redesign the poverty ranking allocation requirement** to ensure that the underlying goal of serving the most disadvantaged students is realized while allowing districts some discretion in determining where investments are most likely to translate into the best student outcomes.

d. **Eliminate the maintenance of effort requirement (MOE)**. The purpose for MOE, to guard against perverse incentives to cut state and local funding due to district receipt of Title I funding, is not a concern today. Yet this annual calculation takes up time and effort at the local and state level.

2. **Lessen the general administrative burden associated with ESEA funding.**
   a. Consider waiving or decreasing reporting requirements for districts based on size, or based on proven progress in closing achievement gaps.
   b. Centralize administration and reporting for students in institutions and nonpublic schools, or minimize the burden to districts associated with this role.

3. **Increase state and district discretion on supplemental educational services.** Allow states to choose whether to require set-asides for supplemental educational services, but allow districts to decide whether SES in their district will be provided by the district or by state-approved providers selected by the district.

4. **Revise Title II to focus on teacher and leader effectiveness.**
   a. Ensure that statutory and regulatory language focuses on effectiveness in addition to outputs: The current Highly Qualified Teacher requirements could be maintained as a "floor" that upholds a basic level of competency while new language would establish a "firmament" of higher-level goals for educator effectiveness goals based on student achievement.
   b. Permit states and districts to fund new educator effectiveness initiatives aligned with Title II priorities with Title II funds, regardless of whether the initiative is required by the state (as in Colorado's new educator effectiveness law) or by federal law.
   c. Help states fund efforts to provide and sustain high-quality professional development to all district contexts.

5. **Revise Title III and align it with the rest of the ESEA and other relevant laws.**
   a. Ensure the alignment of Title I and Title III accountability for the achievement of English learners.
   b. Title III supplement-not-supplant restrictions should either be eliminated or at least relaxed by removing the "federal" part of the restriction. This single restriction put the funding outside of the core activities associated with educating English learners.
   c. Eliminate consortia subgrants and instead distribute Title III dollars according to formula. Exempt all school districts that do not meet the $10,000 threshold from any and all fiscal regulations and reporting. This exception should not apply to Title III and AMAO accountability.
   d. Ensure that USED and the Office of Civil Rights are communicating consistently about the rights and needs of English learners. The agencies should consider issuing joint guidance in areas of overlapping jurisdiction.

6. **Make adjustments necessary to benefit the unique needs of rural districts.**
   a. Change the Title I funding formula to correct inequities affecting rural district funding.
   b. Increase the effectiveness of Rural Education Achievement Program funds by allowing more schools to qualify and by giving states more flexibility.
   c. Ensure that funds from competitive programs such as Race to the Top and Investing in Innovation are accessible to smaller and rural districts as well as larger urban districts.

Consider creating pilot projects that would allow districts to gain greater flexibility and relief from administrative requirements in exchange for proven and sustained achievement gains for disadvantaged and under-performing students. Many Colorado district and state leaders are interested in transitioning to a regulatory framework that rewards demonstrated performance with flexible oversight, a model that would fit well with Colorado's history and culture.

I. The Evolution of Federal Funding for Education

The passage of the Elementary and Secondary Education Act in 1965 represented a seminal moment in the history of federal funding for education. The most substantial piece of the Act, Title I, originally subtitled "Better Schooling for Educationally Deprived Children," was at the time, and remains, the largest federal commitment to education. Title I allocations have grown from the nearly $1 billion dollar initial allocation to the current 2012 appropriation of nearly $17 billion.[2] Now subtitled "Improving the Academic Achievement of the Disadvantaged," Title I provides funding for over 56,000 schools and more than 21 million children nationwide.[3]

Against the background of the civil rights movement and its increased focus on economic inequality in America, President Johnson undertook an ambitious "war on poverty." Among the planks of this policy were the Economic Opportunity Act, signed into law in 1964, and the Elementary and Secondary Education Act, signed in 1965. Underlying this policy was a growing focus on the education of economically disadvantaged children, and a concurrent recognition that equal educational opportunities provided the greatest promise for lifting families out of poverty.[4] At its core, ESEA was designed to provide supplemental funding for targeted populations, most importantly students in poverty—as stated in its original declaration:

> "In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance…to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means…which contribute particularly to meeting the special educational needs of educationally deprived children." (P.L. 89-10, Sec. 201)

These twin pillars of the original intention of the ESEA, namely that funding is supplemental, or additional to the funding already provided by states and local districts, and that it is targeted to children in poverty, have greatly influenced the development of its fiscal framework, in law, regulation and guidance. The Act has been reauthorized seven times since its original passage.

A. Ensuring That Funding Is Supplemental

Although the passage of ESEA represented an unprecedented federal contribution to education funding, the period around the passage of ESEA was also marked by an upheaval in the school funding methods of many states. During the

[2] SY 2009-10. U.S. Department of Education
[3] U.S. Department of Education
[4] Miller, 2009

1960s and 1970s, a growing body of research and a wave of lawsuits drove policy changes that focused on the gross inequities in the education funding systems of many states.[5]

In particular, these movements had highlighted the wealth-based funding inequities arising from the fact that the predominant source of public kindergarten through twelfth grade education revenue at that time was local property taxes.[6] According to the various lawsuits and policy movements, this funding source created vast disparities in education funding between districts with high property wealth and those covering geographies of concentrated poverty.[7]

At the same time, a growing body of research argued that certain students, most fundamentally those from low-income households, required additional educational programs and interventions that increased per pupil costs for their schools, and districts.[8] Additionally, studies showed that high-cost districts were also more likely to be low property wealth districts, thereby exacerbating the basic wealth-based disparities.[9]

States began the long process of adopting funding mechanisms that attempted to “equalize” education funding levels across school districts within a state. However, that process was plodding and inconsistent across states. Attempts to elevate the urgency and consistency of equalizing education funding across districts produced court cases challenging education funding levels on U.S. or state constitutional grounds. By the 1980s most states had moved to establish more equity in education funding across districts through the provision of additional state resources.[10]

During this major expansion and redistribution of state funding, the federal government became increasingly focused on ensuring that ESEA funding was in addition to and not in place of state and local funding.[11] This concern gave rise to the tightening of maintenance of effort, supplement not supplant, and comparability provisions (see below for further discussion of these provisions).[12]

B. Ensuring That Funding Reaches Populations with Special Needs

Despite the clear intention of ESEA to provide targeted funding for students in poverty, a 1969 report found that funds were not being spent exclusively on low income students.[13] Concerns about targeting funding became the foundation for another set of fiscal constraints, including provisions that govern how a district must allocate funding among its schools, and provisions about which schools may use funds for programs that serve all students in a school as opposed to assistance for targeted students.

[5] Notably Wise, 1969 and the *Serrano v. Priest* and the *San Antonio Independent School District v Rodriguez* cases.
[6] Odden & Picus, 2000
[7] Wise, 1969
[8] Rothstein, Wilder, & Allgood, 2011.
[9] Coons, Clune, & Sugarman, 1970
[10] Murray, Evans, & Schwab, 1998
[11] Fullerton, J., & Hochman, D., 2012
[12] Gurwitz, A., & Darling-Hammond, L., 1981
[13] Washington Research Project, 1969

In addition to the mechanisms above for ensuring proper use of ESEA dollars, myriad other reporting requirements, including time and effort reporting for all personnel funded through ESEA, are required to demonstrate that funds are being used for targeted populations.

The development of ESEA over time also added other student populations targeted for federal supplementary support. In addition to providing support for students in poverty, the current authorization of ESEA directs funds to English language learners. In 1968 Congress passed the Bilingual Education Act, which addressed, in a narrow way, the needs of English learners. Provisions for English learners evolved over time, eventually codified as Title III in the current authorization, No Child Left Behind. Title III provides formula grants for English Learners and immigrant children, and incorporates Title I's fiscal and reporting requirements to ensure the proper use and additive nature of those federal funds.

C. Driving Educational Improvement across the System

Since becoming law in 1965, ESEA has slowly changed its focus from funding inputs to a greater emphasis on educational outcomes. The focus has also expanded to include the educational success of all students, not just those who live in poverty.

When ESEA first became law, funding equity provided the best proxy for educational opportunity. However, even shortly after the creation of the law, there were indications that student outcomes were not entirely reducible to education funding inputs.[14] Although achievement gaps between student populations continued to be the focus of ESEA, the concept of how to best leverage federal dollars to address those gaps has changed dramatically since 1965.

In 1983, another influential work, *A Nation at Risk,* charged that the American education system was ineffective and marked by poor and declining achievement across all areas.[15] In many ways the beginning of the the current standards-based education reform movement can be attributed to this work. One of the features of the nation's initial response to this work was the acceleration of the development and use of standardized tests as a means to raise academic expectations and outcomes in K-12 schools.

The recognition of the importance of standards-based assessments and accountability at a national level gained momentum in the Presidencies of George H.W. Bush and Bill Clinton, and was initially codified in the 1994 ESEA reauthorization known as the Improving America's Schools Act (IASA).

In addition to implementing new requirements to set academic goals and measure student performance against those goals, that reauthorization expanded the focus of the Act from targeted student populations to the achievement of all students not performing at expectations. This expanded scope separated the funding elements of ESEA, which retained a focus on the supplemental and targeted assistance provisions of the original Act, from the accountability provisions that emphasized educational achievement for all students.

Whether viewed as a carrot or a stick, this development established the precedent of a significant federal commitment to education, through a window of funding that remained targeted to certain student populations. Importantly, with

[14] Coleman, J., Campbell, E., Hobson, C., McPartland, A., Weinfeld, F., & York, R., 1966
[15] National Commission on Excellence in Education, 1983

the adoption of an enhanced scope, and focus on state and local outcomes, the IASA also moved toward allowing districts more flexibility in use of federal funds to advance those goals.[16]

The advancement of a national education policy through ESEA funding has continued to evolve. In 2002, President George W. Bush signed into law the most recent authorization of ESEA, No Child Left Behind. The policy codified in that Act was the culmination of a bi-partisan effort that included Democratic leaders such as Senator Ted Kennedy and Representative George Miller, in addition to the Bush Administration.

The No Child Left Behind Act expanded on the standards-based testing and, importantly, accountability provisions of IASA. NCLB further solidified the IASA's emphasis on the education of all children and expanded the law's testing and accountability requirements to all schools in a district that received NCLB funding, not just Title I schools.

In many ways the goals of NCLB harkened back to the focus of the original ESEA -- closing the educational achievement gap -- and for the first time added a focus on race-based achievement gaps in addition to poverty-based gaps. NCLB requires states and districts to track the academic achievement of subgroups of students and set annual yearly progress targets with accountability provisions for schools, districts and states that do not meet targets. One of the more controversial aspects of NCLB is its requirement that all students perform at grade level by the 2014 school year.

The accountability provisions of NCLB represent another step in the direction of focusing ESEA efforts on the educational outcomes of students, rather than fiscal inputs. As a part of this focus on outcomes, NCLB also sought to provide additional flexibility to schools, districts, and states for the use of funds.

The election of Barack Obama in 2008 brought more changes to federal education policy. NCLB was scheduled for reauthorization that year, but political battles over other issues pushed it to the back burner. The Obama administration took alternative steps to move its education agenda ahead. As the Great Recession continued, the Obama administration announced Race to the Top, a competitive grant that would award significant amounts of money to states willing to meet the administration's parameters in four key policy areas. In 2010, the administration released its Blueprint for Reform, a proposal for the reauthorization of ESEA that incorporated the principles expressed in the Race to the Top grant criteria. Finally, in 2012 the administration solicited state requests for waivers from NCLB using a highly structured waiver application process consistent with the principles in the Blueprint for Reform.

The primary focus of the proffered NCLB waivers was relief from the full proficiency requirement of NCLB. In the absence of congressional action on reauthorization, and in order to head off what had become an untenable situation with an unattainable goal, USED proposed trade-offs between flexibility on this and other items, in exchange for states undertaking ambitious efforts to adopt more rigorous standards, implement school and district accountability systems using multiple measures, and develop new teacher evaluation systems.

At the time of this report, 34 states and the District of Columbia have received waivers and nine other state waiver requests are in the process of being reviewed by USED.[17] Colorado, which had already begun a number of reforms

[16] In summarizing the provisions of IASA, USED noted, "The IASA revises the ESEA to provide broad flexibility to states, school districts, and schools in their implementation of federal programs. At the same time, the IASA calls for strategies to hold school districts and schools accountable for improved student achievement." (U.S. Department of Education, 1995)
[17] Duncan, 2013

aligned with the Blueprint for Reform, was an early requester of waivers, and USED Secretary Arne Duncan has touted Colorado's academic longitudinal growth model and school and district performance frameworks as models for other states.[18]

At the same time, organizations from across a diverse political spectrum have pushed back on the waiver process. Some see the waivers as a continuing encroachment of federal policy makers into state education systems.[19] Others charge that the administration is watering down the rigorous expectations for student achievement contained in NCLB.[20] Still others find the emphasis on data, testing, and accountability systems to be contrary to the best interests of students.[21] Finally, some believe that increased flexibility will allow districts and schools to divert federal funding away from the most vulnerable students.[22]

II. Literature Review

ESEA funding mechanisms have attracted less attention than less dense topics such as testing or school choice. However, funding is clearly important, especially in the wake of an economic recession that has led to increases in the numbers of low-income students with high needs. The sections that follow provide background information and a brief literature review on the most frequently cited issues in the ESEA fiscal framework.

Additionally, the literature review explores ESEA as it relates to additional concerns identified by the Colorado Study: Title III and English learners; the unique needs of rural schools and districts; funding flexibility and regulatory burden; and state and district capacity to implement the increasing requirements of ESEA. Finally, we review research on the waivers requested by states from the requirements of NCLB.

A. Title I and the Goals of Supplemental Funding and Targeted Funding

There have been many recent policy briefs devoted to the complicated fiscal requirements designed to ensure that Title I funds go where they are intended to go. A series of briefs was recently jointly released by the American Enterprise Institute and the Center for American Progress.

These fiscal provisions include requirements related to:

- Maintenance of effort;
- Comparability;
- Supplement-not-supplant; and
- Rank ordering of schools in poverty

Each of these is discussed in turn.

[18] Ibid.
[19] Burke, 2012
[20] Democrats for Education Reform, 2011.
[21] FairTest, 2011.
[22] Education Law Center, 2012

1. Maintenance of Effort

The maintenance of effort provision of Title I monitors a school district's state and local funding. It aims to prevent Title I funds from being used to offset state and local reductions in spending over time. Under maintenance of effort, districts that reduce state and local expenditures by more than 10 percent per year face corresponding reductions in Title I funding. Maintenance of effort provisions have been part of ESEA in some form or other since the law was passed in 1965.[23]

In the present environment, it would likely be extremely politically unpopular for states and districts to unilaterally reduce education funding by such a significant amount. However, the 2008 economic recessions sparked renewed concerns about the provision as state and local governments reduced spending.[24] For instance, districts that experience fiscal crises or natural disasters can seek USED waivers from maintenance of effort requirements.[25] In an interview for the Colorado Study, USED officials said they had received more than 100 of these requests last year, an amount they indicated was unusually large.

A broader concern is that "maintenance of effort" sends the wrong message by discouraging districts from becoming more efficient because large reductions in spending can trigger penalties. Those concerns may be misplaced, as federal funds constitute a relatively small part of the average district's budget, and consequences for violating the maintenance of effort provision are small. Even in the highest poverty districts, Title I typically comprises about 10 percent of total revenue. So most districts could completely substitute Title I funds for state and local funds, yet still remain within the 10 percent window. Even if a district were to face a substantial annual reduction in state and local funds equal to 20 percent, the penalties would be light, with losses equaling less than one percent of total annual revenue.[26]

Research suggests that, even in the absence of maintenance of effort requirements, localities may increase the amount of local revenue allocated toward programs funded by federal grants.[27] This is sometimes called the "flypaper effect" because money sticks where it lands. Indeed, a recent study found that overall school spending in Southern states increased by 46 cents on the dollar in the early years of Title I, leading to significant decreases in the dropout rates for white students.[28] These increases occurred in the 1960s, prior to the current maintenance of effort requirements.

However, the conditions that led to those early Southern increases (large, sudden cash infusions of federal monies representing more than 20 percent of existing school funding) no longer exist. Nor were they national in scope. An analysis drawing on data from the 1990s found that while increases in Title I allocations do provide an initial infusion of cash that increases overall per pupil funding, the effects fade out within three years as local and state budgets adjust accordingly.[29]

Recent recommendations for ESEA reauthorization typically ignore maintenance of effort or suggest that it be eliminated. For example, Fullerton and Hochman (2012) suggest that maintenance of effort does not appear to be

---

23 Gurwitz & Darling-Hammond, 1981
24 Fullerton & Hochman, 2012
25 Ibid
26 Ibid
27 Hine & Thaler, 1995
28 Cascio, Gordon & Reber, 2011
29 Gordon, 2004

accomplishing its goals of preventing federal funds from backfilling local shortfalls. At the same time, they suggest that it may be discouraging financial efficiency because district budget directors allot it a disproportionate degree of importance.

2. Comparability

The comparability requirement of Title I requires local districts to use state and local funds to provide comparable services at Title I and non-Title I schools. If all schools within a district receive Title I funds, then services provided by state and local revenues must be equivalent at schools with higher and lower poverty rates.

The idea behind comparability is that Title I money is meant to compensate for the greater needs of low-income students by ensuring that high-poverty schools have more resources. In order for Title I to remain an add-on, not a backfill, state and local revenues must first provide an even foundation. Comparability has been part of ESEA, in one form or another, since the 1970 reauthorization.[30] Small districts with only one school per grade span are exempted from comparability requirements.

When it comes to demonstrating comparability, the NCLB statute provides multiple options for school districts. These include:

- Implementing a district-wide salary schedule
- Ensuring equivalent staffing levels
- Ensuring equivalence of curriculum and instructional supplies such as books
- Establishing student/instructional staff ratios
- Demonstrating uniform per-pupil expenditures
- Creating a resource allocation plan based on student characteristics such as poverty or disability[31]

Most districts use the first four options to demonstrate comparability. Policymakers have expressed concerns that some of these options should be eliminated because they contain loopholes. Their concerns center on the idea that higher-poverty schools employ higher percentages of inexperienced teachers.[32] Because most teacher salary schedules pay more for years of experience, inexperienced teachers earn less money. As such, a district that implements a uniform salary schedule or ensures equivalent staffing levels may end up spending less to staff high-poverty schools. The reason is that each (inexperienced) teacher simply costs less money to employ.

Even if a district were to use per-pupil expenditures to establish comparability, these staffing inequities could continue. Current Title I regulations permit districts that use this means of establishing comparability to exclude the portion of a teacher's salary based on years of experience. The issue is further complicated by an accounting practice called "salary averaging." Districts that use this method do not use each teacher's actual salary to calculate per-pupil, school-level expenditures of state and local funds. Instead, average per-pupil expenditure calculations for each school assume that all teachers earn the district's average salary. This can paint an inaccurate portrait because lower-paid, inexperienced teachers are disproportionately represented at high-poverty schools.[33] Consider, for instance, the hypothetical example

[30] Heuer & Stullich, 2011
[31] NCLB, 2002. , Section 1120A(c)(2)(A)
[32] Lankford, Loeb & Wyckoff, 2002
[33] Roza, Miller & Hill, 2005

of two identical elementary schools, each of which employs 12 classroom teachers for 400 students. The average district salary is $50,000. So the district, which uses "salary averaging," calculates that both schools spend the identical amount on classroom teacher salaries: $1,500 per pupil. ($50,000 per year times 12 teachers divided by 400 students) Yet, in reality:

> * At School A, a wealthy school, every teacher has 15 years of experience and every teacher earns $70,000. School A actually spends $2,100 per pupil on classroom teachers' salaries.
>
> * At School B, a high-poverty school, every teacher is in her first year of teaching and every teacher earns $38,000. School B actually spends $1,140 per pupil on classroom teacher salaries.

Even though salary averaging makes it appear that these two schools spend identical amounts of money on classroom teachers, School A actually spends 84 percent more than School B on teacher salaries. While this hypothetical example is certainly extreme, it illustrates how district-level salary averaging can result in inaccuracies in per-pupil funding estimates for individual schools.

Because instructional salaries comprise the bulk of school expenditures, higher poverty schools may actually spend less state and local money than do lower poverty schools even though the intent of Title I is that they should be spending more. In the biggest study to date on school-level expenditures at Title I and non-Title I schools, researchers found that 46 percent of Title I elementary schools spent less state and local money per pupil than did non-Title I elementary schools in the same district.[34] Additionally, 42 percent of Title I middle schools and 45 percent of Title I high schools spent less state and local money per pupil than did non-Title I schools in the same grade span and district. The analysis included spending on the seniority-based portions of teacher salaries, but excluded employee benefits.

In a separate analysis using the same data set, researchers also predicted what would happen if all schools were required to use per-pupil expenditures (including the seniority-based portion of teacher salaries) to prove comparability.[35] They estimated that up to 28 percent of Title I districts would be out of compliance. However, they also concluded that it would cost these districts just 1 to 4 percent of total school-level expenditures to create uniform per-pupil expenditures. This relatively small outlay of funds could have a dramatic effect on individual Title I and higher-poverty schools, which would see their per pupil expenditures rise by up to 15 percent.

Several recent commentators have suggested that districts be required to demonstrate comparability in actual per-pupil expenditures at Title I and non-Title I schools, thereby eliminating loopholes based on salary averaging. This view is supported by the National Association of State Title I Directors, which recommends "strengthening the financial comparability provision so poor schools receive their fair share of state and local funds" by revising the funding formula to "establish an equitable base amount for each eligible student."[36] Cohen and Miller (2012) also suggest actual dollars spent at each school, rather than abstract ratios such as staff-student ratios using average salaries, be used to establish comparability.

---

[34] Heuer & Stullich, 2011
[35] U.S. Department of Education, 2011
[36] National Association of State Title I Directors, 2010, p. 5

However, district and school officials have expressed significant concerns about proposals to require all districts to prove comparability by establishing uniform per-pupil expenditures.[37] These concerns included:

- Union-district contracts can make it difficult to shift staff in order to ensure comparable per-pupil expenditures.
- Shifting experienced staff to higher-poverty/Title I schools will not necessarily increase equity because experienced teachers are not necessarily better teachers. Someschool officials believe that changes in the comparability requirements should be accompanied by changes to the teacher compensation and evaluation system.
- Districts should have flexibility when it comes to defining whether pupil expenditures are "comparable" because conditions at schools (e.g. poverty rates) can fluctuate.
- Legislation should specify which expenditures that districts can use to demonstrate comparability. For instance, certain state and local expenditures are currently exempted from comparability requirements. These include expenses associated with special education and special academic needs. Will these expenses continue to be exempt?[38]

A Colorado state education agency official said that schools monitored by her office have always been able to provide school-level expenditures. However, some studies have found that school accounting systems are not always set up to provide this data.[39]

Finally, the suggestion for using actual school-level salary expenditures to show comparability assumes that teacher experience is correlated with teacher effectiveness – the most expensive teachers are the most effective teachers. Although research shows that newcomers to the professions are typically not as effective as more experienced teachers, in general teacher effectiveness varies widely once teachers are past the novice stage.[40]

3. Supplement-not-Supplant

Title I is supposed to add to state and local funding, not replace it. The supplement-not-supplant provision dates to the 1970 ESEA reauthorization. It requires Title I recipients to verify that they are spending their funds on services they would not otherwise provide with state and local monies. The verification rules differ depending upon whether funding is allocated for individual children within a school ("targeted assistance") or for all children in a qualifying school ("school-wide programs").

Although Title I funds are allocated based upon poverty rates in districts and schools, rich and poor students alike can benefit from targeted assistance. What matters is that the funding is serving students who are struggling academically or are at risk of struggling academically. Targeted assistance programs must prove that they are not using Title I money to pay for services that the district provides to all students. Districts usually do this by tightly controlling Title I dollars and linking each dollar to an approved use, such as paying salaries for teachers who only work with Title I students. Programs that provide academically struggling students with extended learning time outside of school hours (e.g. summer and/or after-school tutoring) are automatically considered supplemental.

[37] Haxton, de los Reyes, Chambers, Levin, & Cruz, 2012
[38] Haxton, de los Reyes, Chambers, Levin, & Cruz, 2012
[39] Haxton, de los Reyes, Chambers, Levin & Cruz, 2012; Roza, Miller & Hill, 2005
[40] Adamson & Darling-Hammond, 2012

School-wide programs serve all the students (poor and non-poor) in a high-poverty school. As a result, school-wide programs do not need to submit documentation identifying and tracking expenditures related to each individual student. However, recipients must still prove that, if Title I funding was eliminated, less money would be spent on the programs currently receiving Title I money.[41] This requirement obviously requires a certain level of speculation since it entails imagining what might occur under conditions that do not currently exist. One policy brief compared it to asking such questions as: "'Would I exist if my mother had never met my father?' or 'What if Gore instead of Bush had been declared victor in 2000?'"[42]

Given the speculation involved, compliance can be tricky to assess. "Keep in mind that any determination about supplanting is very case specific and it is difficult to provide general guidelines without examining the details of a situation," a U.S. Department of Education guidance document states.[43] However, the document goes on to explain that, regardless of whether the program is targeted or school-wide, certain expenses cannot be funded by Title I. These include:

- Services that a school district is required to provide under state, local or federal law. For instance, Title I funds cannot pay for services required under the (legally-mandated) individualized education program of a special education student.
- Services paid for by state and local funds during the previous school year. For instance, a district cannot use Title I funds to pay the salary of a reading specialist in 2012 if that position was locally funded in 2011.

Even these fairly clear prohibitions can be challenged by districts. For instance, in the case of the reading specialist, a district could use Title I funds if it could prove that the position had been eliminated by the school board as a result of decreases in local funding and that the decision to eliminate the position had not been influenced by the availability of federal funds.

Certain programs are excluded entirely from the supplement-not-supplant requirement. These exclusions include:

- Consolidated school-wide reform programs designed to help students meet states' academic achievement standards. Although available to all students in the school, these programs should be designed to assist students who are either failing or most at risk of failing to meet these standards. Program effectiveness must be evaluated using the state assessments required by ESEA. This exclusion only applies to schools with poverty rates of at least 40 percent.
- Supplementary services that only serve students who are failing or most at risk of failing to meet state academic standards. These programs must also be evaluated using the state assessments required by ESEA.[44]

The authors of a recent policy paper argue that some districts are violating the supplement-not-supplant provision by using "salary averaging."[45] This practice (described in detail in the previous section on comparability) may short change schools that employ large percentages of lower-paid, inexperienced teachers by using the district-wide average salary to

[41] U.S. Department of Education, 2008
[42] Fullerton and Hochman, 2012, p. 11
[43] U.S. Department of Education, 2008, p. 38
[44] U.S. Department of Education, 2008
[45] Roza, Miller & Hill, 2005

account for the expense of each teacher paid with Title I funds. Districts that use this method may not be spending as much money as they claim on Title I-funded teachers, and some of that Title I money may be flowing to expenses the district would otherwise be providing with state and local funds: e.g. more experienced, costlier teachers for non-Title I students.

Two recent policy papers levy more general criticisms, and recommend eliminating supplement-not-supplant rules entirely.[46] These criticisms include:

- Supplement-not-supplant can make it difficult to budget for comprehensive reforms because compliance is more easily achieved when ESEA programs are funded separately. In particular, the federal government tests for violations on a cost-by-cost basis that requires school districts and schools to prove that each individual expenditure would not have been made in the absence of ESEA funds.
- Supplement-not-supplant emphasizes the appearance of compliance over rational budgeting processes. For instance, suppose a district loses state and local funding sources for a program that serves Title I students. Even if the district would like to continue the program with support from Title I money, officials may suspend the program for three years and then re-open it under a new name, in order to avoid violating supplement-not-supplant provisions.

Junge & Krvaric (2011) propose expanding the supplement-not-supplant test used in schoolwide programs to all Title I expenditures. This test requires districts to demonstrate only that the overall methodology used to allocate state and local funds does not take into account Title I funding. In other words, funding is "Title I neutral." Expanding the "Title I neutral" test would reduce administrative burdens because districts with targeted assistance programs would no longer be required to "cost out" each item to prove that Title I funding was not supplanting state and local funding. Other possible recommendations include allowing USED and/or the state education agency to waive the provision and eliminating supplement-not-supplant entirely. Fullerton and Hochman (2012) echo these recommendations.

4. Rank Ordering Schools by Poverty Rate and the 35 Percent Rule

In general, districts distribute Title I funds to schools based on the number of low-income students in a particular school or catchment area. (The catchment area can include students at non-public schools, who are also eligible for Title I services.) Most districts use free and reduced-price lunch eligibility to determine which students are low-income.[47] Districts then rank their schools or grade spans in order of the percent of low-income students they serve and must award funding in rank order, with the greatest amount going to the highest poverty schools, and then descending in order. Schools with poverty rates of more than 75 percent have highest priority for the funds. Exceptions exist for districts with fewer than 1,000 students or one school per grade span.[48]

If a district uses Title I funds in any school that has less than 35 percent low-income students, they must allocate at least 125 percent of the district per-pupil Title I funding (i.e. the total Title I funding divided by the number of Title I eligible students) to the schools over 35 percent. The requirement is meant to ensure that districts do not spread funding too

[46] Fullerton & Hochman, 2012, Junge & Krvaric, 2011,
[47] Chambers, et al., 2009
[48] U.S. Department of Education, 2003

thinly in order to reach down the ranking to lower poverty schools. It is also designed to ensure that there are adequate funds for the Title I program since fewer students are generating the funds. However, the requirement can also result in a situation in which some schools that serve Title I students do not receive any funding. Additionally, schools in districts that trigger this requirement, i.e. schools in districts with less poverty, provide more Title I per-pupil funding for funded schools than do schools in higher poverty districts, where the 125 percent requirement does not apply. One study suggested that the 125 percent requirement might help explain why, in 2004-05, lower poverty schools received $206 per pupil more in Title I funds than did higher poverty schools. [49]

Despite this discrepancy in per-pupil funding, other means of calculating funding indicate that the rank order method fulfills its goals of prioritizing the highest poverty schools. In 2004-05, 93 percent of the highest poverty schools received Title I funds, as compared to 23 percent of the lowest poverty schools and 56 percent of all schools. [50]

However, Fullerton and Hochman (2011) suggest that rank order allocation is overly prescriptive, that it makes a district's use of funding needlessly inflexible and that it inhibits districts from targeting funding where they believe it can make the greatest impact. They propose piloting a Title I block grant in which school districts would be granted greater flexibility in return for increased accountability. So, for instance, a school district with strong academic performance growth would be permitted to avoid rank order allocation rules by allotting Title I funds to a lower-poverty school if a higher-poverty school had stronger student performance. Fullerton and Hochman also suggest re-examining which level of government carries out each ESEA compliance task. For instance, in the case of rank order allocation, a lower poverty school in a high poverty district might not receive any Title I funds. Yet if that same school were located in a neighboring district with a lower poverty rate, it might be that district's highest poverty school. As such, it would receive Title I funds. Shifting the responsibility of rank order allocation to the state or federal level would ensure that funds were distributed in a more fair and consistent manner.

B. Federal Funding Flexibility and Administrative Burden

As discussed previously, the goal of the ESEA is to provide supplemental and targeted funding, and the fiscal requirements described above are intended to ensure that the funding is both supplemental and is reaching the students it is intended to reach. In addition, states and districts receiving federal education funds must comply with EDGAR – the behemoth Education Department General Administrative Regulations, Title 34 of the Code of Federal Regulations Parts 74-86 and 97-99. These rules place substantial restrictions on the ability of the state and districts to utilize funds as they see fit (funding flexibility) and carry substantial burdens associated with compliance (administrative burden).

1. Funding Flexibility

The debate over reauthorization of ESEA ranges from those who would like to see states and districts have complete discretion over how to use federal funds to those who insist that tight restrictions are necessary to ensure that funds intended for disadvantaged students are not redirected to causes that are more popular locally. The Obama administration has signaled its own approach to flexibility by offering waivers to certain sections of the 2002 ESEA. Yet

[49] Chambers et al, 2009
[50] Chambers et al, 2009

the evidence demonstrates that states, districts and schools often do not take advantage of waivers that are available to them under the current law.

The concept of flexibility in the use of federal ESEA funds was first introduced in 1994, through a program called Ed-Flex. Ed-Flex allowed approved states to request waivers on behalf of their districts. In 2002, NCLB expanded flexibility and paired it with increased accountability. In addition to expanding Ed-Flex, new flexibility programs in NCLB included transferability, Local-Flex and State-Flex, and REAP-Flex, for small rural districts. Districts were also given the opportunity to submit applications for consolidated funding and to consolidate federal funds in schools with schoolwide Title I programs.

Under transferability, districts are allowed to transfer up to 50 percent of their initial allocations in and out of the following programs: Title II, Part A (teacher quality); Title II, Part D (educational technology); Title IV, Part A (safe schools); and Title V, Part A (grants for innovative programs). Allocations can also be transferred into Title I, Part A (disadvantaged children). District ability to use transferability may be decreased or taken away entirely for poor performance. Under Colorado's waiver, all districts, regardless of performance status, can transfer 100 percent of their Title I A, Title II A and/or Title III funds. The idea behind this provision is that struggling districts may need more flexibility.

Another ESEA flexibility provision, Local-Flex, is a competitive demonstration program that allows districts to consolidate their formula allocations from the four programs listed above and redistribute those funds for any purpose allowed under ESEA. Failure to make AYP for two consecutive years terminates the program.

Under REAP-Flex, eligible rural districts can use up to 100 percent of their ESEA formula funding for any activities allowable under one or more of the following programs:

- Title I, Part A (disadvantaged children)
- Title II, Part A (teacher quality)
- Title II, Part D (educational technology)
- Title III (English learners and immigrant students)
- Title IV, Part A (safe schools)
- Title IV, Part B (21st-Century Community Learning Centers)
- Title V, Part A (innovative programs).

A study conducted by the Urban Institute for USED found that in the 2005-06 school year, just over half of rural districts eligible for REAP-Flex participated. Just 16 percent of districts participated in transferability, even though all districts are eligible, and only one district nationwide applied for Local-Flex. Up to seven states were authorized to participate in State-Flex, a state-level competitive demonstration program; only one applied, and withdrew the application soon thereafter.[51]

[51] Christensen, 2007.

Districts not participating in transferability or REAP-Flex typically reported that they had insufficient information about the programs or that they did not see a clear benefit to participation, either because the amounts of funding were too small or because they felt they already had enough flexibility. States played a key role in disseminating information and encouraging districts to apply. For Local-Flex, the application process was seen as prohibitive. There also appeared to have been confusion in distinguishing among the various programs.

Study recommendations for increasing participation in flexibility programs included providing more information to districts, particularly through the states; removing program-specific restrictions and accounting requirements; and increasing the number of programs to which flexibility applies.

2. Administrative Burden

A recent GAO report surveyed states and districts about what requirements they found to be most burdensome in Title I, Part A, as well as several other major education laws.[52] The provisions identified as most burdensome included complying with the requirements for assessments, adequate yearly progress data collection and reporting, alternate assessments, provision of services to eligible non-public school children, state and district report cards, the set-aside for supplemental educational services, and approval and monitoring of SES providers. Some of these topics are outside the scope of the Colorado study, while others are addressed here. One of the issues raised by education stakeholders was the perception of duplicative reporting. The Council of Chief State School Officers pointed GAO to a CCSSO study that found that states are required to report over 200 data elements multiple times in various reports to USED.[53] The GAO reported that USED responded that states had not taken advantage of a USED effort to consolidate education reporting, and that the USED disagreed with the perception that reporting was duplicative.

GAO tried to quantify the cost of compliance associated with these requirements, but found that states and districts typically do not collect this information because they do not have sufficient staff to do so, find it too burdensome to collect the information, and/or don't find the information to be useful to student achievement.

C. Supplemental Educational Services

No Child Left Behind requires that low-income students at consistently under-performing Title I schools be offered supplemental educational services (SES) and the opportunity to transfer to a higher-performing school. Districts must set aside up to 20 percent of Title I, Part A funds to pay for the costs of SES and school choice.[54]

Supplemental educational services are provided outside of school hours. Under NCLB, Title I schools must offer SES to low-income students (regardless of their achievement levels or at-risk status) at Title I schools that have missed making AYP for three consecutive years or more. The tutoring, free to recipients, is paid for out of a school district's Title I, Part

[52] Scott,2012

[53] Wilhoit, 2011

[54] Deke, 2012. The 20 percent set aside also pays for the "public school choice" component of NCLB, which offers transportation to higher-performing schools to students at schools that have missed AYP for at least two consecutive years. In Colorado, under the NCLB waiver, the set-aside has been reduced to 15 percent, with exceptions for districts that can prove that previous demand for SES and choice was less than this amount.

A funds. When demand exceeds capacity, the lowest-performing, low-income students have top priority for services. In 2007, 17 percent of the 3.3 million eligible students chose to receive supplemental services.

As of 2006, districts spent $375 million on these services, most of which were provided by for-profit and non-profit organizations, not schools (although schools are permitted to offer SES).[55] The providers that are permitted to offer SES must all be approved by the states in which they operate. A recurring issue is that state education departments have not necessarily (permanently) eliminated bad providers. For example, a recent three-month investigation by a Florida newspaper found that state-approved providers had employed criminals, lured low-income families with promises of computers and bikes, and fraudulently billed for tutoring that did not occur.[56] The research is mixed on whether SES improves academic performance, with RAND researchers finding that children who participated in SES had statistically significant improvements in reading and math, and most other researchers finding little if any effect on student achievement.[57] In general, individualized tutoring does raise student achievement, but the quality of SES providers seems to be mixed.

The SES and school choice set-asides have been unpopular with districts, and parents have not taken advantage of the opportunities in significant numbers. More than 40 states and a group of eight California school districts have been granted waivers from both the SES and school choice requirements of NCLB.[58] However, some states that have received waivers, including Florida and Colorado, have chosen to maintain the SES/choice programs, with requested modifications.

A synthesis of research on SES recommends that Congress carefully rethink and review the program prior to reauthorization.[59] Given the small overall effects, lack of popularity with parents and relatively high cost of SES, one possibility is elimination. However, if SES is to be retained, the synthesis includes several recommendations for improving tutoring quality:[60]

- Tutors should possess college degrees. They should also be experienced, and well-trained.
- Tutors should use a national or prescribed curriculum.
- Reading tutoring should be one-on-one.
- States should eliminate providers that do not provide positive effects on student achievement.

A recommendation not mentioned in the synthesis but implied by the Florida newspaper series is that states should beef up monitoring requirements for providers. For instance, at the very least, states should check that provider employees have undergone criminal background checks so that, for instance, convicted sex offenders and child abusers are not permitted to work with children. Monitoring should also include unannounced spot checks to ensure that providers are offering the services for which they are paid to the children they report that they are tutoring.

[55] Ibid
[56] LaForgia, 2013
[57] Deke, 2012; Chappell, 2010, Zimmer, 2007
[58] Vowell, 2012
[59] Chappell, 2010
[60] Ibid

D. Title II and Teacher Quality

Title II, Part A is the educator-focused section of ESEA. It aims to encourage high quality teaching and school leadership. The Eisenhower Professional Development and Class-Size Reduction programs were earlier versions of Title II that were included in previous authorizations of ESEA. Compared to Title II, the Eisenhower program had more of a focus on math and science.[61]

In 2012, the Title II budget was $2.26 billion. Up to 5 percent of a state's funds can be reserved for state agencies that administer K-12 and higher education. The rest goes to local (K-12) education agencies. Nearly every school district in America gets a piece of the pie, with large and high-poverty districts receiving the bulk of the funds. (Funds are distributed to state and local agencies based on child population counts and poverty rates.)

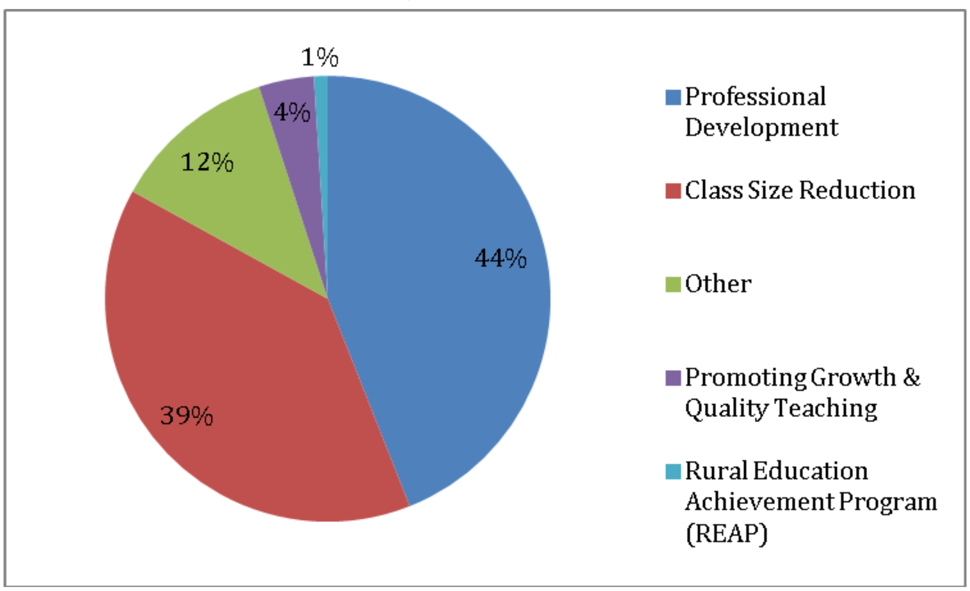
According to the U.S. Department of Education, permitted uses of these funds include:[62]

- "Recruiting and retaining highly qualified teachers;
- Offering professional development in core academic areas
- Promoting growth and rewarding quality teaching through mentoring, induction and other support services
- Testing teachers in academic areas; and
- Reducing class size."

As is evident from Figure 1, professional development and class size reduction were the most common uses of the funds in 2012.

Figure 1

Common Uses of Title II, A (Quality Teachers) Funds



[61] U.S. Department of Education, 2006
[62] U.S. Department of Education, 2012

Source: U.S. Department of Education

Districts have used the majority of their funds for professional development and class size reduction since No Child Left Behind took effect. However, the percentage of funds devoted to class size reduction has declined since 2002, while expenditures for professional development have increased. During that same time period, districts that did continue to use funds to reduce class size became less likely to focus these funds on the early elementary grades.[63] This raises questions about whether the decision to use these funds in this manner were driven by "scientifically based research" results, as is called for under the law: Research definitively indicates that class size reduction programs, well-executed in early elementary classes, lead to higher achievement for low-income students and minorities.[64] However, when it comes to class size reduction in the upper grades, the jury is still out.[65]

Lower-poverty districts were especially likely to use their funds for professional development. Overall, most professional development focused on reading (33 percent) and math (23 percent).[66] The law states that this professional development is supposed to be "high quality." According to a 2006 guidance document issued by the U.S. Department of Education, features of high-quality professional development include: integration into broader improvement plans for districts and states, alignment to state-level standards, and intensity/duration (e.g. conferences and one-day workshops are specifically excluded).[67] Although the document's definition of professional development continues for over a page, districts still struggle to determine what type of professional development best meets the program's over-arching goal of educating teachers in such a way to improve student achievement. For instance, research indicates that effective professional development for teachers should be collaborative, "intensive, ongoing, and connected to practice," "focused on the teaching and learning of specific academic content," and "connected to other school initiatives." Yet most American teachers do not have access to professional development that meets these criteria.[68]

Another controversial aspect of Title II is the "highly qualified" teacher provision.[69] The problem here is not the goal, which possesses near-universal appeal, but the ways in which that goal is met. At the very least, each teacher is supposed to have a bachelor's degree, full state licensure/certification and proof that she knows every subject she teaches. Yet these requirements have been interpreted and implemented differently in different states that a teacher who is "highly qualified" in one state may be unqualified in another.[70] Further, in some states, Colorado included, new laws (separate from NCLB) have established teacher evaluation systems that account for student achievement growth as measured by student learning outcomes. Districts that use federal funds to provide professional development related to this system face "supplement not supplant" restrictions (discussed below) that prevent them from using federal funds to implement the requirements of state law.

---

[63] U.S. Department of Education, 2012.
[64] Finn & Achilles, 2003. Although the issue of whether and when class size reduction improves student achievement is well settled for the early grades, policy makers and researchers still debate whether the resulting improvements are large enough to justify the cost.
[65] Biddle & Berliner, 2002
[66] U.S. Department of Education, 2012
[67] U.S. Department of Education, 2006
[68] Darling-Hammond, Wei, Andree, Richardson & Orphanos, 2009, p.5
[69] Technically, the Highly Qualified Teacher provision is found in Title I, section 1119 but is administered by IIA.
[70] Darling-Hammond & Berry, 2006.

E. Title III and English Learners

Title III, Part A is the section of ESEA that provides support for English learners, including immigrant children. Officially known as the English Language Acquisition, Language Enhancement, and Academic Achievement Act, the law's goal is to ensure that the students served both learn English and meet the same academic achievement standards as other children in their state.[71]

Title III is the latest iteration of a measure that has been part of ESEA in some form or other since 1968, when the Bilingual Education Act (then called "Title VI") was added as an amendment.[72] In 1974, the U.S. Supreme Court's landmark decision in *Lau v Nichols* solidified federal involvement in English language acquisition by declaring that schools discriminated against non-English speaking students when they failed to provide special services to English learners.[73]

In several ways, the NCLB version of Title III represents a stark departure from iterations of the measure that appeared in the 1994 reauthorization of ESEA. One difference was that the funding formula shifted from a competitive grant allotted directly to a select group of school districts to a state-administered formula distribution that reaches most schools serving English learners. About three-quarters of Title III funding is spent on instructional staff and materials with the remaining funds allocated for professional development, parent involvement and instructional support.[74]

As a result of this broadening of scope proscribed by the 2002 reauthorization, the number of English learners served by ESEA dramatically increased, rising eventually to its current level of more than 4.5 million students.[75] Additionally, total funding increased by 50 percent.[76] (It is $733.5 million in 2013.[77]) However, because the funds were spread more thinly, per-pupil funding for English learners actually declined.[78] Additionally, even though a formula is used to distribute the funds, per-pupil allocations vary significantly by state, ranging from $457 in Pennsylvania to $86 in Alaska.[79]

One reason for the disparity is that funds are currently distributed to states based on data from the U.S. Census Bureau's American Community Survey. States then distribute the funds to local agencies based on the number of English learners enrolled in each school. The Census counts generally differ from enrollment counts. Further, definitions of "English learner" vary widely. As of 2010, 42 states permitted local education agencies to set their own definitions, meaning that a student who is considered an English learner in one district could, in theory, move a few miles away and find that she is no longer limited English proficient .[80] States and districts with relatively inclusive definitions of "English learner" may serve many more students than suggested by their Census counts.[81]

[71] Tannenbaum, 2012.
[72] Evans & Hornberger, 2005
[73] Lau v. Nichols, 1974
[74] Tannenbaum, 2012
[75] U.S. Department of Education, 2012
[76] Crawford, 2008
[77] U.S. Department of Education, 2012
[78] Evans and Hornberger, 2005
[79] Tanenbaum, 2012
[80] Ibid
[81] Ibid

In addition to changing funding formulas for programs serving English learners, NCLB also introduced a new form of standards aimed at assessing language proficiency. These standards, which are established at the state level, are assessed annually. The assessments help determine whether state and local education agencies have met three types of Annual Measurable Achievement Objectives (AMAO):[82]

1. Annual increases in the number or percentage of students progressing toward English proficiency.
2. Annual increases in the number or percentage of students achieving English proficiency by the end of the school year.
3. Adequate yearly progress of English learners as a subgroup toward grade-level proficiency in the core subjects of language arts and math.

Sanctions are imposed in districts that consistently miss one or more objectives. These sanctions include developing improvement plans, making curricular changes, firing personnel and losing funds. States are charged with monitoring progress and sanctions.

Since Title III AMAOs focus both on language acquisition and academic outcomes, the literature has also identified ways in which this dual focus has provided needed attention to English learners as well as challenges.[83] One of the challenges has been the fact that the universe of students in the EL category is constantly shifting as students "exit" the category after having achieved proficiency. Therefore, the tested universe of EL students in any district intentionally excludes the students at the top end.[84]

From a state administration perspective, an oft-cited challenge is that state departments of education lack the resources to conduct this and other monitoring required by ESEA: In 2010, most states had fewer than two full-time staffers assigned to Title III.[85]

Other challenges pertain to the district level of administration. For example, one district challenge is finding teachers certified to teach English learners. Although unemployment resulting from the most recent recession almost certainly eased this challenge, officials in more than half of Title III districts had trouble recruiting properly certified English learners' teachers. One quarter of districts employed at least one such teacher who was not properly certified. [86]

Despite these challenges, the largest study to date of Title III services concluded that the measure has, at the very least, begun to fulfill its goals of matching English learners with instruction that helps them progress toward English proficiency.[87]

However, a recent research brief did propose several recommendations for improving Title III when ESEA is next authorized:[88]

[82] No Child Left Behind Act of 2001
[83] Ramsey & O'Day, 2010
[84] Ibid
[85] Tannenbaum, 2012
[86] Ibid
[87] Ibid
[88] Ramsey & O'Day, 2010.

- Increase accountability. Any student who was ever part of the English learner subgroup should be counted indefinitely as an English learner, but only for the purposes of accountability. This would increase accountability for English learners who have exited EL programs while also addressing concerns that high-scoring/high-growth students exit the subgroup, leading to a situation in which the subgroup necessarily excludes top performers. Other proposed means of increasing accountability include monitoring AMAO not only at the district level but at the school level and breaking down the English learner subgroup by the student's native language and/or country of origin.
- Improve coordination between Title I and Title III. For instance, the two sections of ESEA have different accountability timelines, guidelines and goals for AYP and AMAO.
- Consider revising the Title III funding formula. Current formulas spread funding so thinly that it is sometimes difficult for districts to make a meaningful difference with the money, which amounts to about $100 per English learner served. This is especially true in districts with small numbers of English learners. These districts must form consortia that administer and share the Title III funds, resulting in situations, for instance, in which a single grant of $10,000 serves eight different districts. When consortia districts are large and geographically isolated, as they are in the rural areas of many Western states, it becomes even more difficult to share funding by, for instance, providing a single set of professional development sessions that is accessible to all districts.

F. State and District Capacity to Implement ESEA

The general finding that SEAs do not have adequate capacity to provide the oversight and assistance required in ESEA has been a complaint that is much noted in the literature.[89] These capacity constraints are not provided for in current set-aside requirements in ESEA. More SEA funding is not the only answer, but a solution must begin with recognition of the mismatch between what SEAs are asked to do and the resources available to accomplish their goals

ESEA makes grants to states, and state education agencies (SEA) are responsible for distributing funding, overseeing compliance with federal provisions, and ultimately accountable to USED for any resulting issues. ESEA allows SEAs to set aside one percent of total funding for administration at the state level. In 2008-09 the average SEA administrative set-aside was $2,750,000 for the administration of the 588 provisions of Title I alone.[90]

In addition to the administrative requirements of ESEA, SEAs are also currently implementing a significant number of related education reform measures such as teacher evaluations systems, common core state standards, and new assessments. Many of these reforms were required of states that wished to obtain ESEA Flexibility waivers. As ESEA introduced these reforms, they also faced budget reductions resulting from the recent economic turndown..[91] One study found that these funding decreases have forced SEAs to reduce staffing levels.[92]

[89] Turnbull & Anderson, 2012
[90] Turnbull & Anderson, 2012
[91] Kober & Stark Rentner, 2012
[92] Ibid

Although all SEAs have been faced with the necessity of doing more with less, some report greater obstacles than others. Specifically, states with a greater proportion of low performing schools and those with smaller populations report more significant problems in administering ESEA.[93]

As SEAs become stretched more thinly with respect to oversight and compliance, there has been a growing concern about their ability to deliver quality systems and management procedures.[94] In addition, studies suggest that some SEAs have hesitated to take advantage of ESEA flexibility options because they lack the resources and capacity to fully explore and understand their options..[95]

Some districts have moved toward increasing district resources, or establishing regional education authorities in order to address limited state capacity.These moves typically focus on interventions for individual struggling schools, rather than on administration, reporting or compliance assurance.[96]

When it comes to the capacity to implement and administer federal mandates, districts vary even more than states.. Like states, districts are allowed to reserve a portion of ESEA funding for administrative purposes. Ultimately , it is the districts that provide the services. Reporting and compliance assurance procedures roll up from local districts to SEAs. Districts can have fewer than 100 students or more than a million, and ESEA funding can provide less than $10,000 or more than a hundred million. Accordingly districts will necessarily vary in terms of their ability to address the administrative aspects of ESEA.

G. The Unique Needs of Rural Schools and Districts

More than 11.4 million students—23 percent of all public school students—attend rural schools in the United States. Of those students, more than 9.6 million are enrolled in a district classified as rural by the U.S. Department of Education. In fact, in 2010-2011 there were more schools located in rural areas than in either cities or suburbs.[97] According to a recent Rural School and Community Trust report, rural districts' share of national public school enrollment increased from 17.4 percent to 20 percent between 2000 and 2010.[98]

With rural enrollment up, more attention is being paid to the advantages and challenges of rural schools. On the positive side, rural populations tend to have close-knit, supportive communities. Teachers are well-respected. Families and their children take pride in their schools, which are often the community's cultural and social centers. About half of all rural districts are considered small, meaning that student enrollment is below 537, the median enrollment size for all rural school districts in 2009.[99]

Like urban schools, rural schools face challenges in meeting the educational needs of growing numbers of racially, ethnically, socio-economically and linguistically diverse student populations. Additionally, persistent poverty, where at

[93] Minnici & Hill, 2007
[94] Turnbull & Anderson, 2012
[95] Ibid
[96] Taylor, O'Day, & Carlson Le Floch, 2010
[97] Keaton, 2012
[98] Strange, Johnson, Showalter, & Klein, 2012
[99] Ibid

least 20 percent of the population is below the poverty threshold for 30 years,[100] is overwhelmingly rural and geographically concentrated.. NCES data show that persistent child poverty is significantly greater in rural schools (26 percent) than in urban schools (12 percent).[101] While the majority of rural students are non-Hispanic whites, rural school districts have seen substantial growth in their minority populations. Between 2000 and 2010, minorities accounted for 83 percent of rural population gains.[102] Nationally, fewer than 4 percent of rural students are English Learners (EL) but some rural areas like California (18.1 percent) and Alaska (16.3 percent) have much higher rates of EL students.[103]

Providing students with a quality education as specified by NCLB is challenging for rural schools with longstanding technology gaps, transportation problems, and low teacher salaries. For example, while 100 percent of rural schools have instructional computers with internet access, they also have the lowest number of instructional computers available and the highest ratio of students to computers.[104] Moreover, with 28 percent of rural residents lacking access to high-speed Internet (compared to 3 percent of urban residents), students may not have access to services once they leave the school building.[105]

Spotty Internet access, geographic isolation, and chronically low salaries often make it difficult for rural school districts to recruit and retain qualified educators.[106] Professional isolation is often a problem for rural educators who have less access to professional development opportunities or opportunities for peer collaboration.[107] Rural educators are paid about 86 cents on the dollar compared to urban teachers[108] and are often expected to fill multiple roles including teaching and being certified in more than one subject.[109]

Recognizing that rural districts have unique characteristics and challenges, Congress created the Rural Education Achievement Program (REAP) as part of the Elementary and Secondary Act . REAP provides funds and funding flexibility to relatively poor small, rural LEAs with student enrollment of less than 600. In 2012, REAP provided awards to nearly 6,000 LEAs, out of approximately 14,000 qualifying LEAs nationwide.[110]

REAP, like the rest of the ESEA, expired at the end of 2008, although programs continue to operate as long as appropriations are provided. A more detailed description of ESEA programs applicable to rural districts and schools may be found in Appendix E. Congress is expected to consider amending and extending REAP along with other ESEA programs. Policy questions around REAP include how rural LEAs are identified (i.e. defined), Title I weighting formulas, and competitive grant disadvantages rural districts face.

---

[100] Center for Rural Pennsylvania, 2005
[101] Strange, Johnson, Showalter, & Klein, 2012
[102] Ibid
[103] Ibid
[104] Thomas & Lewis, 2010
[105] FCC update, June 17, 2011
[106] Barley & Wegner 2010,
[107] Government Accountability Office, 2004; Barley & Wegner 2010
[108] NCES, 2009
[109] Eppley, 2009; In 2004, the USDOE issued flexibility provisions under NCLBs Highly Qualified Teacher requirement allowing teachers in small, rural and isolated areas (REAP eligible districts) three years to become highly qualified in the additional subjects they teach.
[110] CRS Education Legislation Daily Postings, January 31, 2013

H. State NCLB Waivers

In September 2011, Secretary Duncan invited states to apply for two-year waivers from certain provisions of ESEA, currently authorized under the No Child Left Behind Act. USED developed policy and guidance about areas that were and were not subject to waivers, using this guidance to shape state applications in a way that promoted the education agenda of the administration.[111] Since then 45 states and the District of Columbia have applied for waivers, 41 states and the District of Columbia have had such waivers granted and4 are currently under review by USED.[112]Additionally, a group of eight California school districts applied for and received a waiver. (The state of California does not have a waiver.)

Some of the central provisions of the ESEA Flexibility waivers address district and school accountability provisions, including how states measure proficiency and progress toward proficiency. One recent study found that the majority of states who have already received waivers report that these waiver provisions more accurately reflect student achievement and growth and will improve student learning.[113] According to that report, most of the states that had received waivers said they had applied for them in part because ESEA inappropriately identified schools, that they wanted more local control over education and a better alignment between state and federal accountability.[114]

In addition to allowing flexibility, the waivers also required certain changes to be made at the state and district level in order for states to qualify for the waivers. The four major principles for waiver considerations are: 1) states must establish college and career-ready standards, 2) states must establish and implement differentiated accountability systems, 3) states must establish teacher and principal evaluation systems, and 4) states must evaluate and remove duplicative and burdensome reporting requirements.[115] Several states that applied for waivers made state legislative changes to comply with these principles.

As much as states were eager to apply for and implement the waiver changes, even in the face of new state education policies, they also faced challenges in creating these new systems including resistance from stakeholders and challenges in identifying new annual measurable objectives.[116] In addition, states have concerns about the efforts associated with waiver implementation and the fact that the current authorization of ESEA does not reflect those new policies. While ESEA awaits reauthorization, the current waivers are set to expire in 2014.[117] USED will begin accepting waiver renewal applications in January of 2014.

[111] U.S. Department of Education, 2012
[112] U.S. Department of Education, February
[113] McMurrer & Yoshioka, 2013
[114] Ibid, and Riddle, 2012
[115] McMurrer & Yoshioka, 2013
[116] Ibid
[117] Riddle & Kober, 2012

III. The Colorado Context – Education in the Modern West

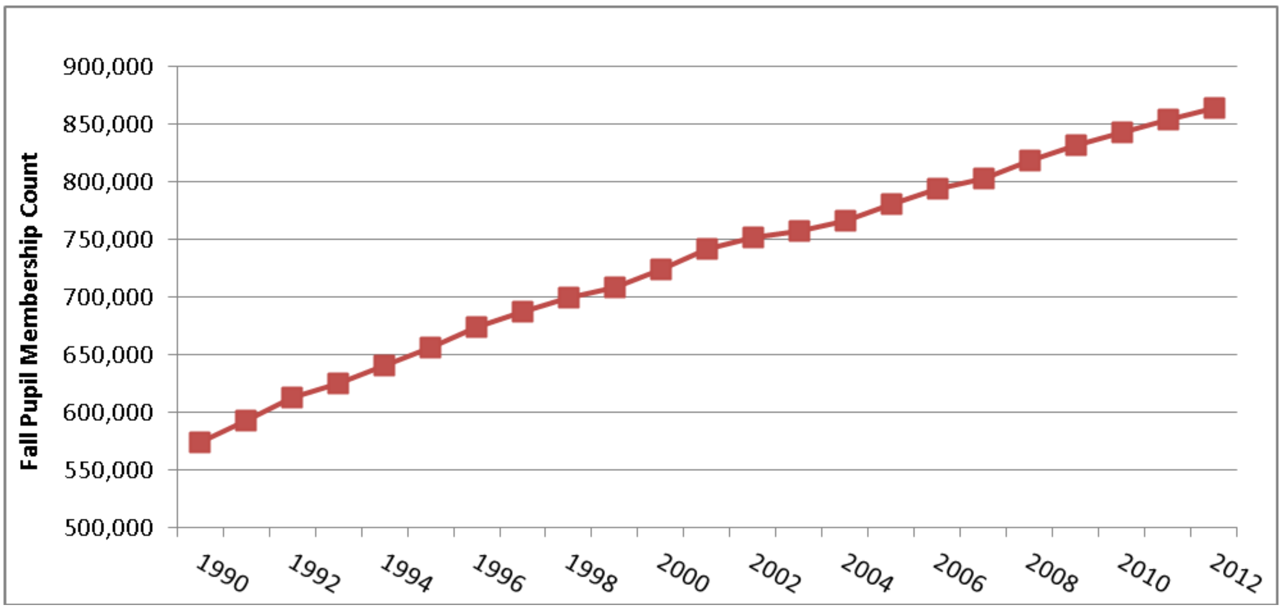
A. Demographic and Geographic Context

Colorado is a diverse and dynamic state. Many of the changing population trends and geographic realities in Colorado have implications for ESEA funding and administration in the state.

Demographically the state saw large population growth in the 1990s and has continued to experience net-in-migration, even through the recession.[118] Similarly, the state's K-12 student population has grown every year since 1990, and has increased by more than 40 percent in the period 1990-2012 (Figure 2).[119]

Figure 2

Colorado Fall Pupil Membership Count, FY 1990 -- FY 2012



Source: Colorado Department of Education , 2012

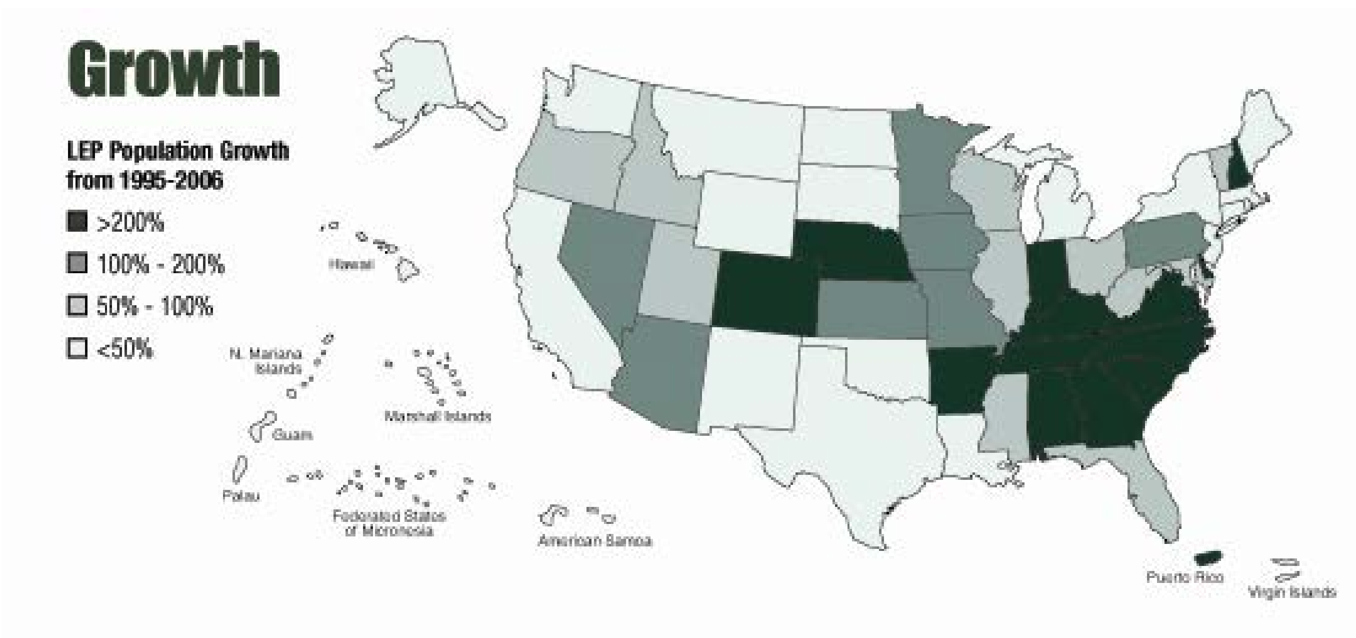
This population influx has been unevenly distributed across geographic regions and demographic categories. From one perspective, Colorado has benefited from in-migration of highly educated adults. The state ranks third nationally for the percent of adults with bachelor's degrees or higher.[120] However, Colorado is a net importer of education. In a much discussed phenomenon, internally referred to as the Colorado paradox, this high level of educational attainment has been largely produced by transplants to the state, even while Colorado ranks low in the number of in-state students obtaining those degrees. The state has also seen a dramatic increase of English language learners. According to USED, in 2010-11, 12 percent of Colorado K-12 students were categorized as Limited English Proficient (LEP), giving Colorado the fourth highest percent of LEP students nationally at that time.[121] (The state currently reports a 15 percent LEP

[118] Colorado Department of Local Affairs
[119] Colorado Department of Education
[120] U.S. Census Bureau
[121] U.S. Department of Education

population.) The number of English learners in the state has increases260 percent since 1995 (Figure 3), a rate of growth that substantially outpaced Colorado's overall student growth. Colorado is thus on the forefront of a national trend toward increasing numbers of English learners, especially in areas where the percentages of English learners had previously been relatively low.

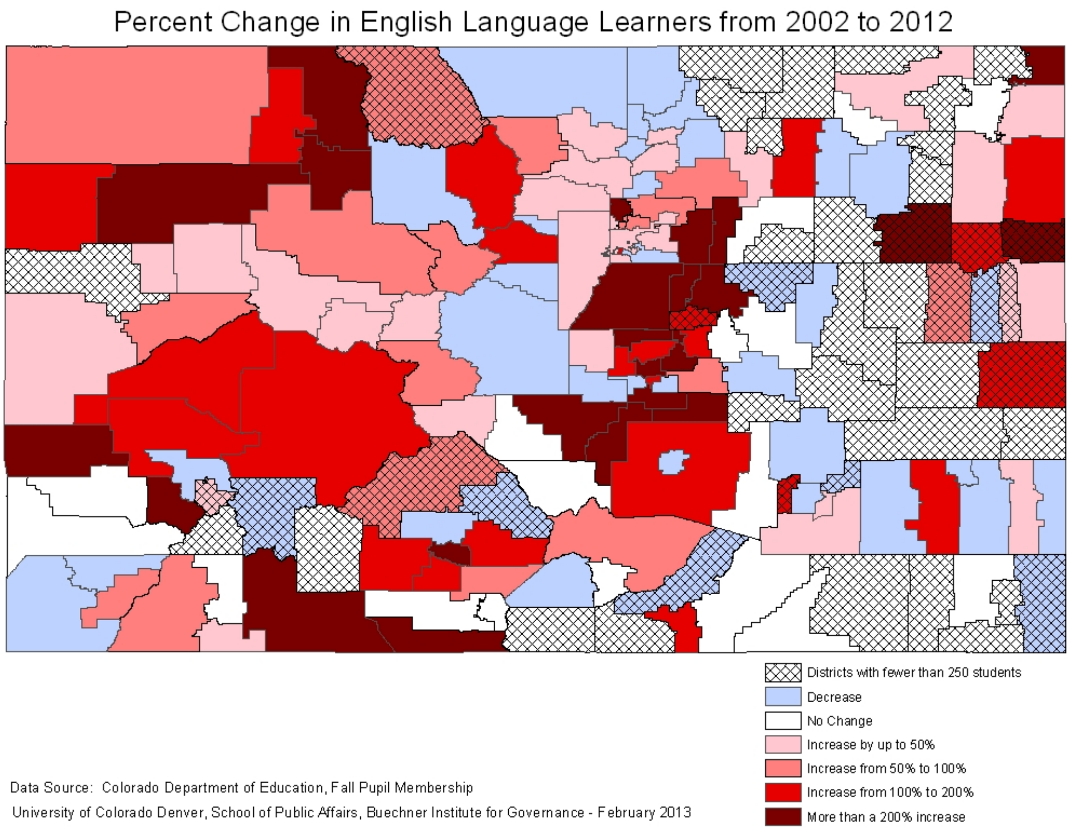
Figure 3. Growth in LEP Student Population from 1995-2006

Source: The National Clearinghouse for English Language Acquisition



The sharp increases in student population or English learners have not been evenly distributed across the state. The largest growth in overall student enrollment has been in the Front Range communities surrounding Denver, Fort Collins and Colorado Springs., Increases in the percentage of English Learners have been concentrated on the Front Range, as well as in the San Luis Valley in southern Colorado, the Eastern Plains, the mountain resort communities, and in certain agricultural areas. (Figure 4)

Figure 4

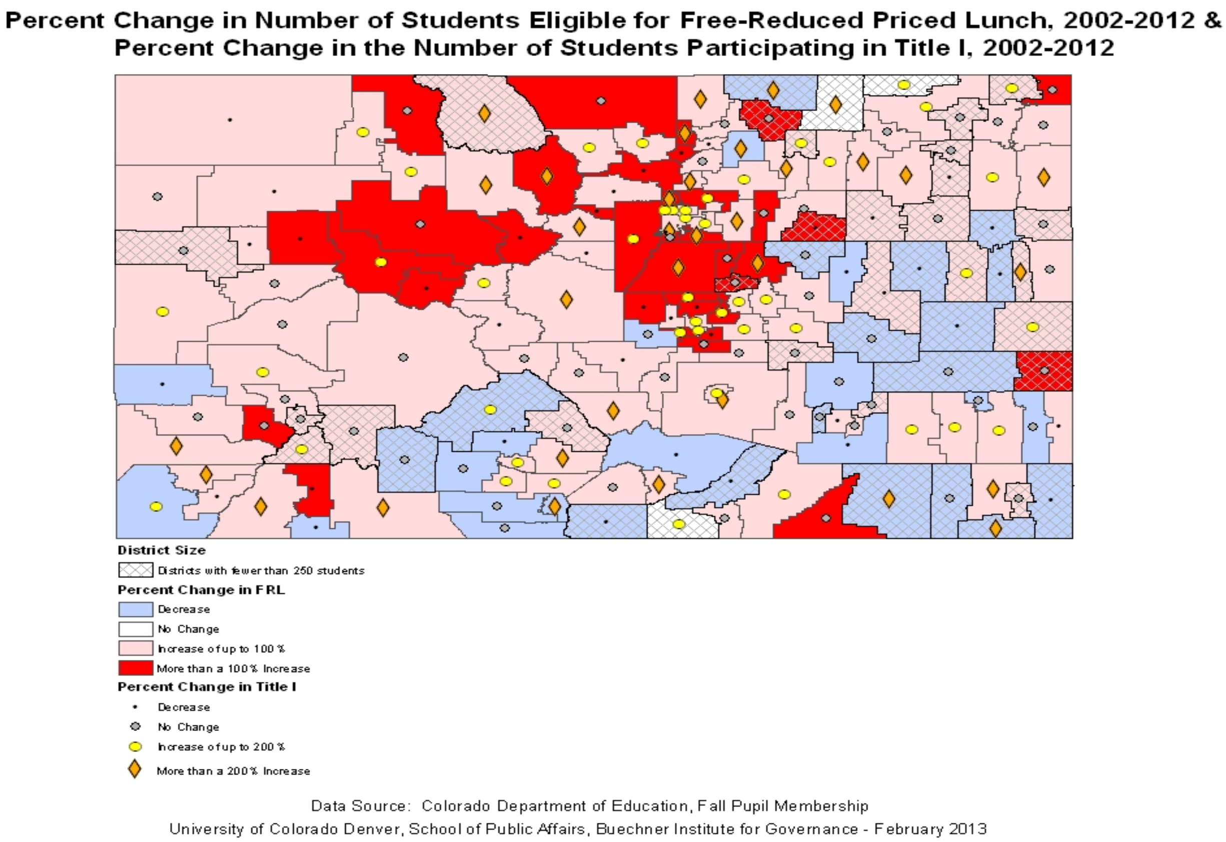


In a different trend, although Colorado is a relatively wealthy state, ranking 15th for per capita personal income nationally,[122] it has also experienced a large increase in childhood poverty. In the ten year period between 2001-2011 the number of students eligible for the federal free or reduced-priced lunch (FRL) program increased by 68 percent,. Over that same period, FRL students as a percent of total K-12 enrollment increased from 28 percent to 41 percent.[123] Paralleling those counts, the percent of Colorado children living in poverty more than doubled between 2000 and 2011, compared with a 34 percent increase nationwide over the same period.[124] Colorado is thus a more dramatic example of a national trend.

Although much of the state has experienced growth, the increases have been more dramatic in some school districts (see Figure 5). In addition to increasing poverty in urban areas, the recession spread poverty to suburban and resort areas of the state that had little experience with such issues.

[122] U.S. Bureau of Economic Analysis, 2012
[123] Colorado Department of Education
[124] The Annie E. Casey Foundation

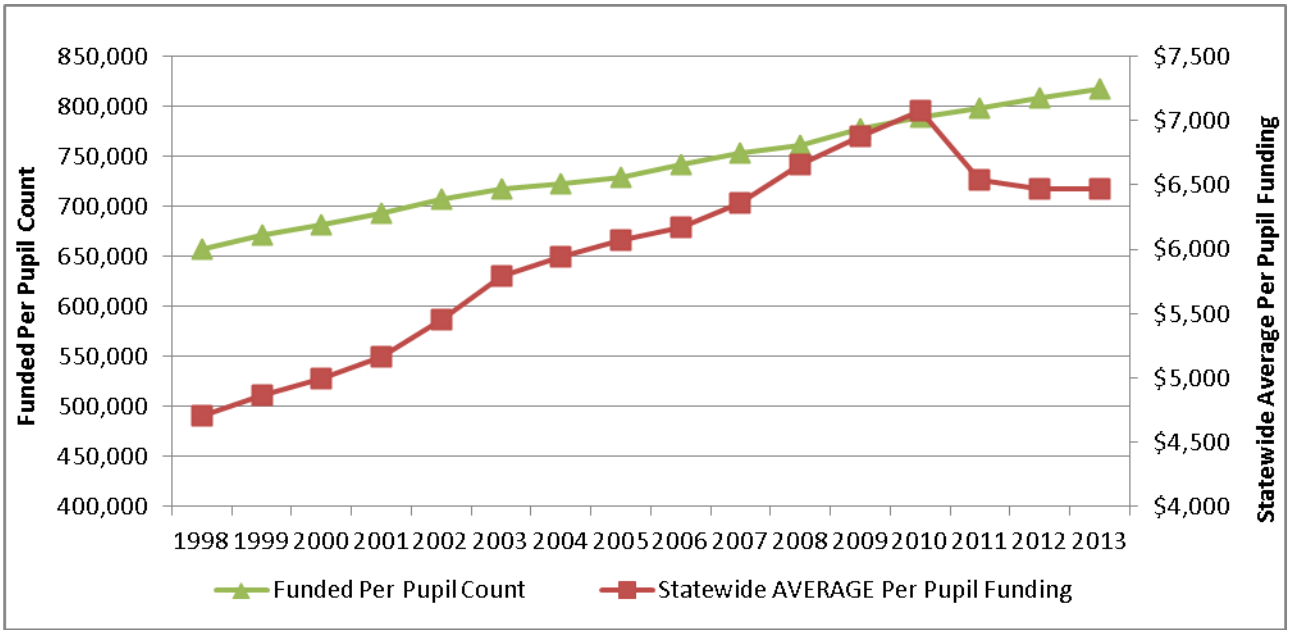
Figure 5



As has been the case in many areas of the nation, the sharp increases in student population, children in poverty and English learners has put a financial strain on both state and local district budgets—especially with the dramatic decline in revenue during the most recent recession. Although education funding in Colorado has some state constitutional protection, during the recent recession, the state cut the education budget by 16 percent, not including capital and local supplemental property tax measures. Schools absorbed these cuts even as the state saw increases in student population, poverty rates and numbers of English learners. (Figure 6).

Figure 6

Comparison of Funded Per Pupil Count and Statewide Average per Pupil Funding, Colorado 1998 - 2013



Source: Colorado Department of Education

According to the most recent *Education Week* report, "Quality Counts", Colorado ranks 42nd nationally for per-pupil spending. However, when per-pupil education funding is compared to resource allocation patterns in neighboring and Western states, Colorado falls somewhere in the middle.

Western States and States Bordering Colorado Ranked According to Per Pupil Public Elementary-Secondary School System Finance Amounts: 2009–2010

	Federal	State	Local	Total
Wyoming	1410	10020	8080	19510
Nebraska	1579	4018	6757	12354
U.S. Average	1535	5352	5419	12306
Kansas	1429	6069	4068	11566
Washington	1354	6698	3381	11433
Montana	1807	5257	4294	11358
Oregon	1451	5261	4304	11016
New Mexico	2274	6963	1741	10978
Colorado	**865**	**4623**	**5097**	**10585**
California	1582	5565	3434	10581
Nevada	846	5525	3683	10054
Arizona	1639	3257	4164	9060
Oklahoma	1176	4067	3597	8840
Idaho	1665	4618	1880	8163
Utah	1040	3960	2742	7742

Source: U.S. Census Bureau, 2010 Annual Survey of Local Government Finances—School Systems.

When it comes to administering ESEA, the state's diverse geography has also created challenges. As mentioned before, the student population in the state is concentrated along the Front Range, a north/south strip in the middle of the state where the mountains meet the plains. Mountain resort communities along the major interstate east/west corridor also experienced an influx of students since the decade since ESEA was last reauthorized.

However, at more than 100,000 square miles, Colorado is the eighth largest state in the country. Colorado is larger than every state east of it, more than twice as large as 20 states, more than four times larger than 10 states, and more than ten times larger than six states. Indeed, Colorado's largest school district, Moffat, is larger than the states of Rhode Island and Delaware combined. Collectively, these two states alone house 89 school districts. By contrast, much of Colorado's area is covered by school districts with very low enrollment—109 of Colorado's 178 school districts have less than 1,000 students but collectively cover more than half the state.

In addition to the huge administrative capacity concerns presented by Colorado's rural districts, many of them, most significantly across the Eastern Plains, have suffered from significant depopulation. This depopulation, which has been slow but steady for decades, is typical of rural, agricultural areas throughout the United States. School enrollment affects school funding in these districts, which further impacts administrative capacity, creating a destructive cycle.

Within this demographic context of sharp increases in both children in poverty and English learners as well as growing student populations in Front Range districts coupled with uneven population changes in rural districts, Colorado's educational landscape has had to adjust to revenue declines and policy advances requiring greater focus on struggling students. All these demographic and geographic realities have substantial implications for federal ESEA administration in Colorado. In addition, although these features make Colorado very different from the Eastern, Southern and Midwest states, it is important to note that many of these features are present in varying degrees to other Western states: Wyoming, Montana, Washington, Oregon, Arizona, New Mexico, Utah, Nevada and Idaho.

B. State Education Reform

Colorado has long been recognized as a leader in standards-based education reform. Over the course of the last five years alone, Colorado has put in place a series of far-reaching new laws that make great advances in the area of aligned standards, assessments, school ratings and teacher evaluations. These major pieces of state legislation are also relevant to ESEA and were all referenced at length in the state's recently approved ESEA waiver.[125]

1. The Colorado Achievement Plan for Kids

In 2008, the state legislature passed S.B. 08-212, the Colorado Achievement Plan for Kids (CAP4K). This sweeping piece of legislation began the process through which the state has reset and aligned all its standards, preschool through postsecondary, and has begun the process of creating new tests designed to measure against the standards.

As a part of the new standards process, the state has adopted the Common Core State Standards (CCSS) developed by the National Governors Association and the Council of Chief State School Officers,.Fullimplementation of the mathematics and English language arts guidelines begins in 2014. The state has also developed a comprehensive series

[125] Colorado Department of Education, 2012

of other new standards for subjects not covered by the CCSS. Collectively, all the new standards are called the Colorado Academic Standards. The fact that Colorado has CCSS in place positions it well if those standards are required or allowed as one option when ESEA is reauthorized. The Obama Administration's "ESEA Reauthorization: A Blueprint for Reform" recommends incorporating these standards.[126]

With respect to assessments, in 2012, Colorado became a governing state in the Partnership for Assessment of Readiness for College and Careers (PARCC) multi-state assessment consortium. In doing so, Colorado committed to using the new assessments developed by the consortium, which are aligned to the Common Core standards. The state's commitment to these assessments conformed to one of the options presented in the recent ESEA waivers. Again, this positions Colorado well if that option is replicated in a new ESEA reauthorization.[127] Colorado has begun the transition from its previous assessments to the new assessments, using transitional assessments in the interim Transitional Colorado Assessment Program (TCAP).

2. The Educational Accountability Act

In 2009, the state legislature passed S.B. 09-163, the Educational Accountability Act. This piece of legislation made substantial changes to the state's accountability system, aligning multiple systems and creating the new annual school and district performance framework reports (SPF and DPF) as the principal method of evaluating and rating each school and district throughout the state.

One of the most important developments of the new system was the creation of the Colorado Growth Model. The Colorado Growth Model tracks the progress of students throughout their educational careers. Individual students are assigned proficiency scores as well as ratings that indicate whether they are on track to reach or maintain proficiency. Growth is aggregated at the school and district levels as a part of the SPF and DPF systems. In addition to Colorado assessments, the state's new SPF and DPF systems use multiple measures, as required by ESEA waivers. The system also tracks subgroups of students.

Colorado's ESEA waiver, approved by USED in January 2012, has allowed Colorado to use its SPF and DPF systems to determine annual measurable objectives (AMOs) and measure adequate yearly progress (AYP) for Title I. However, there is not yet complete alignment between the state's accountability system and ESEA accountability provisions, as amended by the waiver. In particular, the federal requirements for identification of categories of low-performing schools --"priority schools" and "focus schools"-- use different calculations and so do not match the categories of lowest-performing schools identified by the SPF. Further, the state was not able to fully align Title III accountability, specifically AMAO 3 (achievement in reading and mathematics of EL students), with the state's accountability provisions for the English learner subgroup. This has created a disconnect between Title I accountability measures for English learners and Title III accountability.

3. Great Teachers and Great Leaders

In 2010, the state legislature passed S.B. 10-191, commonly referred to as the educator effectiveness bill. This landmark legislation created a comprehensive new teacher and principal evaluation system for the state. Under the new

[126] U.S. Department of Education, 2010
[127] Colorado Department of Education, 2012

evaluation system, teachers and principals are evaluated on an annual basis. The evaluations, designed to measure effectiveness, require that measures of student learning count for at least 50 percent of the evaluation. Other provisions of the law include measures that tie a teacher's probationary or non-probationary status to evaluation results, and prohibit districts from forcing schools to accept teachers they do not want.

Colorado is in the process of developing and implementing the new system, with implementation on a pilot basis in 27 school districts. Full implementation statewide is scheduled for 2014-15.[128] With this legislation, Colorado has moved past the Highly Qualified provisions of ESEA Title II, which are based on credentials, and toward a system that focuses instead on the effectiveness of teachers in the classroom. As the state noted in its ESEA Flexibility waiver request, it has "outgrown the highly qualified…targets," with more than 99 percent of teachers meeting that threshold. [129]

C. Colorado's ESEA Waiver

Colorado was one of the first states to apply for ESEA Flexibility waivers, and its application was approved by USED in 2012. The reforms described above had aligned the state with many of the policies favored by the Obama adminstration, and so its waiver request matchedthe permissible waiver parameters.

The state had a particular interest in ensuring that it was not required to administer two separate accountability systems one for theColorado Growth Model and district and school performance frameworks, and another for the NCLB system based on adequate yearly progress towards full proficiency by 2014. As a result, Colorado's waivers primarily cover accountability provisions that were added as a part of the NCLB reauthorization. Colorado SEA and LEAs have reported the changes afforded by the waiver are tremendously helpful and go a long way toward aligning state and federal accountability. In fact, Colorado has built its recent reforms and their accompanying infrastructure on the assumption that many of the waiver provisions, particularly those dealing with accountability, will be incorporated into the next round of ESEA reauthorization.

The USED approval letters for the state's waivers are contained in Appendix D.

D. State and District Capacity for Implementation

The State Education Agency (SEA) charged with implementing and overseeing ESEA requirements in Colorado is the Colorado Department of Education (CDE). Many aspects unique to Colorado make CDE's task more challenging than it is for other state education agencies. Colorado is one of just six states with a state constitutional provision giving local school boards control of instruction in the public schools in their jurisdictions. This provision has been interpreted broadly by state courts, balanced by the state's constitutional responsibility for general oversight of the public schools.[130]

The spirit of local control runs deep in the state, undergirded by Western cultural values of independence and individual responsibility. Debates stemming from issues of local control have complicated the implementation of statewide rules

[128] Colorado Department of Education
[129] Colorado Department of Education, 2012
[130] Colorado Constitution, Article IX, Section 15. For broad interpretation, see Owens v. Colo. Cong. Of Parents (Colo. 2004)

related to all of the recent education reform measures discussed above. ESEA has mandated some degree of consistency in standards, assessment and accountability nationally and in Colorado. However, the internal tension between the degree of oversight CDE is able to exercise and the relative inflexibility of ESEA's regulatory framework has been a significant challenge for the state.

Even if the state was free to mandate district actions, the geographic and demographic diversity of itslocal school districts would likely rule out a "one-size-fits-all" approach. . In addition, the sheer size of the state makes it difficult to visit sites and monitor districts. Colorado is home to multiple rural districts located in vast, sparsely populated regions. These districts face unique challenges that pertain to K-12 education in general and ESEA in particular. These challenges have implications for CDE's regulatory obligations.

The shifting ground of ESEA, coupled with the substantial education reform policies recently adopted at the state level have added exponentially to CDE's responsibilities. Colorado, like many Western states, tends to provide fewer resources for state agencies and programs. As a result, CDE faces all these challenges with below-average staffing levels. CDE has one staffer for about every 2,170 students enrolled in the state's public schools. Just 14 states have more students per SEA staffer.[131] The agency has just five employees dedicated to Title I oversight. CDE's capacity is stretched very thin, particularly with the new reforms undertaken by the state. While increased SEA funding is not the only answer, Colorado must contend with a mismatch between resources and expectations.

District capacity in Colorado varies widely, from large metro-area districts with very sophisticated central offices to poor, isolated districts with just two or three district employees, who must wear many hats. This fact, combined with local control, makes for a wide range of district ability to implement reform. While this should not and does not prevent the state from putting the best policies in place, it does mean that school and district level implementation is particularly challenging.

[131] This rough estimate is based on data provided in Brown, Hess, Lautzenheiser, & Owen, 2011, which included a table listing SEA staff numbers alongside public school enrollment. To create the staffer-per-pupil ratio, we simply divided the total number of pupils by the total number of SEA staffers for each state. Information was unavailable for three states and the District of Columbia.

IV. The Colorado Study

This report draws upon four major sources of data: advisory committee input, interviews with educational administrators, a statewide survey of Colorado administrators and case studies of two Colorado school districts. The advisory committee consisted of 16 Colorado stakeholders representing a variety of perspectives. All were knowledgeable about federal programs and their implementation and administration in Colorado. Interviews with district leaders, state education agency representatives, and federal USED representatives were also conducted. Surveys were sent to all 178 school districts, targeting superintendents and chief financial/administrative officers. Finally, case studies were conducted in two districts.

The purpose of the case studies was to gain a deeper understanding of how ESEA looks in two very different school districts, one rural (Strasburg) and one urban (Aurora). These districts were selected by the staff of Senator Michael Bennet and are representative of Colorado's urban/rural divide.

Adams-Arapahoe 28 J (Aurora Public Schools) is a 38,000-student district located in Aurora, a diverse city that incorporates both an urban core of lower-income apartment housing and a collection of affluent suburbs that are bedroom communities for adjacent Denver.[132] Although the city is served by four school districts, its urban core lies within the boundaries of Aurora Public Schools, which is Colorado's sixth largest district. Most Aurora Public students are low-income (68 percent). In addition, 40 percent are English learners and nearly 40 percent benefit from Title I services.

By contrast, Strasburg 31 J is a small, semi-rural district located 40 miles east of Denver. The district is Colorado's 75th largest, enrolling about 1,000 students. Less than a quarter of students are low income, and less than five percent are English learners or participants in Title I.

The study methodology is described in more detail in Appendix A. Survey results are found in Appendix B. Detail on the two case studies is in Appendix C.

[132] All the statistics in this section are taken from the Colorado Department of Education website.

A. Issues Commonly Cited by Colorado State and District Leaders

The results of the survey and the interviews demonstrated that Colorado leaders are generally in agreement with many of the reauthorization priorities that have been proposed at the national level. The vast majority of survey respondents agree that federal funding is important to key education goals such as closing achievement gaps. However, they struggle to keep up with complex reporting and administrative requirements, and would like more flexibility in decisions about using federal funds.

94 percent of Colorado district leaders believe that federal funds are important to closing achievement gaps

1. Title I Fiscal Framework

In general, the Colorado Study found districts relied on Title I funding, with school officials reporting that it was an important funding source. One survey respondent stated, "ESEA funding is critical to educational equity in our nation." Ninety-four percent of respondents believed that ESEA funds were important to closing the achievement gap, with 71 percent reporting that they were "extremely important." ESEA funds are also important to the ability to implement evidence-based programs (84 percent), improve teacher quality (70 percent) and serve English learners (69 percent).

As discussed in the literature review, Title I restrictions stem from the intent to ensure that federal funding is supplemental and reaches those students who need it most. Survey respondents were asked to identify where they stood on a 10-point scale ranging from maximum restriction in using those funds to maximum flexibility in using the funds. Most respondents came down on the side of flexibility (63 percent, with 21 percent advocating for maximum flexibility). Twenty-four percent placed themselves on the more restrictive side of the scale, and 15 percent advocated for a balance between the two. Colorado's districts clearly feel this tension.

However, many survey respondents definitely felt the largest barrier to student achievement presented by Title I was the lack of flexibility for use of the funds. In several places in the survey, in case studies and in interviews, Colorado district administrators urged a large shift in the approach to funding constraints in the reauthorization of ESEA. In several instances they suggested a focus on measurable standards-based student achievement, by subgroup, and corresponding accountability in place of all the current fiscal requirements. As one respondent put it:

> Aligning the federal resources to MEASURABLE goals already used at the state level for the at-risk population will allow us to use a laser-like focus towards achieving what we need to do for those students, instead of using our time to figure out how we can meet all of the reporting and funding use mandates…while making a minimal impact on student achievement.

ESEA policy has been shifting toward this view for some time. Reauthorization efforts should give strong consideration to moving furtherin this direction, instead of essentially preserving the old fiscal framework, while tacking on a focus on student achievement..

Of the various fiscal reporting and accounting provisions that have been discussed at length in national reports, Colorado's districts pointed to comparability and the supplemental education services set-aside as the largest headaches.

a. Comparability

In general, the national literature has suggested that it is important to compare funding at different schools within the same district so as to discern whether Title I is providing additional funding for services for targeted students. However, the literature also suggests that current applications of the comparability provisions of ESEA do not accurately capture intra-district funding differences.[133]

Much has been written about the teacher salary loophole in particular. This refers to the fact that individual teacher salaries, which often include adjustments for years of experience and additional education, are not taken into account when calculating comparability. As a result, many schools that serve primarily low income students receive less funding than those serving fewer low income students due to salary differentials, since schools serving low income populations are more likely to have teachers with less experience. (There are other loopholes that have also been identified in the literature, around funding for materials, technology, etc.[134]) The teacher salary loophole is especially problematic since teacher pay represents such a large percentage of educational expenditures, amounting to nearly 50 percent of total district expenditures in Colorado.[135] Accordingly, many national reports have called for tightening this provision.[136]

In Colorado, CDE has developed guidance for assistance to districts in calculating comparability. This guidance generally favors FTE allocation among schools, although districts can choose alternate methods identified by the law for demonstrating comparability .A few larger districts do so. However, CDE reports that such alternate calculations frequently are so complex and involve such a level of expenditure detail that the state is actually unable to fully assess the accuracy. Moreover, accounting systems in most districts are not set up to handle school-level real dollar expenditures. Thus, districts are at two extremes – those who can calculate school-level expenditures with a level of detail that confounds the state, and those who are unable to calculate school-level expenditures.

Colorado survey respondents were extremely split on the benefit of the comparability provision, with 36 percent calling it beneficial and 39 percent saying it was problematic. Districts did not cite comparability changes in their recommendations. Quite frankly, with current accounting systems, it is much easier for districts to calculate comparability using averages and ratios rather than school-level dollars, so it may not be surprising that practitioners are not the primary advocates for reforming comparability.

In Aurora Public Schools, one of the case study districts, officials reported that they believed comparability to be a useful requirement. They understand the state to be advising them to try the staff/student ratio first, and then if that didn't show comparability, to try figuring out the real dollars. Interestingly, Aurora reports that it often does not meet the

[133] Center for American Progress, 2008; Roza, 2007; Luebchow, 2009
[134] Luebchow, 2009
[135] Colorado Department of Education, 2012
[136] E.g. Fullterton & Hochman, 2012, Luebchow, 2009, and Spatig-Amerikaner, 2012, to name only a few.

staff/student ratio because it gives principals autonomy over staffing decisions. In other words, district promotion of an innovative approach (school-based autonomy) leads to challenges with comparability.

On balance, for reasons discussed in this report, comparability appears to be the most useful of the fiscal elements examined to ensure funds are supplementary (compared to MOE and supplement-not-supplant). However, if reauthorization retains this provision, there should be a careful evaluation of whether its current form achieves the intended goals. There should also be an assessment of the assistance districts and states may need to transition to appropriate budgeting and accounting systems. New budgeting and accounting systems could also be designed to allow districts to more readily adopt student-centered funding. Under this approach, school-level funding is assigned to individual children based on at-risk characteristics and academic performance, rather than through undifferentiated allocation based on staff numbers.

Colorado Study Recommendation on Comparability:

> **Redesign the comparability requirement to ensure that it achieves the goal of equity in intra-district allocation. Provide funding and other resources to assist districts and schools with the substantial investments needed to permit the tracking of school-level real dollar expenditures.**

b. Supplement-Not-Supplant

The supplement-not-supplant provision of Title I, along with MOE and comparability, is meant to guarantee that funding is used as an addition to state and local funding, and not in place of it. However, the rule has also been frequently criticized for its unintended consequences.

Supplement-not-supplant requirements can inhibit innovation by providing incentives to maintain current funding allocations and therefore avoid developing new supplement-not-supplant justifications. Similarly, since there is a presumption of supplanting if districts use Title I funds to provide services to all the students in a district, school officials may hesitate to develop or scale successful programs to address achievement in math or reading .
In the statewide survey, over half of respondents found supplement-not-supplant problematic, making it the most challenging of the fiscal elements currently required in the view of state and local administrators in Colorado. The Colorado Study confirms that some districts are reluctant to change elements funded through Title I or innovate with new programs for fear of violating supplantation rules. One respondent to the statewide survey said, “We are leery of funding new programs with Title money…”

ESEA does provide for less restrictive applications of the supplement-not-supplant rule for schools that qualify for school-wide programs and consolidate their funds. These schools, generally serving above 40 percent low income children (although there are waivers available for this threshold in Colorado), are able to consolidate state, local and federal funding, and therefore must only demonstrate that the school receives all the funding it otherwise would were it not for federal funds.

In the statewide survey, 90 percent of urban-suburban districts in Colorado reported using Title I for school-wide programs, either exclusively (65 percent) or in addition to targeted-assistance for some schools (25 percent). However, only 53 percent of districts classified as rural or in outlying cities and towns ran school-wide programs (34 percent exclusively and 19 percent in combination with targeted assistance in other schools). The difference is potentially due to the number of small districts that do not have schools that meet the 40 percent threshold for school-wide programs. Since supplement-not-supplant is more onerous outside of school-wide programs, these small districts are disproportionately handicapped by this requirement.

The supplement-not-supplant restriction discourages innovation at the state and local governing levels as well. New state laws or district policies, even those designed to advance the goals of Title I with respect to the achievement of low income students, cannot be funded with Title I dollars. This disincentivizes state legislatures and local boards of education from enacting such policies. Although Title I funds can be used for pilot programs, once such programs are required by state law, or provided to all schools by district action, they become ineligible for Title I funding.

An extreme example of this consequence has been highlighted by the new ESEA Flexibility waivers. USED established certain preconditions for receiving waivers. All of those preconditions required passing new state laws or changing old ones. Ironically, once the laws were changed or passed, the activities they required could no longer be funded with ESEA dollars. For example, USED required, as a precondition to receiving ESEA Flexibility waivers, that states set up teacher effectiveness evaluation systems that accounted for student outcomes. However, once states establish these systems in law, as Colorado has done, they cannot use ESEA dollars to support activities required by the law that might otherwise be allowable expenditures under ESEA.[137]

Given the difficulty of demonstrating supplement-not-supplant, and the perverse incentives it puts in place with respect to innovation and expansion of programs at the state and district level, this restriction should be reconsidered in a reauthorization of ESEA. Several options for redesigning, or eliminating, supplement-not-supplant have been offered by Junge and Krvaric (2011) in their paper on the topic. One of these options involves making the determination of supplement-not-supplant without cost-by-cost expenditure tracking, but rather through evidence that the district's method for allocating funds is "Title I neutral" – in other words, it would be the same whether or not Title I funds were available.

Colorado Study Recommendation on Supplement-not-Supplant:

> **Eliminate the supplement-not-supplant requirement, or revise it to require demonstration that allocation is Title I neutral.**

[137] Federal funds can be used for aspects of the teacher evaluation system that are not required by law (e.g. professional development related to the new evaluation system).

c. Rank Order Allocation

The requirement that districts allocate Title I funding to schools in rank order according to the percent of low-income students they serve is the fiscal provision of Title I that is most squarely designed to ensure funding reaches the population it is designed to serve.

One of the additional waivers Colorado received as a part of ESEA Flexibility allows districts the authority to fund high schools out of rank order if the schools have graduation rates under 60 percent.[138] However, CDE reports that extremely few districts allocate Title I funding to high schools (outside of districts that have only a few schools), and so this flexibility is unlikely to make a large impact.

In the Colorado Study, the rank order allocation provision was both praised and denounced. During the course of collecting Colorado data, we heard from Title I administrators that the provision was beneficial and necessary for ensuring funding benefitted at-risk students. As one survey respondent put it, "The future of economically disadvantaged students MUST be attended to in order to break the cycle of poverty. " The general importance of targeted funding is underscored by the fact that a recent evaluation on the Impact of Title I, Part A in Colorado, commissioned by the Colorado Department of Education, found achievement results showed that Title I students who scored unsatisfactory in the prior year experienced greater growth if their Title I schools received a high per pupil Title I allocation ($900 per pupil or higher).[139]

However, we also heard from large district superintendents that rank order allocation was one of the most overly prescriptive parts of Title I . School officials said the provision presented a substantial barrier to allowing districts to align funding to student achievement goals and use the money where it was needed most. District respondents to the survey mentioned problems with rank order funding frequently in the open-ended sections soliciting recommendations for changing Title I. Similarly, this requirement was also cited in one case study district as an impairment to the district using funds for schools most academically in need, rather than schools with the highest poverty levels. The district pointed out that they were in the best position to select the best candidates for investment among schools with high levels of poverty.

The survey results reflected this same divide, with 40 percent of respondents finding rank order allocation problematic and 33 percent finding it beneficial (the lowest beneficial rating of any of the provisions still in place that were tested).[140]

Suggestions from district leaders on this point included: 1) eliminating the requirement, 2) allowing other factors to be considered in ordering schools for allocation, in addition to poverty, 3) allowing more flexibility on allocating for districts that receive lower amounts of funding, and 4) requiring some portion of Title I funds to be allocated according to rank order of poverty, but allowing some portion to be allocated to schools at the district's discretion.

Some priority-based allocation requirement seems necessary to the goals of ESEA. As a matter of fact, none of the measures designed to ensure funding is supplemental make sense without a corresponding provision that funding is

---

[138] U.S. Department of Education, 2012

[139] Colorado Department of Education, Office of Federal Program Administration, in conjunction with OMNI institute, 2011

[140] Fully 22 percent of respondents cited it as not applicable to their districts. This represents the fact that the majority of respondents in the survey represented rural districts, since the vast majority of Colorado districts are rural, many of which have one 1 or 2 schools.

supplemental *to the students that need it*. Comparability is meaningless without priority-based allocation. What is the point of determining that all schools are comparably funded by state and local sources if the "on top" money can be spent at any school? However, as ESEA moves away from a focus on funding inputs towards a greater emphasis on student outcomes, it does make sense to allow districts some discretion to allocate funding where it is most necessary for student success. Accordingly, reauthorization of ESEA should modify the poverty rank order allocation requirement to take into account the needs of schools based on student achievement.

Colorado Study Recommendation on Rank Ordering:

> **Redesign the poverty rank order allocation to provide that districts may, within boundaries, vary from strict ranking order so that they may direct funding where they believe the investment has the best chance of improving student outcomes.**

d. Maintenance of Effort

The maintenance of effort provision is meant to ensure that states and districts do not use Title I dollars to offset reductions in state and local dollars. If a school district reduces combined state and local revenue by more than 10 percent in any given year, there is a related reduction in Title I distributions.

In general, nationally, education spending at the state and local level has increased steadily for decades, with more than a four-fold increase in per pupil spending since the passage of ESEA in 1965.[141] In Colorado, voters put protections for and mandatory increases to education spending into the State Constitution in 2000, which increased education spending annually until the recession, and then limited the severity of cuts. As a result, even though education funding was cut about 16 percent over four years, the cuts never exceeded ten percent in any given year.[142]

One policy analyst speculated about the existence of a possible "cliff effect" associated with the temporary infusion of ARRA State Fiscal Stabilization Fund and EduJobs support for education and its impact on MOE.[143] Bearing out this concern, one informal survey by a blogger reported a significant increase in MOE waiver requests, resulting in 173 such requests, in 16 states, within a one year period from 2011-2012 (compared to "a mere handful" of MOE waiver requests in normal years).[144] In addition, the approval rate of these requests, reported at about 50 percent, should raise some red flags for a provision that has not been significantly constraining in the past.[145]

However, in Colorado, state constitutional protections were combined with cautious fiscal management that allocated most ARRA dollars to higher education in order to avoid issues with MOE.), As a result, Colorado school districts did not face MOE problems associated with either the recession or the expiration of additional federal funds.[146]

---

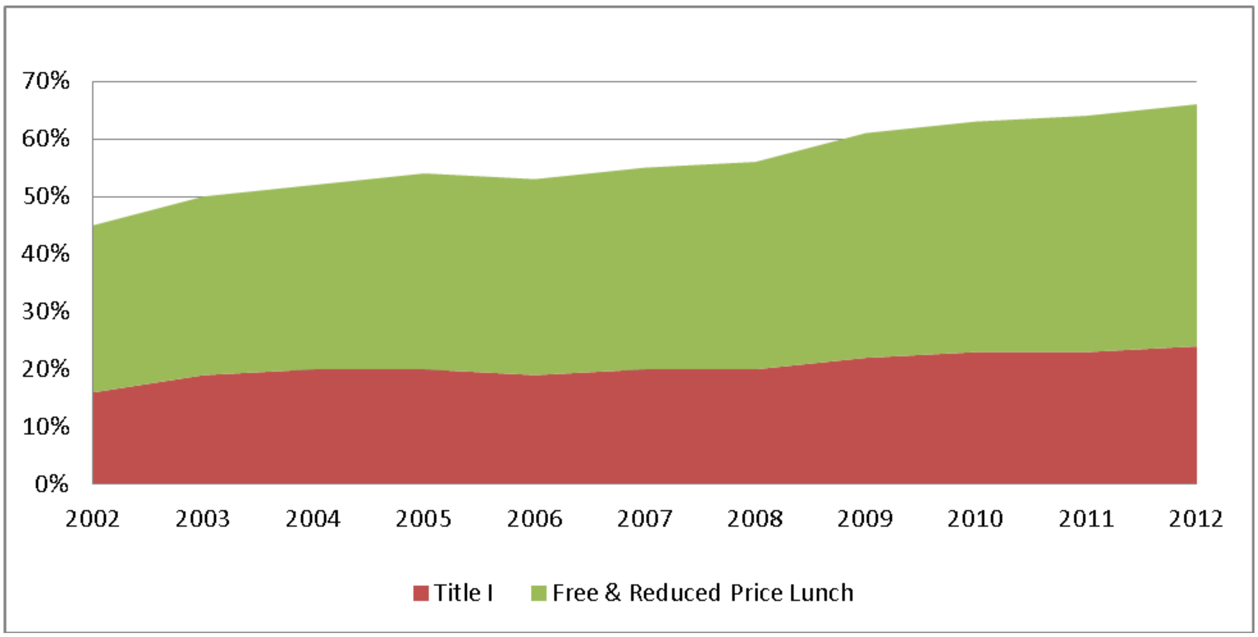
[141] Springer, Houck, & Guthrie, 2008
[142] Colorado Department of Education. The percent of per pupil reductions is inflation-adjusted.
[143] Fullerton & Hochman, 2012
[144] Brownstein, 2012
[145] Brownstein, 2012
[146] Colorado Department of Education. Although CDE did report a couple of MOE waiver requests had been filed, and approved, over the past decade, these requests were associated mostly with one-time local anomalies like insurance settlements.

In addition, as the literature notes, even where districts face MOE-related reductions in ESEA funding, these only represent small percentages of total district revenues.[147] For example, even if a district had revenue reductions of 15 percent in a year, thereby triggering a 5 percent reductions in Title I funding, no district's Title I funding is likely to exceed 10 percent of operating dollars/ This means that the required 5 percent reduction in those dollars would amount to a reduction in total district funding of ½ of one percent.

, The real problem with Title I funding through the recession has been the fact that the state has experienced a sizable increase in students from low-income households, many of whom are not receiving Title I funding. During the recession, the increase in students in poverty, measured by eligibility for free and reduced-price lunch (FRL), increased faster than Title I funding, with the result that in 2012 there was a gap of 18 percent of total students that qualified for FRL, but did not receive Title I funding (Figure 7). This is a bigger obstacle than MOE.

Figure 7

Colorado FRL Eligible Students and Title I Students



Importantly, participants in the Colorado Study did not report funding levels for Title I as the largest barrier to improving student outcomes, but instead identified funding flexibility as the central issue for Title I. Yet, MOE calculations and fears of the effects of MOE, in addition to the time and effort needed for waiver requests, however inconsequential the results, nevertheless contribute to the administrative burden of these funds.

The consideration of MOE in the reauthorization of ESEA should take into account: 1) the multi-decade trend of ratcheted-up education spending nationally and in Colorado, 2) the effects of the recent severe recession on state and local revenue, 3) the questionable policy effect MOE drives by discouraging efficiency, and 4) the total underfunding of students in poverty through Title I in Colorado and nationally. Especially given the small effects negative consequences from MOE, the entire exercise should be abandoned in the reauthorization.

[147] Fullerton & Hochman, 2012

Colorado Study Recommendation on Maintenance of Effort:

> **Eliminate the maintenance-of-effort requirement.**

2. Administrative Burden Issues

A common response to interview and survey questions was a plea for a reduction in administrative burden. Many districts would like to see flexibility and diminished reporting in exchange for positive student outcomes. As one survey respondent put it:

> Too much time spent trying to validate what we are doing to meet the parameters set by Title funding. If a school's data demonstrates a system that works and is improving, why not let them do what needs to be done!!!

This outcomes-based regulatory approach is a popular one in Colorado. For example, the state's new accountability system requires schools and districts to assess their performance data and file improvement plans each year. For, schools and districts with solid performance, the requirements of the law stop here. By contrast, underperforming schools and districts are subject to increasing amounts of state supervision and, ultimately, state interventions that may lead to closure. Smaller districts clearly struggle with the administrative burden. Survey respondents whose districts received relatively small amounts of federal funding openly questioned whether the money received was worth the administrative requirements. In Strasburg, for example, where Title I funding is less than one percent of the total budget, the superintendent commented: "Seems like a lot of reporting to do to just to get less than one percent to meet the needs of economically disadvantaged students."

Many of Colorado's smaller districts report that the person in charge of reporting is also in charge of many other areas. As one respondent stated:

> While I understand the intent behind some of the rules, it takes a lot of time to understand and make sure that compliance is happening. It's realistic if this [was] my only role, but because I have multiple responsibilities in our district, being highly effective in this area is challenging.

A district leader from a district with a student population between 600 and 1,200 students expressed concerns about the cumulative effects of administrative requirements:

> There are many components to the reporting measures that are instituted. Each year we are required to provide more information. Each reporting usually contains some components that have previously been reported on. It's a very complex, redundant process that continues to take more time. If the reporting was simply condensed to alleviate redundancy many hours would be saved. As it is, we spend a great deal of time, energy, and expense in trying to comply with the new measures that continually seem to crop up to "make the reporting easier…"

Another respondent suggested differentiating reporting requirements by the size of the district or other characteristics that complicate compliance:

> The sheer number of reports can be daunting. Regulations intended for large districts such as comparability and proving consultation with non-public schools mean that many small districts cannot manage these funds by themselves and sometimes do not get the targeted services their students deserve. Perhaps looking into regulations that take a district's size and physical isolation into account would help mediate this.

The survey asked districts to estimate the number of FTE required to comply with federal reporting requirements. The results were not particularly useful, as districts seemed to define this in a wide variety of ways and no consistent pattern was observed. For example, smaller districts often counted anyone who provided information, while some larger districts seemed to interpret the question as asking for the one person ultimately responsible for reporting.

Other issues cited by districts involved the administrative burdens associated with administering funds directed to other institutions. For example, Title I, Part D funds provide funding for neglected, delinquent, and at-risk youth. Some of the funds are targeted to state-run programs that benefit state-run institutions such as juvenile correctional facilities and treatment centers for neglected children. The rest are targeted to local education agencies that run programs in locally-operated facilities and/or otherwise benefit neglected and delinquent youth.[148]

Additionally, 12 major ESEA programs require public school districts to provide "equitable services" and benefits to non-public schools.[149]Funding for ESEA services is allocated on the basis of all low-income children residing within a district or a state, regardless of whether these students attend a public school. Prior to making decisions about ESEA funding, public school districts must engage in "timely and meaningful consultation" with non-public schools within their boundaries. Overall, in 2007, 44 percent of non-public schools had at least one participant in an ESEA program.[150]

Programs for neglected and delinquent students and non-public schools are incredibly diverse in that they serve populations and purposes that vary widely. However, when it came to the Colorado study results, they all had one thing in common: in interviews, survey responses and advisory committee discussions, Colorado administrators frequently referred to these programs as the most burdensome and difficult to administer. Although charged with fairly and equitably administering these programs, local school officials often viewed at least one of these three programs as unfairly draining resources and time from students in traditional public schools.

For the larger districts that participated in the Colorado study, the Title I, Part D and non-public school components of ESEA were perceived as particularly problematic. These programs, district officials said, create a disproportionate amount of administrative burden considering the relatively small numbers of students that benefit. (Smaller districts were less likely to have locally-operated neglected/delinquent institutions or non-public schools within their boundaries.)

One larger Colorado district estimated that it spent 135 times more per pupil to staff the Title I, Part D and non-public school programs than to staff the Title I, Part A program that is the meat and potatoes of ESEA. ($49.07 per student for Title I, Part A versus $6,080 for Title I, Part D and non-public schools). The administrator said:

[148] National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent or At-Risk, 2008
[149] Christensen, 2007
[150] Christensen, 2007

> I can tell you that I spend more time with each non-public and [Title I, Part D] facility than I do with each individual Title I school over a year's time with 'meaningful consultation', meetings to explain Title I, monitoring, ordering and delivering supplies. It's just a lot of time.

Adding to the frustration is the sense that districts are responsible for implementing programs in schools and institutions that operate differently, often with different priorities than their own. Further, although districts are held accountable for the Title I, Part D and non-public school programs, they do not actually have control over the overall operation of the cooperating institutions or non-public schools. Nor are they necessarily knowledgeable about the ins and outs of the institutions and schools that benefit from these programs.

"It is really very onerous," one local district official said. "I'm not sure why it's not a state responsibility." .

Given the limited availability of administrative resources, districts may view time spent administering ESEA programs for juvenile justice facilities, treatment centers, and non-public schools as an encroachment. And even though non-public school students "generate" ESEA funds, local school officials may also resent the fact that they are required to share ESEA resources that they would rather preserve for students in their own schools. This attitude is reflected in some responses to the Colorado Study survey. For instance, one Colorado survey respondent stated that a barrier to using Title II funds to improve student outcomes was "depletion of district Title II funds due to allocations to non-public schools that operate within district boundaries."

Local school officials also voiced some of the same complaints about administering federal funds for charter schools as they expressed about neglected/delinquent institutions and non-public schools. For instance, one local school district official said of charter schools:

> In a district with as many as we have, they are problematic, not in terms of allocating funds but monitoring. …They are not required to use our financial system, so all funding goes to them on a reimbursement basis, and collecting enough documentation of expenses to pass audits is very administratively heavy and cumbersome. It is hard to be the fiscal agent when we have so little insight and control.

Another district official reported similar problems adding that, when charters close, the district is left to pick up the pieces when it comes to ESEA auditing and compliance.

In turn, charter schools representatives have expressed concerns about districts' inconsistent administration of ESEA programs, which can vary widely depending on personal relationships between district and charter officials and districts' historic attitudes toward and relationships with charter schools:

> One standard for good authorizing is making all monies available on a pro-rated basis to charters. [It's] on a slow uptake and implementation.… It's already in state board rules that funds should be equitably shared. That in practice looks very different across our districts. For some it's a lack of will. For many, it's a lack of knowledge and capacity to know how it looks.

These views are not necessarily universal. But, coupled with the reality that districts have limited control over these institutions, they do raise questions about whether these ESEA programs should be shifted to a more "neutral" administrator that does not also run its own set of schools. Given the relatively small numbers of students served by these programs, it might also make sense to consolidate administration into state-level organizations that have expertise in these programs rather than relying on dozens of different individual school districts to develop the capacity and knowledge to navigate ESEA rules for the lone charter school, non-public school and/or institution within district boundaries.

Based on the expertise of thosewho participated in the Colorado study, we strongly recommend that responsibility for Title I D be shifted to state agencies, perhaps to the same agencies that oversee other programs for neglected and delinquent youth. Non-public schools pose a more complex problem because most have religious affiliations.[151]

Colorado Study Recommendations on Reducing Administrative Burden:

- **Consider waiving or decreasing administrative and reporting requirements for districts based on factors such as size or amount of funding; or based on proven progress in closing achievement gaps.**
- **Move responsibility for administering funds for students in institutions and non-public schools to the state, or lessen the administrative burden on districts.**

3. Supplemental Education Services (SES)

Most state ESEA Flexibility waivers have waived this NCLB requirement to offer tutoring to students at academically struggling Title I schools. However, Colorado is one of a very small number of states that maintained SES in some form. (Other states that maintained some form of SES include Florida and South Carolina.) This is not to say that Colorado has maintained SES exactly as proscribed by NCLB. Instead, as explained in a 2012 *Education Week* commentary, by Bob Schaffer, then the chairman of Colorado's State Board of Education, Colorado board members chose to hold on to some aspects of the program while altering others:

> Our proposal found that balance by holding on to what works about supplemental education services, but using state standards rather than federal mandates to give districts the flexibility to make the program work even better.[152]

For instance, Colorado districts that are home to chronically struggling schools must still set aside funds for SES. However, Colorado state standards, not NCLB's AYP provisions, define which schools must offer families the opportunity to take advantage of SES. Further, the funding set-aside has been reduced from the statutory 20 percent requirement for SES and school choice to 15 percent of Title I funds.[153]Districts that have previously offered SES can set aside less

---

[151] Christensen, 2007
[152] Schaffer, 2012
[153] Like SES, public school choice is a consequence for failing to meet accountability goals under NCLB. The provision is not discussed in this section because Colorado study participants found it much less problematic than SES. Part of the reason is likely that, even

than 15 percent if they can prove, based on previous demand for SES, that they need less.[154] In addition, districts can re-purpose any set aside funds that remain after eligible families have been given a chance to take advantage of tutoring and public school choice. That re-purposing can occur during the same school year in which the money is set aside. It can also occur the following year. Leftover funds must be used for extended learning time for struggling students at struggling schools. Examples of allowable uses include summer school and after-school programs.[155] Schaffer explained that these provisions were designed to replace a "use-it-or-lose-it system that promoted a blizzard of unnecessary end-of-year spending." [156]

Despite these efforts to make SES more flexible and more subject to local control, the provision remains extremely unpopular with the local school officials who participated in the Colorado Study: SES and/or set-asides were mentioned by nearly 40 percent of the 37 respondents who explained why they found some aspect of Title I to be "extremely problematic." Colorado's waiver did not alter the provision of the SES program allowing eligible families to select SES providers from a list of state-approved vendors. Under current rules, districts can provide SES, even if they are not meeting accountability goals, as long as their application is approved by the state education agency. (Previously, districts that missed such goals could not provide SES, but that rule has been waived, which some survey respondents appeared not to have realized.) However, under NCLB and Colorado's waivers, parents have the right to select providers for their children from a state-approved list. So even if a district offers SES, a parent may end up selecting a different provider.Local school officials said that these outside SES vendors charged too much money for services that did not increase student achievement. As one local official stated:

> We have yet to see any student's actual state assessment proficiency level change after they have participated in SES and we're dumping thousands of thousands of dollars into…these programs.

Another local official suggested on the survey that it would be better to "[i]ncorporate SES internally to avoid such a high per-pupil cost from outside venders. We could reach more students this way." Research does suggest that, when it comes to SES, districts are more cost-effective than outside organizations.[157] One local school official said:

> We could use the money in much more effective ways on an LEA by LEA basis by offering extended days-an hour a day of add instruction. That could probably be really beneficial as opposed to SES where we have a small group of kids tutoring twice a week for an hour. They may or may not show up. We may not be able to reach parents. It is a great waste of money. It is a great waste of human resources. Nobody can come out and say, yes this is working.

District leaders also questioned the adequacy of many approved providers, with some complaints implying fraud, especially in rural areas. "SES companies scam on small rural districts," one survey respondent wrote. A local rural school official elaborated:

---

before schools faced consequences under NCLB, Colorado already had strong open enrollment laws that permitted students to enroll in any school in the state that had the capacity to accommodate them.

[154] Colorado Department of Education, 2013
[155] Ibid
[156] Schaffer, 2012
[157] Barley & Wegner, 2010

> The SES piece does not work well. Not many providers really want to come out here. The provider we are using made one stop out here to do a training and drop off books/resources. I put in about 80 hours sending letters to parents, posting info on website, helping parents fill out applications, holding a meeting for parents to choose providers, find the teacher to implement. Our district gets none of that money except the 1% we used for parent communication of services. We could have purchased the intervention with the $18,000 we paid the provider that made one trip to our site.

Another issue is that research suggests that the parents of most eligible children (83 percent) choose not to seek tutoring, period. [158] Nor is there a guarantee that parents will seek tutoring for the children who need it most. Local officials noted that transportation, which tutors are not required to provide, was one barrier. Even when providers tutor children in their own schools, parents must make alternate transportations arrangements that accommodate the tutoring schedule. The low-income families that SES is most likely to serve often lack cars or job flexibility, which often makes such accommodations unworkable.

To many of the school officials who participated in the Colorado Study, SES is at best ineffective, at worst fraudulent. One possible solution, selected by many of the states seeking ESEA Flexibility waivers, is to eliminate SES entirely. Another possibility is to strengthen local control, permitting states and districts to decide whether to eliminate the program or keep it in place. A drawback to both of these recommendations is that districts, in some ways, have a perverse incentive to put up barriers, formal and informal, to providers -- the fewer students who select SES, the more money the district gets for its own purposes. So another option is to adjust SES to better serve the needs of the students it is designed to serve. The Colorado Study results suggest several potential areas for improvement:

- SES cost structures should be re-examined. Currently, districts must "spend up to the per-pupil allocation (PPA) under Title I Part A or negotiate costs for tutoring purposes up to the PPA for each student receiving SES." [159]In most Colorado districts, per pupil allocations range from $640 to $1,500. In return, providers must serve students for "a minimum of 15 hours of services, or for the length of their approved Colorado program, whichever is greater."[160] This means that a provider could, in theory, charge up to $100 an hour for tutoring a child. In fact, SES providers charged local districts prices ranging from $11 to $97 per hour in 2011.[161] Certainly, one would hope that a district would negotiate a lower rate. But rural or isolated districts may lack negotiating power since they must offer parents at least three provider options even if relatively few providers serve their areas. Clearly, some Colorado rural survey respondents feel they are being scammed. State and or federal officials should consider establishing standard, hourly rates, based on the types of services provided rather than entitling each provider to the PPA, regardless of what that might be.

- A "choice" to participate in SES might not be much of a choice at all if parents do not have the means to transport their children to and/or from the tutoring. Certainly, something is preventing the vast majority of eligible parents from participating in SES. One means of increasing participation and, by extension, choice, might be to provide transportation to and from tutoring.

[158] LaForgia, 2013
[159] Colorado Department of Education, 2013, p. 28.
[160] Colorado Department of Education, 2013, p. 36.
[161] Brock, Wass, Fox, Finlay & Gallagher, 2012

- Participation might also increase without incurring additional transportation costs if parents or parent representative selected a single provider for each eligible school that would then extend the school day for every student in the school. (The district could also apply to provide the services.) If the school day was longer for every child, school buses, child care center vans and other forms of transportation could then adjust their schedules to pick up all the students when the tutoring was over. Further, districts might be able to negotiate better prices with a whole school provider due to economies of scale.

- SES is a component of the accountability provisions of NCLB in that it is a consequence of missing accountability goals. Given this reality, it makes little sense that SES providers are not held to the same accountability provisions as schools. State-level accountability systems should be used to track the academic outcomes of students who participate in SES. If a provider's students consistently fail to make academic gains, the provider should no longer be permitted to offer SES. This is already happening in Colorado. However, it should be incorporated into ESEA if SES is to remain a requirement.

Colorado Study Recommendations on SES:

Allow states to choose whether to require set-asides for supplemental educational services, but allow districts to decide whether SES in their district will be provided by the district or by state-approved providers selected by the district.

4. Title II, Part A and Teacher Quality

Title II, Part A is the section of the ESEA that sets aside teacher-related funds for activities such as professional development and class size reduction. Participants in the Colorado Study were relatively satisfied with the level of flexibility provided by the program's current form. For instance, survey respondents were asked what they would do differently if given "complete flexibility to use Title II Part A funding to improve the preparation, training and recruiting of high quality teachers and principals." The most common answer was that the respondent would maintain the status quo.

Despite their relative satisfaction with the program, Colorado study participants did have suggestions for improvement. One concern was that local school officials would violate supplement-not-supplant rules if Title II funds were used to support the implementation of Colorado's 2010 educator effectiveness bill, which implements annual teacher and principal evaluations that incorporate student learning outcomes. Although states were encouraged or required to pass this type of legislation to qualify for ESEA waivers and/or Race to the Top grants, they now face the paradoxical situation that the law actually forbids them to use Title II funds to support the very activities that the US Department of Education encouraged.

A USED official interviewed for the Colorado study sympathized with these concerns. She said that the department was drafting guidance clarifying that districts actually could use Title II funds for activities related to state laws that were passed in order to win waivers. She said that the Title II guidance would be similar to Title I, Part A flexibility guidance, which states:

> In light of the critical nature of the three ESEA flexibility principles to a State's educational system, we presume that State laws or regulations that an SEA has incorporated into its ESEA flexibility request stem from that request and would not have been required of LEAs, at least in precisely that form, in the absence of ESEA flexibility. Thus, an LEA that is using Title I, Part A funds to implement elements of its SEA's flexibility request that are required by State law or regulations would not violate the "required by law" presumption of supplanting.[162]

This is not to say that, under current law, districts will be permitted to use Title II funds for any and every expense related to educator evaluations. The U.S. Department of Education official clarified:

> We've gotten questions about…can you can use Title II dollars on a system that looks at teacher data? If you want teacher data to talk to student data, that's outside of Title II. You'd have to figure out how much teacher data, how much student data, then pro-rate[to ensure Title II funds are only used for teacher data].
>
> The USED official added:
>
> Right now the biggest difficulty is the legislation is 11 years old. It wasn't really written with the current interest around educator quality in mind. The allowable uses of funds, while pretty flexible, are not always a perfect fit. The statute never mentions educator evaluation, educator effectiveness. It has very little to say about principals though it can be used for professional development for principals. It was written with highly qualified teachers in mind and so we are using a set of allowable uses of funds that doesn't always fit particularly well with initiatives on rolling out educator evaluation systems. That's probably the biggest area of difficulty right now in terms of using the money.

Another set of recommendations from Colorado study participants revolved around the Title II funding and planning timelines, which are determined at the state level. In Colorado, ESEA applications are due June 30th, a day before the new fiscal year begins on July 1st.

As one Colorado survey respondent wrote, it is difficult to begin "specifically outlining exact professional development in June when there are still a lot of unknowns such as state assessment results, available PD opportunities, or even knowing what staff will be returning."

A CDE official agreed that it could be difficult to plan without the latest test scores in hand, but suggested that districts should be using local assessment data, not just state test results, to plan professional development. She said that districts should also know who will be working where by June. She added:

> I would also argue that if districts are truly looking at their student level to identify performance challenges and determine professional learning opportunities, who is in which classroom should not matter. Title IIA professional learning funds are not intended to enable this teacher to X and that teacher Y. The funds are

[162] U.S. Department of Education, 2012, *ESEA flexibility: Frequently asked questions,* p. 12.

> intended for the district to tackle overarching areas of need and focus within the district. Again, from that perspective, who is in the first grade classroom really does not matter.

Some local complaints about Title II stem not from the program itself but from district-level interpretations and misinterpretations of its rules and regulations. For example, when asked what they would do if given complete flexibility to use Title II dollars to improve student achievement outcomes, three different survey respondents said they would use the funds for incentives such as bonuses for working in hard-to-staff schools or rewards for teachers whose students attain especially strong outcomes. Yet a U.S. Department of Education official said that all of these activities are currently permissible.

Other respondents said if granted complete flexibility, they would use the funds for short-term professional development for one-day workshops and/or conferences. A USED official noted that all federal departments have been scrutinizing conference-related expenses even more closely than usual in the wake of the recent scandal over a 2010 Government Services Administration conference in Las Vegas. However, even if that scandal had never occurred, she questioned whether short-term trainings such as conferences were the best use of Title II funds when research on professional development indicates that the most effective professional development is ongoing and long-term. She said:

> It's not just whether it's allowable. It also has to be reasonable and necessary. It may be allowable but probably not reasonable or necessary. When people say, we're not allowed to do this may be because it wasn't reasonable and necessary.

This statement represents the fundamental tension between the desire for local flexibility and the need for accountability. On the one hand, local districts often know best how to serve the needs of their schools, students and staff. On the other hand, some level of oversight and accountability is necessary to ensure that funds are not spent for frivolous or ineffective programs. For instance, USED's Title II office recently received a call about a district that wanted to spend more than $700 per person on a three-hour work shop that did not offer any particularly unusual or special content. This is obviously not a wise use of funds.

An additional issue is that state and federal education officials believe that some of the permitted uses of Title II funding are not necessarily reasonable for many districts. Class size reduction is perhaps one of the more dramatic examples of this phenomenon. The expense is permitted by law. In fact, nationwide, about 40 percent of Title II funds are spent on reducing class size, according to the U.S. Department of Education. Yet state and federal officials questioned whether this was the best use of Title II funds. A USED official said:

> The Title II allocation is not huge. [LEAs] may spend 100% on class size reduction and that's one teacher. There is research to suggest, in certain circumstances, class size can have an effect on student achievement. It's an expensive way to get an increase in student achievement. We have tried to encourage folks to examine this, not just continue to pay 40 percent for class size reduction because they always spent 40 percent. In a lot of places, that conversation has been quite successful.

Should class size reduction continue to be a permitted use of Title II funds? Certainly, a significant portion of American school districts believe it should be. What about professional development? With encouragement from USED, districts have made professional development the most common use for Title II funds. Yet Colorado Study participants noted that they often had trouble determining whether specific professional development initiatives were associated with higher student achievement. One national think tank has recently argued that neither professional development nor class size reduction were efficient uses for Title II funds, class size reduction being too expensive and professional development being too difficult to tie to student achievement as measured by test scores.[163] At the very least, Congress should consider, when reauthorizing, what Title II's mission should be, which broad categories of expenses best fit with that mission and how much flexibility districts should have to meet the measure's broader goals.

Districts have not always taken advantage of existing flexibility when it comes to spending Title II funds. For instance, districts have not necessarily chosen to leverage Title II funds in ways that compliment other ESEA funds. As a result, there were complaints that some teachers were eligible for Title II-funded professional development while others were not, or that Title II did not provide enough money to pay for everyone to get professional development. Other districts simply found it too complicated to use funds in such a way to offer comprehensive professional development. In the words of one survey respondent:

> If we could get past the compartmentalization of funds, we could offer more powerful trainings to our staff. For example, we can't really offer a single training in, let's say math, that encompasses general ed, special ed, ESL and ELL teachers without some very complicated formula to blend all of those funding sources together. It really is a barrier to offering more comprehensive trainings.[164]

The USED official confirmed that Title II funds could be combined with other ESEA funding sources:

> What you can't do is commingle the funds. As long as you keep the accounting lines separate. ..If districts wanted to have one big push for professional development and pay for two thirds of it with Title III, one third Title II, assuming it is professional development that's allowable [you could do so] but you have to keep the accounting frames separate.
>
> She added:
>
> That is, to some degree, a pain in the neck.

Lawmakers need to rethink and clarify the mission of Title II. In recent years, educator evaluation systems based on student outcomes have spread like wildfire. USED initiatives such as flexibility waivers and Race to the Top have fanned the flames. If Congress would like to continue to encourage such initiatives, then Title II needs to reflect its priorities by updating the definition of a highly qualified teacher to include student outcomes and doing away with the paperwork attached to the earlier system of tracking highly-qualified teachers. Alternatively, state education officials in Colorado suggest that current highly qualified teacher rules could be a "floor" that establishes minimal qualifications while

---

[163] Chait & Miller, 2009

[164] A state education official felt that this type of complaint was more relevant to Title IA funds than to Title II A funds.

student achievement-based educator evaluation systems become a “ceiling” that encourages schools to employ the most effective educators. Further, if this is the direction that Congress chooses to pursue, it is unfair to use supplanting rules to ban activities related to laws that states passed to fulfill federal goals of outcome-based evaluations. As such, the reauthorized ESEA needs to include language that excludes from supplanting regulations at least some activities related to outcome-based educator evaluation.

In line with the previous suggestion for updating Title II, Congress should also reconsider which broad categories of expenditures best fit with Title II’s mission, given the shift from teacher quality to teacher effectiveness. Right now, Title II A is among the more flexible provisions of ESEA. However, if achievement-based educator evaluation is to be a focus, lawmakers should rethink this flexibility. Which expenditures would and would not be in line with this focus?

Congress should reconsider to what extent local districts should have flexibility when deciding how to spend Title II funds. If Title II’s mission does become more narrowly focused on test-score based teacher evaluation, should district spending flexibility be narrowed too? For instance, should districts be permitted to use Title II funds for expenses they cannot definitively tie to test score increases? This would necessarily eliminate many educational interventions from consideration.

Congress should consider making it less complicated to combine funds for professional development activities supported by ESEA’s various components. Although it is possible to do so now, the Colorado Study results indicate that it is, in practice, difficult if not impossible for many districts to accomplish.

At the state level, state education agencies should reconsider funding timelines. If Title II is to focus more heavily on test-score based teacher evaluation, it will become even more crucial than ever to have the latest test scores in hand before deciding on how to spend the funds. Yet once these indicators do become available, the school year is sometimes well underway while the fiscal new year is a distant speck in the rearview mirror. Further, even if test scores are the focus, planning should center on long-term trends, not one-time dips and spikes.

Colorado Study Recommendations on Funding for Teacher Effectiveness:

Revise Title II to focus on teacher effectiveness.

- **Ensure that statutory and regulatory language focus on effectiveness but consider maintaining HQT requirements as a “floor” so as to ensure that every teacher has a basic level of training.**
- **Permit states and districts to fund new educator effectiveness initiatives aligned with federal priorities with Title II funds, regardless of whether the initiative is required by the state (as in Colorado’s new educator effectiveness law) or by federal law.**
- **Help states fund efforts to provide and sustain high-quality professional development to all district contexts.**

5. Title III: English Learners

As mentioned above, Title III of ESEA provides funding for English learners, i.e. students whose dominant language is not English and who do not meet established state standards for English proficiency (generally termed limited English proficient (LEP) by ESEA). Title III contains its own fiscal provisions designed to ensure funds are targeted and supplemental. Some of these provisions are much more restrictive than those in Title I.[165] In addition, Title III contains its own, separate and different, accountability provisions for English learners. The provisions are different even from the accountability requirements for the English learner subgroup in Title I. Another difference between Title III and the other parts of the ESEA is that it provides for sub-granting dollars to consortia of districts.

> *It's becoming a funding source that cannot be spent.*
>
> *District administrator*

As other studies have shown, Title III has served to substantially increase the focus on, and funding for, this group of students, who had been previously invisible from a state accountability perspective. The creation of Title III in No Child Left Behind not only focused attention on the academic achievement of English learners, but also importantly directed attention and funding tothe acquisition of English for these students.[166] Results from the Colorado Study also reflect this benefit—in the statewide survey, the 66 respondents that reported receiving Title III funding identified areas in which Title III funding was beneficial in improving student outcomes.

As noted above, Colorado has substantially outpaced most of the nation in growth in English learners, and today the state's English learner population represents about 15 percent of total students enrolled in public schools in the state.[167] By far the predominant language of English learners in Colorado is Spanish. Of the state's 110,377 students classified as limited English proficient, 85 percent, or nearly 94,000 students spoke Spanish as their predominate language.[168]

Title III Funding and Flexibility

In the Colorado Study, the largest complaint about Title III was the low funding levels (with 58 percent of respondents citing "too little money" as a barrier to improving student outcomes). This sentiment about Title III was echoed throughout the survey and case studies, with a much more acute focus on funding levels as the biggest barrier than was the case for any of the other ESEA programs. With Colorado's expanding EL population, and the unique educational needs of these students, in addition to the substantial reporting and compliance provisions of Title III, Colorado districts found funding levels to be extremely problematic. One of the case study school districts estimated their Title III funding was approximately $67 per covered pupil.

Next to funding, however, districts in the Colorado Study found the flexibility of Title III funding to be the most problematic aspect. In referring to this lack of flexibility, one district administrator said, "It's becoming a funding source that cannot be spent."

[165] For example, the supplement-not-supplant provisions of Title III do not allow Title III funds to supplant other federal funds, which are allowed in Title I, and there is no allowance for "schoolwide" programs that corresponds to the Title I allowance.
[166] Ramsey & O'Day, 2010
[167] Colorado Department of Education
[168] U.S. Department of Education, 2012. The next most prevalent predominate language was Vietnamese at just under 2,000 students.

A significant source of constraint cited by districts and the state was the supplement-not-supplant provision of Title III. Unlike Title I supplement-not-supplant provisions, Title III provisions require that those funds cannot be used to supplant other federal funds, in addition to the prohibition on supplanting state and local funds.[169] As a consequence, Title III supplement-not-supplant does not allow Title III funds to be used to fulfill the requirements of any other state or federal law, including other provisions of ESEA. For example, USED guidance stipulates that Title III funds cannot be used to develop or administer English proficiency assessments, or screening or placement assessments, as those are required as a part of Title I.

Similarly, supplement-not-supplant guidance specifically prevents Title III dollars from being used for core language instruction educational programs. According to USED, states, districts and schools are required to provide core language instruction educational programs as a part of the Civil Rights Act and the Equal Educational Opportunities Act. And so, although many of the goals of Title III revolve around ensuring limited English proficient students become English proficient so that they have access to academic instruction, USED guidance puts these foundational services out of the scope of Title III funds.[170]

As a result of supplement-not-supplant, English language instruction, English language proficiency screening and placement, and English language proficiency assessments are all ineligible for Title III funding, yet these activities go to the heart and soul of the Title.

It is important to note that survey respondents did not find issue with the assessing, tracking, and accountability measures of Title III,. Rather, districts wanted more flexibility to use Title III funds to support accountability goals.

In addition, since supplement-not-supplant requirements are extended to not supplanting other federal funds, schools that receive limited-year federal grants from other programs, such as School Improvement Grants, are not able to use Title III funds to replace the grant funds when they expire.[171]

The Colorado Study data is replete with references to the restrictive nature of Title III funding in general, mostly attributable to the supplement-not-supplant provisions. Nearly 40 percent of the survey recommendations for changing the administration of Title III dollars had to do with supplement-not-supplant issues. Several respondents cited the inability to use funding for assessments and placement. Others cited restrictions on using funding for teachers delivering language instruction, as those services are so needed for EL students. Another respondent summed it up by saying:

> It's difficult to meet all federal and state mandates for these students with our limited state budgets, and we can't utilize any of these funds without supplanting.

Again, funding levels for Title III become relevant in this discussion. Several Colorado districts felt doubly constrained by the combination of low funding levels and heavy supplement-not-supplant restrictions. In 2010-11 Colorado received just over $11 million for Title III, about 0.2 percent of total state and local funding for education, in contrast to nearly

[169] Non-Regulatory guidance regarding Title III non-supplanting provisions, 2008
[170] Ibid
[171] Since funding a program that was funded from other federal funds in a previous year attaches a “presumption of supplanting”.

$156 million for Title I Part A. In comparison, the supplement-not-supplant restrictions on Title III are more onerous than those in Title I.[172]

In an interview for the Colorado Study, a USED official suggested that Title III's low funding levels are related to its strict constraints.

> There is very little funding in this program. It's the cherry on top of your cake. It is restrictive because there's very little funding. It is designed to be a supplemental program. The difficulty those school districts have is ones that have difficulties in figuring out how to spend the money are usually the ones that don't have a well-designed core program for ELs as required by the Lau agreement--Supreme Court decision. The question we ask when we go out to monitor the school district is, can you tell us what is your basic core program that meets the Lau requirements. If the district is clear about the core program they don't [have problems] understanding how to supplement it.

At the state level, officials are understandably leery of granting additional flexibility for Title III funds. After a recent monitoring visit from USED, the Department issued a fiduciary finding that CDE did not have sufficient practices in place to ensure districts receiving Title III funds met requirements related to supplement-not-supplant. As a part of the resolution, CDE agreed to require more documentation on supplement-not-supplant in consolidated applications, and agreed to monitor more closely and provide more training for these provisions.[173]

The state feels obligated by this agreement to limit district Title III flexibility, especially in light of its limited monitoring and training resources. The underfunding of the state department means that there are insufficient staff to monitor district compliance with supplement-not-supplant, yet the state is required by OCR to do a better job with monitoring. Not surprisingly, state officials have chosen to adhere strictly to the letter of the law. In addition, the state has concerns that Title III funds remain strictly supplemental because the state's English learners have one of the largest achievement gaps of any subgroups in the state and need as much additional support as possible. If restrictions are eased and the funding does not go as intended to these groups, the state may be found in violation of its agreement with OCR and expenditures of non-Title III funds might be reduced accordingly, causing Colorado's English learners to fall even farther behind.

Possible recommendations to address these problems could run the gamut from a complete lifting of fiscal restrictions, and therefore reporting obligations, to total or partial elimination of supplement-not-supplant restrictions specifically, to differentiation between districts on these issues according to their percent of EL students.

Since the combination of maintenance of effort and comparability ensure federal funds are supplemental, supplement-not-supplant restrictions for Title III should either be eliminated or at least relaxed by removing the "federal" part of the restriction—i.e. funds should be supplemental to state and local funds only. That would allow Title III funds to support core language instruction educational programs, English language proficiency assessment, screening and placement.

Lawmakers should reconsider funding formulas and levels for Title III. Even if it is not feasible to increase overall funding for Title III, funding could be more narrowly targeted so that it makes a bigger difference in the receiving districts. For

[172] Colorado Department of Education, 2011
[173] Colorado Department of Education, 2011

instance, funding could be targeted to the districts with the largest achievement gaps between ELs and native speakers, or to districts with the largest increases in EL populations.

Colorado Study Recommendations for Title III Funding and Flexibility:

- **Ensure that Title I and Title III accountability for English language proficiency are aligned.**
- **Title III supplement-not-supplant restrictions should either be eliminated or at least relaxed by removing the "federal" part of the restriction.**

Consortia Administration and Rural Districts

Although 71 percent of English learners in Colorado are in Denver metro area districts, and only two percent live in areas categorized by CDE as rural, the administration of EL programs for these students over such a large and diverse geography provides substantial challenges.[174] In addition, although the percent of all EL students in Colorado that are in rural districts is low, nevertheless some rural districts saw EL student growth over 200 percent over the past decade (See Figure 3: All but six of the districts showing growth over 200 percent are rural districts).[175]

Complicating this problem is administration of Title III funds by consortia. Districts are not eligible to receive Title III funding unless they qualify for at least $10,000 according to the Title III formula distribution. If they qualify for some funding, but less than $10,000, they can join or create consortia of districts to function as one sub-grantee for Title III purposes. In Colorado, there are 11 such consortia for the administration of Title III dollars. Title III is the only part of ESEA that uses consortia.

> Many of the provisions of ESEA are designed for East Coast states.
>
> *State official*

For many reasons consortia administration in Colorado is problematic. The large geography and small funding amounts challenge the ability to use pooled funding effectively. Consortia mainly use Title III funding for professional development. However, the Colorado Study has shown a lack of efficient professional development opportunities in rural areas of the state. Trying to find centralized opportunities to provide professional development in consortia that cover vast areas is a challenge, and travel to and from those locations is expensive, sometimes prohibitively so with limited dollars.

Efficiency is always a challenge in rural Colorado districts, but it is exacerbated when even larger consortia are presented with the task of providing services to districts and schools spread out over hundreds of miles. One consortium that covers 16 rural districts reports they received $30,000 among all districts. In those districts, administration, reporting, compliance and travel more than offset the dollars available to them.

For many of these same reasons, monitoring these consortia on Title III is also a challenge for CDE. Indeed, CDE reports that the fiscal finding on Title III supplement-not-supplant was largely an issue of rural consortia, who do not have the

[174] Office of Language, Culture and Equity, Colordo Department of Education, 2011
[175] It should be noted that percentage increases for very small rural districts could mean absolute increases of few numbers of EL students.

administrative capacity to present narrative explanations of all Title III funding on that issue, and whom CDE does not have the capacity to visit and closely monitor.

Colorado Study Recommendation on Title III Funding Consortia

> **Eliminate consortia sub-grants and instead distribute Title III dollars according to formula and exempt all school districts that don't meet the $10,000 threshold from any and all fiscal regulations and reporting. This exception should not apply to Title III and AMAO accountability.**

English Learners and the Civil Rights Act

In addition to the requirements of ESEA as determined by statute, and regulation and guidance from USED, English learner programs are subject to oversight from the USED Office of Civil Rights (OCR). They are also subject to legal decisions that in some cases predate Title III. The two districts in Colorado that have the largest EL populations, Denver and Aurora, are both under such additional restrictions.

The Office of Civil Rights was created in 1966 to oversee Title VI of the Civil Rights Act. That Title "prohibits discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance. All federal agencies that provided grants of assistance are required to enforce the Title VI regulation."[176] Therefore, in the Department of Education, the Office of Civil Rights has special oversight of ESEA as it pertains to English learners. However, even though OCR's authority is triggered by the provision of funding through ESEA, its specific oversight pertains to Title VI of the Civil Rights Act, not the provisions of Title III of ESEA. As a result, guidance from USED can conflict with OCR analysis of district and state use of ESEA Title III dollars.

As a result of a compliance review conducted by OCR of Aurora Public Schools in Colorado, in 2008, OCR and APS entered into a voluntary resolution agreement to address issues identified by OCR.[177] Pursuant to the agreement, the district developed a written plan on district policies and procedures for EL students, and continues to update that plan every two years.[178]

From both the district and OCR perspective, the voluntary resolution agreement provided the impetus for many improvements to the district's EL policies that have benefitted and continue to benefit the English learners in that district, who currently make up more than 40 percent of the district's students.[179] However, district officials perceived that it provided an additional layer of compliance considerations that are not only on top of but sometimes divergent from those associated with English learners in ESEA as determined by USED.

USED officials denied that the agreement diverged from ESEA rules. One official said:

> We do coordinate with OCR all the time. We work with them closely. There isn't… we don't have cases we have dealt with where there's been this kind of conflict. I can't speak to specific issues surrounding an ongoing investigation. When OCR deals with an issue, it is very specific to the circumstances surrounding that issue.

[176] Office of Civil Rights, U.S. Department of Education
[177] Resolution Agreement between Aurora Public Schools and the U.S. Department of Education's Office of Civil Rights, 2008
[178] Aurora Public Schools, Division of Accountability and Research, 2011
[179] Aurora Public Schools

> When they issue a collective action, it's based on all of those circumstances. It doesn't conflict with statute—you don't have to do something different than what Title III says but the way that the local might be going about adapting, for instance, how to approach patterns or identify students, exit students might have been a civil rights concern. In this case,[Aurora] we are working with OCR. We have received the questions from the state, are going to be discussing the issues with the state.

There have also been differences between OCR and USED guidance on EL students that have surfaced at the state level. For example, ESEA allows states to define LEP students, and approves state definitions, including Colorado's. USED does not require achievement on academic content tests be included as part of the definition of LEP, since the definition is meant to identify language proficiency, not academic achievement. However, OCR has said that students should remain designated LEP until they have reached achievement levels similar to their non-LEP peers on state content tests.[180] Although the additional exit criteria from OCR pertain only to the requirement that states provide English learner services to these students, not that they continue to be counted as LEP through Title III, state ESEA administrators perceive that USED and OCR are issuing conflicting guidance.

Concerns arising from the Civil Rights Act and/or the Equal Education Opportunities Act (EEOA) have also given rise to legal action against 19 school districts and two states on the basis of education services provided to English learners, including two Colorado school districts.[181] Like the voluntary resolution agreement between OCR and Aurora Public Schools, the settlement agreements or consent decrees often require certain policies or procedures that are in conflict with guidance on ELs provided by USED, like the requirement in Denver Public Schools that performance in grade-level content instruction be taken into consideration in establishing criteria for exiting a student from LEP status.[182]

Understanding that such legal resolutions are meant to address identified deficiencies, and are therefore supplemental to other statutory, regulatory and guidance provisions, places where there are conflicts suggest areas of investigation for USED and EL policy.

It would cut down on confusion and misunderstanding on implementing Title III if USED and OCR issued joint guidance on provisions relevant to both offices, especially with respect to issues that are sufficiently general, like EL exit criteria.

USED regulations and guidance on English learners should also reflect, to the greatest degree possible, generalizable provisions of consent decrees as they currently exist. Understanding that such decrees are necessarily specific to issues for the districts they cover, there are nonetheless certain provisions that appear in many if not most such decrees. It would serve districts and states to implement policies and procedures that are likely to be in compliance with the OCR guidelines and Civil Rights legal concerns.

Colorado Study Recommendation for Clarifying Title III and Civil Rights Act Requirements:

- **USED and OCR should issue joint guidance on issues relevant to both offices**
- **USED and OCR should communicate consistently about the rights and need of English learners**

[180] Office of Civil Rights, U.S. Department of Education
[181] U.S. Department of Justice
[182] Denver Public Schools, 2012

6. The Unique Needs of Rural Districts

a. SRSA and the Definition of "Rural"

One of the most useful and well-received federal programs for rural districts is the Small Rural School Achievement Program. Research consistently finds that this is a popular and widely-used program.[183] Colorado survey respondents and interviewees concurred. Survey respondents were overwhelmingly "grateful" for the program. Districts use these flexible funds to provide more resources to their disadvantaged students, improve technology, provide salaries and bonuses for teachers, provide supplies for their EL students, and for professional development. Study participants identified few barriers or areas for improvement.

Definitions matter when it comes to making policy and allocating resources. In interviews, rural educators expressed concern with multiple and changing definitions of the term "rural." There are two related but separate definitional problems. The first is how the *state* defines rural and for what purposes it uses the definition. The second is how the *USED* defines rural and uses that definition to target policy and financial assistance to districts.

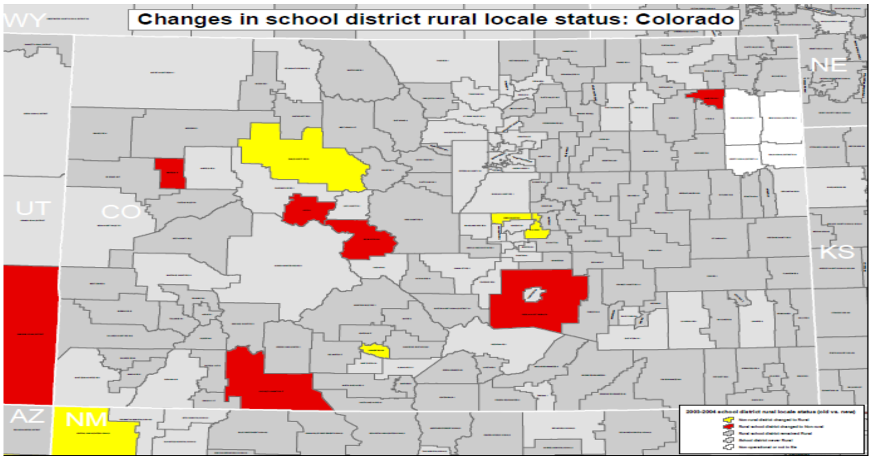
The Colorado Department of Education (CDE) has its own definition of rural that it uses for statistical and program purposes such as teacher effectiveness. In addition, "outlying town" and "rural" districts may be lumped together to assess rural trends in the state. However, the CDE definition is not aligned with the definition USED uses for purposes of ESEA.

USED uses locale codes developed by the National Center for Education Statistics to identify eligible rural school districts for the Rural Education Achievement Program or REAP. Locale codes are a classification system describing a school's location ranging from a large city to rural first developed in the 1980s, and updated in 2006.

> *"It would be nice to have a consistent definition of 'rural'…"*

As a part of the change in 2006, five districts that were not previously classified as rural became rural: Eagle County RE 50, Lewis-Palmer, Falcon 49; Sargent RE-33J, and six districts previously defined as rural are no longer rural: Archuleta County 50 JT; Pueblo County Rural 70; Buena Vista R-31; Aspen 1; Garfield 16; Lone Star 101. The table below illustrates the changes. Districts highlighted in yellow are newly identified as rural; districts in red are no longer considered rural; dark gray districts remain rural; and light gray districts were never considered rural under either the old or the new locale codes.

[183] Christensen, Amerikaner, Klasik, & Cohodes, 2007



Source: NCES Common Core of Data, State Maps: Changes in School District Rural Locale Status

Having a locale code of 6, 7, or 8 is only one of two requirements a rural district must meet to be eligible for the federal Rural Education Achievement Program (REAP). As noted in the Rural School Funding section, districts are eligible for REAP-Flex and SRSA grant program if they have a locale code of 7 or 8 *and* a total number of students in average daily attendance at all schools served by the LEA of fewer than 600, *or* each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile. The percentage of students living in poverty is not a program requirement.

Any rural districts *not eligible* for REAP-Flex or the SRSA grant program may be eligible for the RLIS program if all of the schools served by the LEA have a school locale code of 6, 7, or 8 and have 20 percent or more of children served from families with incomes below the poverty line ($23,050 for a family of four in 2012). The percentage of children living in poverty is based on U.S. Census county poverty data.

USED determines district eligibility for the REAP-Flex, SRSA grant program, and RLIS program each year. In school year 2012-13, there were 141 school districts where all schools had a locale code of 6, 7 or 8. Of these districts, 99 qualified for the REAP program, 14 were eligible for the RLIS program, and 28 did not qualify for either REAP or RLIS due to average student populations ≥ 600 or poverty rate < 20 percent.

Nationally, rural education advocates have asked Congress to expand the definition of rural to include codes 32 (distant town) and 33 (remote town) as well as 41, 42, and 43. Expanding the definition would give states greater authority to offer all necessary flexibility to accommodate the needs of staffing small rural schools. It may also, as in Colorado's case, more closely align with state definitions of rural.

Another idea for expanding rural access to funding is to allow schools that are eligible for both programs but not receiving funding under SRSA to apply for RLIS.

Colorado Study Recommendation on the Definition of "Rural"

Expand the federal definition of "rural" to include codes 32 and 33 as well as 41, 42, and 43.

b. Title I Allocations and Rural School Districts

As mentioned earlier, both rural and urban survey respondents believe that Title I funds are important for improving student outcomes, that more flexibility is needed, and that reporting requirements are burdensome. But the burden may be greater for rural districts that often struggle with funding declines, too few staff, and substantial technology gaps.

Concern over federal Title I funding inequities for Colorado rural schools was brought to the attention of the Colorado Committee on Joint Education on March 3, 2010.[184] The Colorado Rural Schools Caucus noted that Title I funding inequities were built into the Title I formula for determining state allocations. Title I funds come to states and districts in a lump sum. As such, state and district educators do not necessarily know the forces behind increasing or decreasing Title I allocations.

Rural survey respondents commented that cut backs in the last two years "have been extremely difficult" and "we never come close to having the funds we need to properly serve our lowest performing students. Our teachers are stretched far too thin because we don't have the funds to hire more aides or certified teachers." One respondent noted "Our funding has been reduced 50 percent based on a system that has nothing to do with our population..."

> *"Our funding has been reduced because of a system that has nothing to do with our student population."*

Studies indicate that the alternative-weighting formula used in two of four Title I grant formulas, Targeted Assistance and Education Finance Incentive Grant (EFIG), disproportionally favor larger districts at the expense of smaller districts. The Targeted and EFIG Grant programs use one of two alternative weighting systems—one is based on the *percentage of students* and the other is based on the *number of students* eligible for Title I. The weight resulting in the highest amount of funds is used. Because total Title I appropriations are set by Congress each year, and the Targeted Grant weighting system is applied at the *national level*, each increase in weighted count received by a LEA decreases the relative share available for all other LEAs regardless of a LEAs level of poverty.[185]

The problem is compounded by the EFIG grant programs dual formula. One EFIG formula is based on the equitable distribution of state per pupil funding and the other is based on the alternative-weighting formula applied at the *state level*. The EFIG grant program is designed to reward states that fund equitably across districts and spend more state resources on public education. The effect of the EFIG per pupil formula and weighting system is similar to that of the Targeted Grant.

The table below shows the estimated gain or loss in Title I-A funds due to number weighting in the Targeted Grant and EFIG Grant that Colorado districts. All selected districts had FRL student populations equal to or greater than 60 percent in 2009. The table shows that Aurora with 61 percent FRL student population and Denver with 71 percent FRL student population gained Title I allocations using the weighted number formula for the Targeted and EFIG grants. In contrast,

[184] Colorado Committee on Joint Education March 3, 2010, Colorado Rural Caucus, Attachment B
[185] Strange & Finical, 2009

three of the state's highest poverty districts, as measured by percent FRL, (Center 89 percent FRL; Centennial 81 percent; and Manzanola, 80 percent FRL) lost Title I allocations using the number weighting formula.

Estimated Gain or Loss of Title I-A Grants with Alternate Weights for the Targeted Grant and Education Finance Incentive Grant (EFIG) Formulas by CDE District Setting

CDE District Setting District Name	CDE FY09 Fall Pupil Membership # FREE AND REDUCED	CDE FY09 Fall Pupil Membership % FREE AND REDUCED	Gain (Loss) in FY09 Targeted Grant Due to Number Weighting in Current Formula	Gain (Loss) in FY09 EFIG Grant Due to Number Weighting in Current Formula	Gain (Loss) FY09 Due to Number Weighting in Current Formula Targeted and EFIG
Denver Metro					
ADAMS COUNTY 14	6,096	82.13%	($127,800)	($282,400)	($410,200)
AURORA	22,677	61.34%	$397,100	$133,400	$530,500
DENVER COUNTY 1	54,485	70.53%	$2,359,500	$2,848,900	$5,208,400
MAPLETON 1	3,950	68.40%	($33,600)	($89,300)	($122,900)
SHERIDAN 2	1,245	78.06%	($51,700)	($134,700)	($186,400)
WESTMINSTER 50	7,383	74.86%	$59,300	($71,300)	($12,000)
Urban-Suburban					
HARRISON 2	7,643	67.58%	$7,100	($112,800)	($105,700)
PUEBLO CITY 60	12,565	68.65%	($106,100)	($470,500)	($576,600)
Outlying City					
ALAMOSA RE-11J	1,390	67.94%	($46,000)	($105,600)	($151,600)
EAST OTERO R-1	933	70.79%	($61,100)	($166,600)	($227,700)
FORT MORGAN RE-3	2,213	68.47%	($16,600)	($41,900)	($58,500)
LAMAR RE-2	1,090	63.45%	($28,200)	($54,000)	($82,200)
TRINIDAD 1	903	64.45%	($16,700)	($31,900)	($48,600)
Outlying Town					
CENTER 26 JT	537	88.76%	$0	($800)	($800)
CROWLEY	331	66.87%	($14,700)	($36,300)	($51,000)
DEL NORTE C-7	409	68.51%	($16,400)	($40,200)	($56,600)
LAKE COUNTY R-1	764	63.25%	($7,600)	($18,200)	($25,800)
LAS ANIMAS RE-1	452	76.35%	($15,000)	($37,000)	($52,000)
ROCKY FORD R-2	653	74.37%	($40,600)	($110,600)	($151,200)
WELD COUNTY RE-8	1,513	62.44%	($18,900)	($41,900)	($60,800)
Rural					
PLATTE VALLEY RE-3	79	68.70%	$0	($600)	($600)
AGUILAR 6	98	73.68%	($1,000)	($700)	($1,700)
BETHUNE R-5	88	69.84%	($1,300)	($3,100)	($4,400)
CAMPO RE-6	33	67.35%	($1,200)	($1,900)	($3,100)
CENTENNIAL R-1	178	80.91%	($6,100)	($13,800)	($19,900)

HOLLY RE-3	196	67.35%	($5,800)	($11,600)	($17,400)
HUERFANO RE-1	448	72.26%	($9,400)	($23,500)	($32,900)
KIM	38	62.30%	$0	$0	$0
MANZANOLA 3J	142	80.23%	($9,700)	($28,000)	($37,700)
MIAMI/YODER 60 JT	203	61.70%	($6,200)	($13,600)	($19,800)
MONTE VISTA C-8	751	63.59%	($17,300)	($38,500)	($55,800)
NORTH CONEJOS	736	70.03%	($17,100)	($39,200)	($56,300)
PLAINVIEW RE-2	54	65.06%	($600)	($1,300)	($1,900)
SANFORD 6J	219	64.41%	($3,700)	($7,800)	($11,500)
SIERRA GRANDE R-30	195	77.38%	($8,500)	($20,500)	($29,000)
SILVERTON 1	45	68.18%	($800)	($1,600)	($2,400)
SOUTH CONEJOS	203	72.50%	($11,000)	($26,600)	($37,600)

Source: (1) CRS, September 30, 2009, Gain and Loss Estimates based on unpublished data provided by the U.S. Department of Education, Budget Service; (2) CDE, 2009 Fall Pupil Membership, percent and number of free and reduced-price lunch students
Note: (1) Funds appropriated under the American Recovery and Reinvestment Act of 2009 was not included in the analysis. Details may not add to totals due to rounding; (2) CDE data are shown for comparative purposes only and were not used in CRS calculations.

The All Children Are Equal Act (H.R. 2485) would help address this problem by altering the Targeted and EFIG formulas to benefit smaller school districts.

Colorado Study Recommendation on Rural Title I Allocations

> **Eliminate number weighting and take into account the way that the EFIG formula unintentionally harms Title I per- pupil funding in states with low overall per- pupil funding.**

c. Capacity in Rural Districts

Overall, ESEA funds are a small percentage of a district's total operating budget. For Colorado's higher poverty districts, ESEA allocations were about four to eight percent of urban school district total operating budgets in FY 2010-11, the latest data available.[186] For rural districts, ESEA allocations ranged from less than one percent to more than eight percent of total operating budgets in FY 2010-11.[187]

Although rural districts would like to see more funding for their Title I students, keeping up with federal and state reporting requirements is overwhelming to many rural districts. For rural districts, the most cited concern in the Colorado Study related to Title I was that of not having a dedicated staff person. Rural educators wear many hats. A superintendent, for example, may be also the district's grant writer, human resource director, communications director, substitute teacher or facilities manager. This range of duties was evident in the survey. When asked their title and job responsibilities, rural respondents were more likely to list the range of duties they performed:

[186] Federal, State, and Local contributions, excludes capital construction funds
[187] Rural includes: Outlying Towns and Rural. The variability among rural districts is due in part to Title II-D Technology funding.

- *CFO Accounting, finance, budget, payroll, data transmissions, etc., etc., etc.*
- *Developing the Budget, preparing reports annually and monthly...grant writing...meeting with principals…auditing programs…*
- *All aspects of business within the district. Payroll, Benefits, HR, state reporting, Budget preparation, Secretary to the board of directors and many other duties as needed.*
- *Budgeting, grant writing, finance & student reports, Payroll, Curriculum & Instruction, District Assessment.*
- *Educational Services – Title I, Assessment and Curriculum, Professional Development, GT, ELL, District Assessment Coordinator, Homeless, CRDC, and whatever else comes up…*
- *Instructional & Special Programs, assessment coordinator, Title I, Accountability, PD, Curriculum & Instruction, ELL, 504 Coordinator, mental health team, data management and analysis, etc., etc.*

Survey respondents and interviewees from rural districts noted that their district often has to weigh the benefits of taking Title I funds against the cost to existing staff in terms of additional workload. One respondent noted that "As a small district, there is only me to do all the various types of reporting for state and federal accountability. That is extremely burdensome and takes away from my ability to support the instructional and curricular needs of our district." Another noted, "I believe that reporting is important to continued success of programs, however, because there is not enough money to fund a [federal programs manager] position to do this, the responsibility falls on my shoulders which takes away from instructing students."

"Our office only has one full-time (myself) and one part-time person."

For rural educators, multiple and often conflicting responsibilities often means that districts are not only unable to take advantage of funding opportunities, they are often not fully informed of funding opportunities for their district and schools. As one survey respondent summarized:

> In small school districts, the Title Director also has many other roles. This makes it difficult for that person to focus on federal programs. Although the CDE staff is very helpful and knowledgeable, sometimes the people in the field don't know what they don't know and schedules make it difficult to be available each time CDE has a webinar. An in-depth training of requirements, reporting, and 'need to know' would be helpful to make sure that the field has a clear understanding of what is [available] and what is required…

For many of the same reasons, rural districts express concerns about the growing popularity of competitive grants. The Obama administration has used competitive grants to great advantage, and in the coming years, these types of grants are expected to become a greater force in federal education policy and funding.[188] But most small districts lack the resource capacity to hire grant writers and they have too few students to meet the threshold to qualify for competitive grants. This places rural school districts at a distinct disadvantage, as one respondent noted:

[188] U.S. Department of Education, 2010

> This move toward more competitive grants is like a death sentence…we just can't compete against large districts…

Rural districts depend on federal funding to help with instructional coaches, Title I teacher salaries, reading specialists, professional development and other services. However, staffing in these districts is typically minimal, and it is difficult for them to pull together polished grant applications. For these reasons, rural districts underscored the importance of the majority of ESEA funding remaining formula grants. ESEA reauthorization should recognize the disparate capacity for success in competitive grants in districts that are small by necessity. One option could be that, in the development of any new competitive grants, the Act set aside some amount of funding for similar purposes in isolated districts, to be distributed either on a competitive or formula basis.

Colorado Study Recommendation related to Rural District Capacity:

> **The reauthorization of ESEA should recognize the capacity limitations of many rural and smaller districts and take those into consideration when deciding whether funds should be distributed through formula grants, competitive grants, or some combination.**

B. Could Colorado Make Better Use of Existing Flexibility?

1. Exploring Flexibility Assurance

USED has signaled that it would like to increase flexibility in ESEA and reduce administrative burden. In addition to the flexibility provided through the ESEA Flexibility waivers it has also encouraged states, in the waivers, to move further in that direction. The ESEA Flexibility waiver request forms require states to provide an assurance that they would "evaluate and, based on that evaluation, revise its administrative requirements to reduce duplication and unnecessary burden on districts and schools."[189]

According to CDE, their efforts over the past year on this assurance were focused on improving the consolidated application, which was a central cause of much duplication. They used feedback from districts on issues of data collection and reporting duplication over the year. CDE is launching the redesigned application in Spring 2013 and will begin training on it shortly thereafter.

2. Consolidating and Transferring Funds

As a part of the USED pilot solicitation, the agency highlighted the fact that states and districts have not made full use of current flexibility. For example, as identified in this initiative, "The ESEA allows a school that has at least 40 percent students from low-income families to operate Title I as a school-wide program. This program allows a school to use Title I funds, together with other Federal, State, and local funds, to upgrade its entire educational program in order to improve the academic performance of the lowest-achieving students….If a school consolidates its Federal funds, it is

[189] U.S. Department of Education

exempt from most of the statutory and regulatory requirements of the Federal programs whose funds are consolidated, provided the school meets the intent and purposes of those programs."[190] And yet, according to USED, only a small number of schools are currently taking advantage of this provision.

According to the Colorado Study, most districts responding to the statewide survey offer school-wide programs, either exclusively or in addition to targeted assistance programs in some schools. These two categories included 90 percent of responding urban districts and 53 percent of responding rural districts. However, the study also confirmed that few Colorado districts consolidate funds in their school-wide programs. District officials reported that consolidation, while popular with schools and staff, was very difficult to implement because accounting systems are not set up to combine funds. As one district official explained:

> We have never consolidated [ESEA funds] in our district. Our accounting systems in the district just basically don't allow for that. It's a district-level decision. I dug into this several years ago. It would offer a lot of flexibility to our Title I schools to have those funds consolidated but I have heard from our accounting office that CDE makes it difficult. CDE says it's a district-level decision. In [our district], we work very carefully and closely with Title I, Title II, and Title III dollars to braid funds for the objectives of all those different titles. In school-wide [program] schools, we encourage those principals to hire supplemental English language instructors with Title I funds.

Another district official noted the difficulty of consolidating funds not only from ESEA sources, but also from mill levy and bond elections when those dollars have been approved for specific purposes: "Consolidating is not really easy."

This was confirmed by state officials:

> Colorado has put out guidance to districts on flexibility of funds, but in order to really commingle funds and still be in compliance, district audit staff has to be sophisticated enough to back out of commingling and show separate accounting.

Transferability is also of limited use to districts, for the same reasons. Also, a limited number of programs are eligible for transferability, = and two of them (Title II, Part D - education technology, and Title IV, safe schools) have been defunded.

3. REAP-Flex

A rural LEA or LEA charter school that meets the eligibility requirements of the SRSA grant program may exercise REAP-Flex authority *without the approval of either its SEA or the USED*. However, before exercising REAP-Flex authority, an eligible LEA must annually notify its SEA of its intent to do so by the notification deadline established by the SEA. USED research finds that nearly 80 percent of REAP-Flex districts use the flexibility to maintain stable levels of effort for ongoing activities affected by budget cuts.[191]

[190] U.S. Department of Education, 2012
[191] Ibid

In FY 2012, Colorado had 142 USED designated rural districts. Ninety-nine (70 percent) districts were eligible for REAP-Flex and the SRSA program. Fourteen districts (10 percent) were eligible for the RLIS. The remaining 29 rural districts (20 percent) did not qualify for either REAP-Flex/SRSA or RLIS.[192]

USED does provide some flexibility in REAP eligibility. Colorado has not used this flexibility option in the last several school years nor have many other states.[193]

> *An LEA that serves a school with a school locale code other than 7 or 8 (and otherwise meets the ADA or population density requirement) is eligible for the SRSA program (i.e., REAP-Flex and the SRSA grant program) only if it is located in an area of the State that is defined as rural by a governmental agency of the State, and the US Department of Education accepts the State's rural designation.*
>
> *The LEA would need to provide its State REAP coordinator with evidence that a governmental agency of the State defines it as rural. If the State REAP coordinator is satisfied that the LEA is in an area of the State defined as rural by a State governmental agency, the coordinator must provide the US Department of Education with the definition. If the US Department of Education believes that the definition is appropriate, it will consider the LEA eligible for the SRSA program.*

4. Ed-Flex Waivers

In 2000, Colorado was one of the first states awarded Ed-Flex authority under the Education Flexibility Partnership Act. It is one of only ten Ed-Flex states (only eight of which are currently active Ed-Flex states). With this authority CDE can waive certain provisions of ESEA for local districts. CDE is not able to waive fiscal framework elements—i.e. maintenance of effort, comparability, or supplement-not-supplant.

One of the survey questions asked: "Does your district participate in the Ed-Flex program?" Only 17 percent of respondents said yes; 48 percent said they did not participate, and a troubling 35 percent reported that they did not know.

CDE has used Ed-Flex authority to grant some districts the ability to run schoolwide programs for schools that do not otherwise meet the 40 percent poverty criterion. According to the most recent report on Ed-Flex usage nationally, that was the most frequent use of Ed-Flex waivers for all the participating states, with all eight states issuing waivers in this area during the most recent year reported.[194]

In Colorado, state officials did not believe they had the authority to waive the poverty rank order allocation rule, while other Ed-Flex states have issued waivers to districts for this purpose. Other states have issued waivers to districts to allow them to carry over a greater percentage of ESEA funding into the next year. (A state official said that Colorado

[192] State Eligibility Spreadsheets for Fiscal Year 2012 - List of all LEAs that were eligible for the Small Rural School Achievement Program (SRSA) program for Fiscal Year (FY) 2012 by state.
[193] USDOE Guidance on the Rural Education Achievement Program (REAP), 2003 (Appendix A)
[194] U.S. Department of Education

does this as well and is currently authorizing this for 2013-14 in order to accommodate the 2013 federal sequestration.) Texas has issued a statewide waiver of certain requirements of the Education Department General Administrative Regulations (EDGAR), which has provided flexibility for some budget object codes. Texas waivers have also relaxed certain time and effort reporting requirements.

In general, Ed-Flex states have reported that these waivers have allowed districts to focus funding on district or school-specific priorities. Since Colorado is one of few states that have the ability to make use of this authority, CDE should study some of the other state practices, and the full scope of the authority, to determine if they could make greater use of Ed-Flex waivers.

It is important to note that the authority of Ed-Flex expires with the reauthorization of ESEA. Accordingly, any aspects of Ed-Flex that have proven effective should be adopted and scaled by ESEA reauthorization.

VI. Conclusion and Recommendations

The Colorado Study has provided a Western perspective on issues to be addressed in the next reauthorization of ESEA. In addition to recommendations for reauthorization, we also recommend a number of areas for further research.

A. Recommendations for ESEA Reauthorization

Based on the findings from the Colorado Study and the input of the stakeholders on the study advisory committee, it is recommended that the next ESEA reauthorization incorporate the following changes:

1. **Fiscal requirements should be entirely rethought and aligned with the policy goals of the new ESEA**. Many of the current fiscal requirements are holdovers of past authorizations and disconnected from current outcomes-based accountability. Accountability is essential, but the ways in which states and districts are held accountable can evolve over time. At a minimum, ESEA reauthorization should consider the following recommendations:
    a. **Redesign the comparability requirement** to ensure that it achieves the goal of equity in intra-district allocation. This will likely require substantial investment by districts and schools in accounting systems that permit the tracking of school-level actual expenditures, and funding should be provide to assist in the transition to the new systems.
    b. **Eliminate or revise Title I's supplement-not-supplant requirement**. Given the difficulty of demonstrating supplement-not-supplant, and the perverse incentives it puts in place with respect to innovation and expansion of programs at the state and district level, this restriction should be reconsidered in a reauthorization of ESEA. At the very least, the test for supplement-not-supplant should be revised to be a less burdensome Title I neutral test simply requiring districts to demonstrate that funding distribution is not affected by the availability of Title I dollars, and state and local initiatives that are consistent with federal education priorities should be permitted to be funded with ESEA dollars.
    c. **Redesign the poverty ranking allocation requirement** to ensure that the underlying goal of serving the most disadvantaged students is realized while allowing districts some discretion in determining where investments are most likely to translate into the best student outcomes.
    d. **Eliminate the maintenance of effort requirement**. The purpose for MOE, to guard against perverse incentives to cut state and local funding due to district receipt of Title I funding, is not a concern today and yet this annual calculation takes up time and effort at the local and state level.

2. **Lessen the general administrative burden associated with ESEA funding.**
    a. Consider waiving or decreasing reporting requirements for districts based on size, or based on proven progress in closing achievement gaps.
    b. Centralize administration and reporting for students in institutions and non-public schools, or minimize the burden to districts associated with this role.

3. **Increase state and district discretion on supplemental educational services.** Allow states to choose whether to require set-asides for supplemental educational services, but allow districts to decide whether SES in their district will be provided by the district or by state-approved providers selected by the district.

4. **Revise Title II to focus on teacher and leader effectiveness.**
    a. Ensure that statutory and regulatory language focuses on effectiveness rather than inputs.
    b. Permit states and districts to fund new educator effectiveness initiatives aligned with Title II priorities with Title II funds, regardless of whether the initiative is required by the state (as in Colorado's new educator effectiveness law) or by federal law.
    c. Help states fund efforts to provide and sustain high-quality professional development to all district contexts.

5. **Revise Title III and align it with the rest of the ESEA and other relevant laws.**
    a. Ensure that Title I and Title III accountability for achievement of English learners are fully aligned.
    b. Title III supplement-not-supplant restrictions should either be eliminated or at least relaxed by removing the "federal" part of the restriction. This single restriction put the funding outside of the core activities associated with educating English learners.
    c. Eliminate consortia sub-grants and instead distribute Title III dollars according to formula. Exempt all school districts that do not meet the $10,000 threshold from any and all fiscal regulations and reporting. This exception should not apply to Title III and AMAO accountability.
    d. Ensure that USED and the Office of Civil Rights are communicating consistently about the rights and needs of English learners; consider issuing joint guidance in areas of overlapping jurisdiction.

6. **Make adjustments necessary to benefit the unique needs of rural districts.**
    a. Change the Title I funding formula in a way to correct inequities affecting rural district funding.
    b. Increase the effectiveness of Rural Education Achievement Program funds by allowing more schools to qualify and giving states more flexibility in how the grants are applied.
    c. Ensure that funds from competitive programs such as Race to the Top and Investing in Innovation are accessible to smaller and rural districts as well as larger urban districts.

7. **Consider creating pilot projects that would allow districts to gain greater flexibility and relief from administrative requirements in exchange for proven and sustained achievement gains for disadvantaged and under-performing students.** Many Colorado district and state leaders are interested in transitioning to a regulatory framework that rewards demonstrated performance with lessened or more flexible oversight, a model that would fit well with Colorado's history and culture.

B. Recommendations for Further Research

During the course of the Colorado Study, some areas of interest emerged that were beyond the scope of the current study or would require further research an analysis to address and so are not explored here. However, further work on these additional areas of interest would benefit the ESEA reauthorization discussion.

1. The issue of potentially redundant and unnecessary reporting was mentioned frequently in the study. However, the study did not explore the specifics of current reporting requirements and therefore does not make

recommendations of ways to reduce those requirements. Although not necessarily relevant to the statutory framework of ESEA reauthorization, consolidated or streamlined reporting would greatly benefit states and districts.

2. The use or ineligibility of ESEA funding for technology was also an issue that was mentioned often in the Study. Since technology will be such an important element of the next generation of education, and an element that is especially central in Colorado, further research into the specific allowances and restrictions on spending on technology in ESEA should be more fully explored. Colorado is already exploring this through use of a logic model that would ensure that technology is being employed to develop 21st century skills as opposed to being used for low-level activities like drill practice.

3. It might benefit a national discussion on ESEA reauthorization to explore some of the results of the Colorado Study in a cross-state analysis. It is certainly likely that some of the issues identified in this report are Colorado specific, or at least more relevant to Colorado. In order to identify whether these issues should be reflected in statutory changes in ESEA, more analysis should be done on the extent to which they impacting other states in similar ways.

4. Special education funding and the Individuals with Disabilities Education Act (IDEA) was an area of concern for districts in the Colorado Study. In fact, many leaders spontaneously told us that special education was an even bigger problem than ESEA for them. Although out of the scope of this report, IDEA contains many fiscal provisions similar to those in ESEA that should be reexamined. At the very least, the reauthorization of ESEA should take into account the interaction between these two very important federal programs.

References

Adamson, F. & Darling-Hammond, L. (2012). Funding disparities and the inequitable distribution of teachers: Evaluating sources and solutions. *Education Policy Analysis Archives,* 20 (37), 1-44.

Amerikaner, A. (2012). *Unequal education: Federal loophole enables lower spending on students of color.* Washington, DC: Center for American Progress.

Aurora Public Schools, Division of Accountability and Research. (2011). *English language acquisition: 2011 program evaluation.* Aurora, Colorado: Aurora Public Schools.

Barley, Z. A., & Wegner, S. (2010). An examination of the provision of supplemental educational services in nine rural schools. *Journal of Research in Rural Education*, 25(4). Retrieved from http://www.jrre.psu.edu/articles/25.5.pdf.

Boyle, A., Taylor, J., Hurlburt, S., & Soga, K. (2010). *Title III accountability: Behind the numbers.* American Institutes for Research.

Brock, A., Wass, T., Fox, D., Finlay, K. & Gallagher, K. (2012). *Evaluation of NCLB Title I, Part A: Supplemental Educational Services: Academic year 2010-2011 findings.* Denver, CO: Colorado Department of Education & The Center for Research Strategies.

Brown, C., Hess, F., Lautzenheiser, D. & Owen, I. (2011). *State education agencies as agents of change: What it will take for the states to steup up on education reform*. Washington, DC: American Enterprise Institute.

Brownstein, A. (2012, July 1). *Recession prompts a flood of MOE waivers.* Retrieved January 12, 2013, from Thompson's Education Compliance Expert: http://ed.complianceexpert.com/recession-prompts-a-flood-of-moe-waivers-1.44894

Burke, L. (2012, September 5). *Research: No Child Left Behind waivers: bogus relieve, genuine overreach.* Retrieved February 5, 2013, from The Heritage Foundation Web Site: http://www.heritage.org/research/reports/2012/09/no-child-left-behind-waivers-bogus-relief-genuine-overreach

Cascio, E., Gordon, N. & Reber, S. (2011). *Federal aid and equality of educational opportunity: Evidence from the introduction of Title I in the South*. Cambridge, MA: National Bureau of Economic Research.

Ceto, J. L. & Fox, J. E. (2002). Retaining Quality Teachers. *The High School Journal*, Vol. 86(1), October-November 2002. pp. 57-75.

Center for American Progress. (2008). *Ensuring equal opportunity in public education: How local school district funding practices hurt disadvantages students and what federal policy can do about it.* Washington, DC: Center for American Progress.

Chambers, J., Lam, I., Mahitivanichcha, K., Esra, P., Shambaugh, L., & Stullich, S. (2009). *State and local implementation of the No Child Left Behind Act: Volume VI- Targeting and uses of federal education funds*. Washington, DC: U.S. Department of Education.

Center for Rural Pennsylvania (2005). *Persistent Poverty: An Issue for Some Pennsylvania Municipalities.* Pennsylvania General Assembly. Harrisburg, PA http://www.rural.palegislature.us/documents/factsheets/persistent_poverty.pdf

Cohen, J. & Miller, R. (2012). *Evidence of the effects of the Title I comparability loophole: Shining a light on fiscal inequity*. Washington, DC: Center for American Progress and American Enterprise Institute for Public Policy Research.

Coleman, J., Campbell, E., Hobson, C., McPartland, A., Weinfeld, F., & York, R. (1966). *Equality of educational opportunity.* D.C.: U.S. Department of Health, Education, and Welfare.

Colorado Department of Education. (2012). *Colorado: ESEA flexibility request.* D.C.: U.S. Department of Education.

Colorado Department of Education. (2012, September 11). *Colorado School Finance Revenues and Expenditures FY2010-11*. Retrieved from Colorado Department of Education Web Site: http://www.cde.state.co.us/cdefinance/FY10-11RevExp.htm

Colorado Department of Education. (2013). *Colorado Title I Supplemental Educational Services and Title I Public School Choice guidance.* Retrieved from Colorado Department of Education Web Site: http://www.cde.state.co.us/FedPrograms/dl/ti_psc-ti_ses-ti_a_regsandguidance_sesguid.pdf

Colorado Department of Education. (n.d.). *Colorado education statistics*. Retrieved from Colorado Department of Education: http://www.cde.state.co.us/cdereval/pupilcurrentstate.htm

Colorado Department of Education. (n.d.). *Educator effectiveness*. Retrieved February 9, 2013, from Colorado Department of Education Web Site: Colorado Department of Education Web Site

Colorado Department of Local Affairs. (n.d.). *Population totals for Colorado and sub-state regions*. Retrieved January 29, 2013, from Colorado State Demography Office: http://www.colorado.gov/cs/Satellite?c=Page&childpagename=DOLA-Main%2FCBONLayout&cid=1251593346834&pagename=CBONWrapper

Colorado League of Charter Schools. (2013). Colorado League of Charter Schools Website http://www.coloradoleague.org/about-us/who-we-are.php

Colorado State Office of Rural Health. (2011). *Colorado Rural Health Center 2011 Edition.* Denver, CO: http://www.coruralhealth.org/resources/documents/2011snapshot.pdf

Congressional Research Service (2008). *Rural Education and the Rural Education Achievement Program (REAP): Overview and Policy Issues.* Order Code RL 33804. http://nationalaglawcenter.org/assets/crs/RL33804.pdf

Chait, R. & Miller, R. (2009). *Ineffective uses of ESEA Title II funds: Funding doesn't improve student achievement.* Washington, DC: Center for American Progress.

Chappell, S., Nunnery, J., & Hager, J. (2010). *Research brief: Supplemental Educational Services (SES) provision of No Child Left Behind: A synthesis of provider effects.* Norfolk, VA: The Center for Educational Partnerships at Old Dominion University.

Christensen, G. C. (2007). *Non-public school participants in programs under the No Child Left Behind Act and the Individuals with Disabilities Act: Non-public school and public school district perspectives.* Washington, DC: The Urban Institute and The U.S. Department of Education.

Christensen, G. S., Amerikaner, A., Klasik, D. & Cohodes, S. (2007). *Evaluation of Flexibility Under No Child Left Behind: Vol II—The Rural Education Achievement Program (REAP Flex).* U.S. Department of Education. Washington, D.C. http://www2.ed.gov/rschstat/eval/disadv/flexibility/volIII-reap.pdf

Cook, G., Linquanti, R., Chinen, M., & Jung, H. (2012). *National evaluation of Title III implementation supplemental report: Exploring approaches to setting English languate proficiency performance criteria and monitoring English learner progress.* American Institutes for Research.

Coons, J., Clune, W., & Sugarman, S. (1970). *Non-public wealth and public education.* Cambridge: Harvard University Press.

Council of State Governments (2010). *Rural Schools: Federal Expenditures & State Perspectives. Lessons from No Child Left Behind and Considerations for Reauthorizing of the Elementary and Secondary Education Act for Rural Areas*. Washington, D.C.; Council of State Governments.

Crawford, J. (2008). *Advocating for English learners: Selected essays by James Crawford.* Bristol, UK: Multilingual Matters.

CRS Education Legislation (2013). *The Rural Education Achievement Program: Title VI-B of the Elementary and Secondary Education Act.* http://education-legislation.blogspot.com/2013/01/the-rural-education-achievement-program.html

Darling-Hammond, L. & Barry, B. (2006). Highly Qualified Teachers for all. *Educational Leadership,* November 2006; 14-20.

Deans, E. (2011). *Exploring the Rural Competitive Preference in the Investing in Innovation Program*. New York, NY; New America Foundation.

Deke, J. D. (2012). *Impacts of Title I Supplemental Educational Services on Student Achievement.* Washington, DC: U.S. Department of Education .

Democrats for Education Reform. (2011). *Advisory memo: US Department of Education: Recommendations on the waiver process.* Washington, DC: Democrats for Education Reform. Obtained from http://www.dfer.org/Report%20-%20Waiver%20Rec%203.6.pdf

Denver Public Schools. (2012). *Consent Decree (2012) of the U.S. District Court: Denver Public Schools English Language Acquisition Program.* Denver: Denver Public Schools.

Duncan, A. (2013, February 7). *No Child Left Behind: Early lessons from state flexibility waivers (Testmony of Secretary of Education Arne Duncan to the U.S. Senate Committee on Health, Education, Labor, and Pensions).* Retrieved, from U.S. Department of Education Web Site: http://www.ed.gov/news/speeches/no-child-left-behind-early-lessons-state-flexibility-waivers

Education Law Center. (2012*). Comments submitted to the U.S. Department of Education*. Obtained from the Education Law Center website: http://www.edlawcenter.org/assets/files/pdfs/Newsblasts/ELC%20Comments%20on%20Title%20I%20and%20NCLB%20Waiver.pdf

Eppley, K. (2009). Rural schools and the highly qualified teacher provision of No Child Left Behind: A critical policy analysis. *Journal of Research in Rural Education*, 24(4) http://www.jrre.psu.edu/articles/24-4.pdf

Evans, B. &. (2005). No Child Left Behind: Repealing and unpeeling federal language education policy in the United States. *Language Policy, 4*, 87-106.

FairTest. (2011). *Administration Offers Bad "Waiver" Plan as Congress Fails to Rewrite Federal Education Law*. Obtained from the website of FairTest: The National Center for Fair and Open Testing. http://www.fairtest.org/administration-offers-bad-%E2%80%9Cwaiver%E2%80%9D-plan-congress-f

Federal Communications Commission. (2011, June 17). *Bringing Broadband to Rural America: Update to a Report on Rural Broadband Strategy*

Formula Fairness Campaign (nd). *Title I Inequities in Plain Language*. The Rural School and Community Trust. Washington, D. C.

Fullerton, J. & Hochman, D. (2012). *The consequences of distrust: Why the fiscal requirements of federal education policy hinder effective school district management and what to do about it.* Washington, DC: Center for American Progress and American Enterprise Institute for Public Policy Research

Goggin, M. (1986). *Policy design and the politics of implementation: The case of child health care in the United States .* Knoxville, TN: University of Tennessee Press.

Government Accountability Office. (2004). *Additional Assistance and Research on Effective Strategies Would Help Small Rural Districts.* GAO-04-909. Government Accountability Office, Washington, D.C. http://www.gao.gov/new.items/d04909.pdf

Gray, L., Thomas, N., and Lewis, L. (2010). *Educational Technology in U.S. Public Schools*: Fall 2008 (NCES 2010– 034). U.S. Department of Education, National Center for Education Statistics. Washington, DC: U.S. Government Printing Office.

Gurwitz, A. & Darling-Hammond, L. (1981). *Maintenance of effort provisions: An instrument of federalism in education.* Santa Monica, CA: Rand.

Hardré, P., Sullivan, D., & Crowson, H. (2009). *Student Characteristics and Motivation in Rural High Schools*. Journal of Research in Rural Education, 24(16). Retrieved Feb 19, 2013 from http://jrre.psu.edu/articles/24-16.pdf

Haxton, C., de los Reyes, I., Chambers, J., Levin, J. & Cruz, L. (2012). *A case study of Title I comparability in three California school districts.* Washington, DC: American Institutes for Research.

Hines. J. & Thaler, R. (1995). Anomalies: The flypaper effect. *Journal of Economic Perspectives,* 9(4), 217-226.

Heuer, R. & Stullich, S. (2011). *Comparability of state and local expenditures among schools within districts: A report from the study of school-level expenditures*. Washington, DC: U.S. Department of Education.

Horriga, J. (2010). *Broadband Adoption and Use in America. The Federal Communications Commission Omnibus Broadband Initiative* (OBI) Working Paper Series No. 1. http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf

Jeffrey, J. (1978). *Education for the children of the poor: A study of the origins and implementation of the Elementary and Secondary Education Act of 1965.* Columbus: Ohio State University Press.

Jimerson, L. (2003). *The Competitive Disadvantage: Teacher Compensation in Rural America.* Rural Trust Policy Brief Series on Rural Education. http://www.ruraledu.org/user_uploads/file/Competitive_Disadvantage.pdf

Jimerson, L. (2004). *The Devil is in the Details: Rural-Sensitive Best Practices for Accountability Under No Child Left* Behind. Rural Trust Policy Brief Series on Rural Education. Washington, D.C. http://www.ruraledu.org/user_uploads/file/Devil_Is_in_the_Details.pdf

Johnson, K. M. (2012). *Rural Demographic Change in the New Century Slower Growth, Increased Diversity.* Carsey Institute, Issue Brief No. 44, University of New Hampshire, Durham, NH. Retrieved Feb 19, 2013 from: http://www.carseyinstitute.unh.edu/publications/IB-Johnson-Rural-Demographic-Trends.pdf

Junge, M. & Krvaric, S. (2011). *How the supplement-not-supplant requirements can work against the policy goals of Title I.* Washington, DC: Center for American Progress & American Enterprise Institute for Public Policy Research.

Keaton, P. (2012). *Numbers and Types of Public Elementary and Secondary Schools From the Common Core of Data: School Year 2010–11* (NCES 2012-325rev). U.S. Department of Education. Washington, DC: National Center for Education Statistics http://nces.ed.gov/pubs2012/2012325rev.pdf

Kober, N., & Stark Rentner, D. (2012). *State education agency funding and staffing in the education reform era.* Center for Education Policy.

LaForgia, M. (2013, February 9). Public schools lose millions by crooks and cheaters. *The Tampa Bay Times*. Retrieved from http://www.tampabay.com/news/education/public-schools-lose-millions-to-crooks-and-cheaters/1274614

Lankford, H., Loeb, S., & Wyckoff, J. (2002). Teacher sorting and the plight of urban schools: A descriptive analysis. *Education Evaluation and Policy Analysis,* 24(1), 37-62.

Lau v Nichols, 414 U.S. 563 (1974).

Lazarin, M. (2011). *Federal investment in charter schools: A proposal for reauthorizing the Elementary and Secondary Education Act.* Washington, DC: Center for American Progress.

Luebchow, L. (2009). *Equitable resources in low income schools: Teacher equity and the federal Title I comparability requirement.* New America Foundation.

Malhoit, G. C. (2005). *Providing Rural Students with a High Quality Education: The Rural Perspective on the Concept of Educational Adequacy*. Rural School and Community Trust. Arlington, VA. http://www.kintera.org/atf/cf/%7BF4BE47E7-FA27-47A8-B662-8DE8A6FC0577%7D/Providing_Rural_Students.PDF

Mattingly, M. J., Johnson, K. M. & Schaefer, A. (2011). *More Poor Kids in More Poor Places: Children Increasingly Live Where Poverty Persists.* Carsey Institute, Issue Brief No. 38. University of New Hampshire. Durham, NH http://www.carseyinstitute.unh.edu/publications/IB-Mattingly-Persistent-Child-Poverty.pdf

McClure, P. & Martin, R. (1969). *Title I of ESEA: Is it helping poor children?* Washington, DC: Washington Research Project and NAACP Legal Defense Fund.

McLaughlin, D, H., Huberman, M. B., & Hawkins, E. K. (1997). *Characteristics of Small and Rural School Districts.* U.S. Department of Education, Office of Educational Research and Improvement NCES 97-529. National Center for Education Statistics, Washington, DC. Retrieved Feb 19, 2013 from http://nces.ed.gov/pubs97/97529.pdf

McMurrer, J., & Yoshioka, N. (2013). *States' perspectives on waivers: Relief from NCLB, concern about long-term solutions.* D.C.: Center on Education Policy.

Miller, R. (2009). *Secret recipes revealed: demystifying the Title I, Part A funding formulas.* Center for American Progress.

Minnici, A., & Hill, D. (2007). *Educational architects: Do state education agencies have the tools necessary to implement NCLB?* Washington, DC: Center for Education Policy.

Murray, S., Evans, W., & Schwab, R. (1998). Education finance reform and the distribution of education resources. *American Economic Review* , 789-812.

National Association of State Title I Directors. (2010). *Recommendations for ESEA reauthorization.* Retrieved from http://c.ymcdn.com/sites/www.nationaltitleiassociation.org/resource/collection/8C08AEAE-BEC3-412A-8C23-06771BF17BE1/ReauthorizationPaper3.26.10_2.pdf

National Center for Education Statistics. (n.d.). *Fast facts*. Retrieved January 25, 2013, from http://nces.ed.gov/fastfacts/display.asp?id=158

National Center for Education Statistics. (2012). *The condition of education 2012* (NCES 2012-45), Indicator 4. Retrieved from http://nces.ed.gov/fastfacts/display.asp?id=30

National Commission on Excellence in Education. (1983). *A nation at risk: the imperative for educational reform.* D.C.: U.S. GPO.

National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent or At-Risk. (2008). *Title I, Part D, State coordinator's orientation handbook.* Washington, DC: National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent or At-Risk at the American Institutes for Research.

National Rural Education Advocacy Coalition (2011). *2011 Legislative Agenda*. Arlington, VA.

Nelson, S. (2010). *Lessons Learned: Leveraging the Unique Features of Small, Rural Schools for Improvement*. Education Northwest, Vol. 2, Issue 5, Portland, OR. Retrieved Feb 19, 2013 from http://educationnorthwest.org/webfm_send/1052

Odden, A. & Picus, L. (2000). *School finance: A policy perspective,* 2nd. Ed. New York: McGraw Hill.

Office of Civil Rights, U.S. Department of Education. (2012). *Helping to ensure equal access to education: Report to the President and Secretary of Education .* D.C.: U.S. Department of Education.

Office of Civil Rights, U.S. Department of Education. (n.d.). *Office of Civil Rights*. Retrieved February 12, 2013, from Department of Education Web Site: http://www2.ed.gov/about/offices/list/ocr/raceoverview.html

Office of Language, Culture and Equity, Colordo Department of Education. (2011, October 19). Retrieved February 12, 2013, from Colorado Department of Education Web Site: http://www.cde.state.co.us/cde_english/download/Resources-Links/StateoftheState2011.pdf

Picus, L., Goertz, M., & Odden, A. (2008). Intergovermental aid formulas and case studies. In H. Ladd, & E. Fiske, *Handbook of Research in Education Finance and Policy* (pp. 257-275). New York: Routledge.

Provasnik, S., KewalRamani, A., Coleman, M.M., Gilbertson, L., Herring, W. & Xie, Q. (2007). *Status of Education in Rural America* (NCES 2007-040). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC: http://nces.ed.gov/pubs2007/2007040.pdf

Ramsey, A., & O'Day, J. (2010). *Title III policy: State of the states.* American Institutes for Research.

Resolution Agreement between Aurora Public Schools and the U.S. Department of Education's Office of Civil Rights, 08085001-B (March 28, 2008).

Riddle, W. (2012). *Major accountability themes of second-round state applications for NCLB wiavers.* D.C.: Center on Education Policy.

Riddle, W., & Kober, N. (2012). *What impact will NCLB waivers have on the consistency, complexity and transparency of state accountability systems?* D.C.: Center on Education Policy.

Rothstein, R., Wilder, T., & Allgood, W. (2011). *Providing comprehensive educational opportunity to low income students: How much does it cost?* New York, NY: Campaign for Educational Equity, Teachers College, Columbia University.

Roza, M. (2007). Do districts fund schools fairly? *Education Next* , 68-73.

Roza, M., Miller, L. & Hill, P. (2005). *How Title I funds fit into district allocation patterns.* Seattle, WA: Center on Reinventing Public Education.

Rural School and Community Trust (2008). *Title I's Small State Minimum.* Rural Education Matters. Rural School Commnity Trust. Washington, D.C.

Rural School Community Trust (2009). *Rural Policy Matters: Poorer Smaller Districts Lose Out in Stimulus*. Rural School Community Trust, Washington, D.C.

Rural Policy Matters (2010). Rural Trust to Examine Effectiveness of Competitive Grants for Rural Schools. *Rural School and Community Action Newsletter.* Vol 12(6). The Rural School and Community Trust. Washington, D.C.

Rural School and Community Trust (2011). *Taking Advantage of The Rural Competitive Preference in the Investing in Innovation Program*. Rural School and Community Trust. http://www.ruraledu.org/user_uploads/file/i3/Taking_Advantage_20110125.pdf

Scott, G. (2012). *Selected States and School Districts Cited Numerous Federal Requirements as Burdensome, While Recognizing Some Benefits.* GAO Report 12-672. Washington, DC: U.S. Government Accountability Office.

Simon, R. (June 13, 2006). Testimony to the Committee on Education and Workforce Hearing on "No Child Left Behind: Disaggregating Student Achievement by Subgroups to Ensure All Students are Learning." http://archives.republicans.edlabor.house.gov/archive/hearings/109th/fc/nclb061306/simon.htmlSpatig-

Schaffer, B. (2012, June 27). Finding Flexibility in Supplemental Services. *Education Week.*

Retrieved from the *Education Week* web site at http://www.edweek.org/ew/articles/2012/06/27/36schaffer.h31.html?qs=bob+schaffer

Schneider, M. (2006). *NCES' Identification of Rural Locales*. Presentation by Mark Schneider, Commissioner, National Center for Educational Statistics to the Secretary of Education's Rural Education Task Force.

Strange, M., Johnson, J., Showalter, D. & Klein (2012). *Why Rural Matters 2011-12: The Condition of Rural Education in 50 States.* Rural Schools and the Community Trust. http://www.nwp.org/cs/public/download/nwp_file/15455/rural_school_community_trust_WRM2011-12.pdf?x-r=pcfile_d

Springer, M., Houck, E., & Guthrie, J. (2008). History and scholarship regarding United States education finance and policy. In H. Ladd, & E. Fiske, *Handbook of Research in Education Finance and Policy* (pp. 3-22). New York: Routledge.

Strange, M., Johnson, J., Showalter, D., & Klein, K. (2012). *Why Rural Matters 2011-12: The condition of rural education in the 50 States. A Report of the Rural School and Community Trust Policy Program*. Washington, D.C.: http://files.ruraledu.org/wrm2011-12/WRM2011-12.pdf

Tannenbaum, C. B. (2012). *National evaluation of Title III implementation -- Report on state and local implementation.* Washington, DC: U.S. Department of Education.

Taylor, J., O'Day, J., & Carlson Le Floch, K. (2010). *State and local implementation of the No Child Left Behind Act, voume IX--accountability under NCLB: final report.* D.C.: U.S. Department of Education.

The Annie E. Casey Foundation. (n.d.). *Data center*. Retrieved January 29, 2013, from Kids Count: http://datacenter.kidscount.org/data/acrossstates/Trend.aspx?order=a&loc=7%2c1&ind=43&dtm=321&tf=11%2c12%2c13%2c14%2c15%2c16%2c17%2c18%2c35%2c38%2c133%2c867

Turnbull, B., & Anderson, L. (2012). *Government that works for schools and children: Defining an effective state role in Title I education reform.* Center for American Progress and American Enterprise Insitute for Public Policy Research.

U.S. Bureau of Economic Analysis. (2012, March 28). State personal income 2011. *news release*.

U.S. Census Bureau. (n.d.). *The 2012 statistical abstract*. Retrieved January 21, 2013, from U.S. Census Bureau: http://www.census.gov/compendia/statab/cats/education.html

U.S. Department of Education. (1995, September). *The Improving America's Schools Act of 1994*. Retrieved February 6, 2013, from U.S. Department of Education Web Site: http://www2.ed.gov/offices/OESE/archives/legislation/ESEA/brochure/iasa-bro.html

U.S. Department of Education. (2002). *The No Child Left Behind Act of 2001.* Washington, DC: U.S. Department of Education.

U.S. Department of Education (2003*). Non-regulatory guidance: Local educational agency identification and selection of school attendance areas and schools and allocation of Title I funds to those areas and schools*. Washington, DC: U.S. Department of Education.

U.S. Department of Education. (2007). Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *Evaluation of Flexibility Under No Child Left Behind: Volume III—The Rural Education Achievement Program (REAP Flex),* Washington, D.C..

U.S. Department of Education (2008). *Non-regulatory guidance: Title I fiscal issues: Maintenance of effort, comparability, supplement, not supplant, carryover, consolidating funds in schoolwide programs, grantback requirements.* Washington, DC: U.S. Department of Education.

U.S. Department of Education (2008). *Non-Regulatory guidance regarding Title III non-supplanting provisions, 2008-10-02.*

U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service. (2010). *Evaluation of the Implementation of the Rural and Low-Income Schools (RLIS) Program: Final Report,* Washington, D.C..

U.S. Department of Education. (2010). *A blueprint for reform: The reauthorization of the elementary and secondary education act.* D.C.: U.S. Department of Education.

U.S. Department of Education (2010). *Evaluation of the Implementation of the Rural and Low-Income Schools (RLIS) Program: Final Report*, Washington, D.C., 2010. http://www.ed.gov/about/offices/list/opepd/ppss/reports.html

U.S. Department of Education (2012). *Small, Rural School Achievement Program.* U.S. Department of Education. Washington D.C.

U.S. Department of Education. (2012). *Colorado Consolidated state performance report: Parts I and II, for reporting on school year 2010-11 .* D.C.: U.S. Department of Education.

U.S. Department of Education. (2012). *English learner education: Fiscal year 2013 budget request.* Washington, DC: U.S. Department of Education.

U.S. Department of Education. (2012). *ESEA flexibility.* Washington, D.C.: U.S. Department of Education

U.S. Department of Education. (2012, May 3). *ESEA Flexibility Requests and Related Documents.* Retrieved January 21, 2013, from U.S. Department of Education Web Site: http://www.ed.gov/esea/flexibility/requests

U.S. Department of Education. (2012, October 12). *Flexibility and Waivers*. Retrieved January 10, 2013, from U.S. Department of Education Web Site: http://www2.ed.gov/nclb/freedom/local/flexibility/index.html

U.S. Department of Education. (2012). *ESEA flexibility: Frequently asked questions*. Washington, DC: U.S. Department of Education.

U.S. Department of Education. (2012). *ESEA flexibility: Frequently asked questions*: *Addendum # 4.* Washington, DC: U.S. Department of Education.

U.S. Department of Education (2013). *SRSA Eligibility Spreadsheets for Fiscal Year 2012/School Year 2012-2013.* U.S. Department of Education, Washington, D.C.

U.S. Department of Education. (February, 20 2013). *Elementary and Secondary Education: ESEA Flexibility*. Retrieved March 10, 2013, from U.S. Department of Education web site: http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html

U.S. Department of Education. (n.d.). *Department of Education budget tables*. Retrieved January 25, 2013, from www2.ed.gov: http://www2.ed.gov/about/overview/budget/tables.html

U.S. Department of Education. (n.d.). *ED data express*. Retrieved January 28, 2013, from Ed.gov: http://eddataexpress.ed.gov/data-element-explorer.cfm/tab/data/deid/4/

U.S. Department of Education. (n.d.). *Ed-Flex 09-10.* Retrieved February 5, 2013, from U.S. Department of Education Web Site: Programs Covered by the Ed-Flex Authority

U.S. Department of Justice. (n.d.). *Civil Rights Division Educational Opportunities Section Cases Page*. Retrieved February 12, 2013, from U.S. Department of Justice Web Site: http://www.justice.gov/crt/about/edu/documents/classlist.php#origin

Vernez, G. N. (2009). *State and local implementation of the No Child Left Behind Act: Volume VII-- Title I school choice and supplemental educational services: Final report.* Washington, DC: U.S. Department of Education.

Vowell, S. (2012). *ESEA flexibility: Frequently asked questions.* Washington, DC: U.S. Department of Education .

Washington Research Project. (1969). *Title I of ESEA: Is it helping poor children?*

Wise, A. (1969). *Rich schools, poor schools: The promise of equal educational opportunity.* Chicago: University of Chicago Press.

Wilhoit, G. (2011). Testimony of Gene Wilhoit, Executive Director, Council of Chief State School Officers, U.S. House of Representatives Committee on Education and the Work Force: Education regulations: Weighing the burden on schools and students. Obtained from the Council of Chief State School Officers website: http://www.ccsso.org/Documents/2011/news/Wilhoit_Testimony_Education_Regulations_Burden%20_March_2011.pdf

Zehler, A. M., Adger, C., Coburn, C., Arteagoitia, I., Williams, K., and Jacobson, L. (2008). *Preparing to serve English language learner students: school districts with emerging English language learner communities* (Issues & Answers Report, REL 2008–No. 049). Washington, DC: U.S. Department of Education, Institute of Education

Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory Appalachia. http://www.cna.org/sites/default/files/research/rel_2008049.pdf

Zimmer, R. (2007). Do Title I School Choice and Supplemental Educational Services Affect Student Achievement? RAND Research Brief RB 9273. Santa Monica, CA: RAND Corporation.

Appendix A -- Study Methodology

This report draws upon four major sources of data: advisory committee input, interviews with educational administrators, a statewide survey of Colorado administrators and case studies of two Colorado school districts.

A. Advisory Committee

The structure and content of this study were strongly influenced by an advisory committee consisting of 16 Colorado stakeholders. The stakeholders included representatives of local school districts, BOCES, the Colorado Department of Education and the Colorado League of Charter Schools. (See the inside cover of this report for a complete list.) Participants included superintendents, financial officers and federal program managers. All were knowledgeable about and experienced with the administration of federal education programs. Experts were selected with an eye toward representing Colorado's diverse landscape of urban, suburban and rural education.

The full advisory committee convened three times for one to one-and-half hours at a time. Additionally, two subcommittees helped flesh out issues specific to small and rural schools and larger urban and suburban districts.

Overall, committee input shaped the framework of the study and helped to focus interview and survey questions. Member comments were also incorporated into the body of the report. They triangulated findings by viewing and commenting on a draft of the report. As such, they served as de facto co-investigators, informants and reviewers.

B. Interviews

The study included three sets of interviews. The first, exploratory round included a convenience sample of interviews with more than 20 interviews with the Colorado Department of Education (CDE), members of the Colorado Association of School Executives (CASE) , Colorado teachers, and school district administrators knowledgeable about ESEA.

The second set of interviews focused on practices and perceptions of ESEA implementation at the district level. Three committee members from urban/suburban districts and three committee members in small town/rural districts participated in the semi-structured interviews that lasted one two hours. The Colorado League of Charter Schools committee member participated in both the urban and rural interviews.

The third set of interviews was targeted at gathering information on ways in which ESEA has been interpreted and misinterpreted by different levels of government. These semi-structured interviews lasted one to two hours. Participants included four officials at the CDE and five officials from the U.S. Department of Education. Interview results were analyzed with an eye toward resolving and juxtaposing areas in which officials at different levels of government had different perceptions of the rules governing ESEA implementation.

C. Statewide Survey

Based on advisory committee input, exploratory interviews and a review of the extant literature, a 60-question online survey was created on the SurveyMonkey website. The purpose of the survey was to gain a broad understanding of how local school district officials perceived, administered and implemented ESEA programs. One goal was to identify areas in which local officials might misunderstand or misinterpret the requirements of ESEA. An additional goal was to seek recommendations for improving various aspects of ESEA in order to improve student outcomes and reduce administrative burdens at the local level.

The survey contained both constructed-response and multiple choice questions. An email containing a survey link was sent to 469 unique email addresses. These emails were drawn from two sources. The Colorado Department of Education provided a contact list of individuals responsible for overseeing ESEA implementation in their local education agencies (which include BOCES and school districts), and Colorado school district superintendents also received copies of the survey.

An important caveat is that some school districts were represented by more than one respondent. For instance, a superintendent and a Title I coordinator from the same district could each receive copies of the survey and, in some instances, both responded. Because the survey was anonymous unless respondents chose to disclose their contact information after viewing all questions, it is not possible to quantify the amount of duplication. (Only a quarter of respondents disclosed contact information.) However, it is certain that larger districts were more likely to be represented by two or more respondents whereas in smaller districts, one respondent, either the superintendent or a single administrative designee with responsibly for ESEA funds, completed the survey. Because the majority of Colorado students are enrolled in large school districts along the Front Range, this is not as problematic as it would have been if small districts were represented by multiple respondents. However, because of the issue of district duplication, survey results are discussed in terms of percentage and number of respondents, not districts.

The survey was available to respondents for eight business days between the dates of January 23, 2013 and February 4, 2013. One reminder was sent. Of the 469 individuals contacted, 148 (32%) responded to one or more survey questions.

Based on our interviews and committee input, we both analyzed the entire survey and, for purposes of comparison, split the survey into two sections, depending upon whether the respondent was from a rural or urban/suburban district. Descriptive statistics were generated from multiple choice responses. We also examined X^2 distributions of categorical data in order to better understand which urban/rural differences were most significant.

Open-ended responses were coded inductively, from the bottom up. For each question, the entire body of responses was read multiple times in order to generate coding categories that summed up multiple responses. For instance, when asked how they spent Title I, Part A funds, multiple respondents described various types of professional development. So "professional development" became a coding category that was assigned to these responses. The goal was to categorize responses in such a way that we created a frequency table. This table helped us distinguish between common responses applicable to multiple districts and interesting but perhaps idiosyncratic answers specific to a particular district or respondent.

D. Case Studies

The final components of the report are two case studies of the how ESEA funds are administered and spent in two Colorado school districts. The purpose of the case studies was to gain a deeper understanding of how ESEA looks in two very different school districts, one rural (Strasburg) and one urban (Aurora). These districts were selected by the staff of Senator Michael Bennet and are representative of Colorado's urban/rural divide.

Adams-Arapahoe 28 J (Aurora Public Schools) is a 38,000-student district located in Aurora, a diverse city that incorporates both an urban core of lower-income apartment housing and a collection of affluent suburbs that are bedroom communities for adjacent Denver.[195] Although the city is served by four school districts, its urban core lies within the boundaries of Aurora Public Schools, which is Colorado's sixth largest district. Most Aurora Public students are low-income (68 percent). In addition, 40 percent are English learners and nearly 40 percent benefit from Title I services. Although most of the English learners are Spanish speakers, Aurora is also home a significant population of resettled refugees from countries such as Bhutan, Ethiopia, and Iraq.

By contrast, Strasburg 31 J is a small, semi-rural district located 40 miles east of Denver. The district is Colorado's 75th largest, enrolling about 1,000 students. Less than a quarter of students are low income. Less than 5 percent are English learners or participants in Title I.

Case studies consisted of interviews with district officials and information collection from the districts as well as CDE. Given its small size and low percentage of Title I students, Strasburg relies heavily on its superintendent and BOCES (local educational cooperative) to administer federal programs. As such, the superintendent was the only person interviewed for the case study. By contrast, in Aurora, three school officials were interviewed. Additionally, both the Aurora and Strasburg superintendents were members of the study's advisory committee.

The case studies are found in Appendix C.

[195] All the statistics in this section are taken from the Colorado Department of Education website.

Appendix B – Summary of Survey Results

ESEA Statewide Survey Summary

Consistent with the state's geographic distribution of districts, 74 percent of respondent districts are Rural (70 percent of the state total) or Outlying Town (4.3 percent) and, 25 percent are Denver-Metro (10.6 percent), Urban-Suburban (12.1 percent), or Outlying City (3.5 percent) districts.

Most districts enroll fewer than 1,200 students; nine percent enroll more than 25,000. Statewide, 60 percent of districts enroll fewer than 1,000 students and 6 percent of districts have more than 25,000 students.

Title I funding benefits only a small share of economically disadvantaged students. A majority of districts (66 percent) indicate that 40 percent or more of their student population is eligible for the free or reduced-price lunch program (FRL). But only 19 percent of districts believe that Title I funding benefits at least half of their economically disadvantaged student population. Consistent with the number of small and rural districts in the state, most districts (58 percent) have only one or two Title I schools—15 percent of districts have ten or more Title I schools.

Most respondents (69 percent) estimate there are 20 percent or fewer LEP and NEP English language learners in their district.

ESEA allocations are less than 10 percent of a district's total operating budget. Forty-four percent of districts estimate that ESEA allocations are four percent to nine percent of their total operation budget; 34 percent estimate they are three percent or less of district total operating budget; and 11 percent estimate that federal funds are more than 12 percent of their total operating budget.

Most respondents believe that federal funds are "important" or "extremely important" in closing achievement gaps (94 percent), encouraging evidence-based programs and practices (85 percent), improving teacher quality (78 percent), increasing English language development (68 percent), and helping to turn around low-achieving schools (67 percent). Most districts either did not (48 percent) or did not know (35 percent) if they participated in flexibility options under the Colorado Ed Flex Program.

Superintendents generally have responsibility for decision making and compliance with respect to federal funds. Eighty-eight percent of superintendents and/or 72 percent of school principals are responsible for making decisions about use of federal funds. When it comes to compliance with federal funding regulations, superintendents (69 percent), district federal fund coordinators (49 percent), school principals (41 percent), and/or business managers (35 percent) have responsibility. (Respondents could select multiple options.)

About half of districts enrolling fewer than 1,200 students have one or two FTE to meet annual federal reporting requirements. Larger districts tend to have four or more FTE. Comments indicated that districts interpreted this question in different ways.

Eighty-one percent of respondents found mandatory set-asides for supplemental education services and school choice to be problematic for their district. Half of districts found supplement-not-supplant requirements problematic, and 40 percent found comparability to be a problem.

Overall, 70 percent of districts find reporting requirements associated with federal funds as burdensome; of these, 12 percent find the requirements extremely burdensome.

A majority (89 percent) believe that the ability to fund interventions and services for academically needy students is important. Of this, 40 percent listed funding staff as a benefit, but 69 percent of districts reported spending money on this.

Respondents cited a lack of flexibility as the greatest impediment to using Title I funds to better improve student outcomes, even ahead of the level of funding.

Eighty-four percent of districts say their districts receive Title II funding, of these, 39 percent report that BOCES provides administrative support. Sixty-two percent of respondent district receive Title III funding, of these 39 percent report that BOCES provides administrative support. Only 30 percent of districts receive Title III, Part A-Immigrant Set-Aside funding.

Respondent Recommendations for ESEA

Title I (n=56)

Increase general flexibility for spending Title 1 funds	25%
Increase overall funding for Title 1	9%
Don't rely [entirely] on FRL to distribute funds	9%
Lessen the (general) amount of paperwork/administrative burden	7%
Change the (general) funding timeline for TI funds	5%
Improve state/federal articulation for program improvement	5%
Lessen restrictions for family/parental involvement aspects of TI	5%

Title I, Part D (n=8)

Responsibility for monitoring should be shifted away from school districts

Title III, Part A (n=35)

Increase funding	43%
Provide more flexibility for spending money	34%
Decrease requirements and administrative obstacles	20%

Title III, Part A – Immigrant Set-Aside (n=7)

More funding/insufficient support to meet mandates	57%
In general, this program works very well.	14%
Fund Summer School After School tutoring Family education	14%
More support to parents who do not speak English	14%

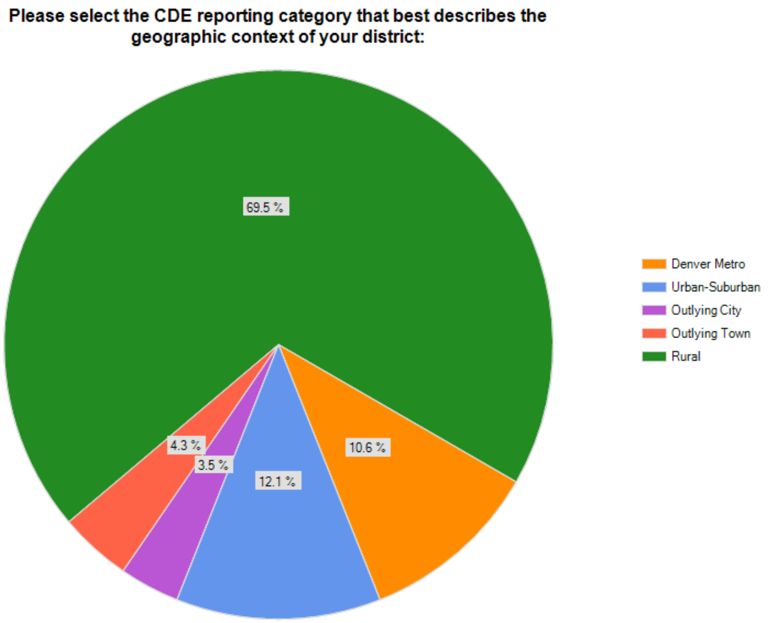
Title VI, Part B REAP

More flexibility in uses
Providing training in the district where everyone is trained together offers continuity and allows everyone the opportunity.
We are very grateful for the program.

Survey Findings

General Information:

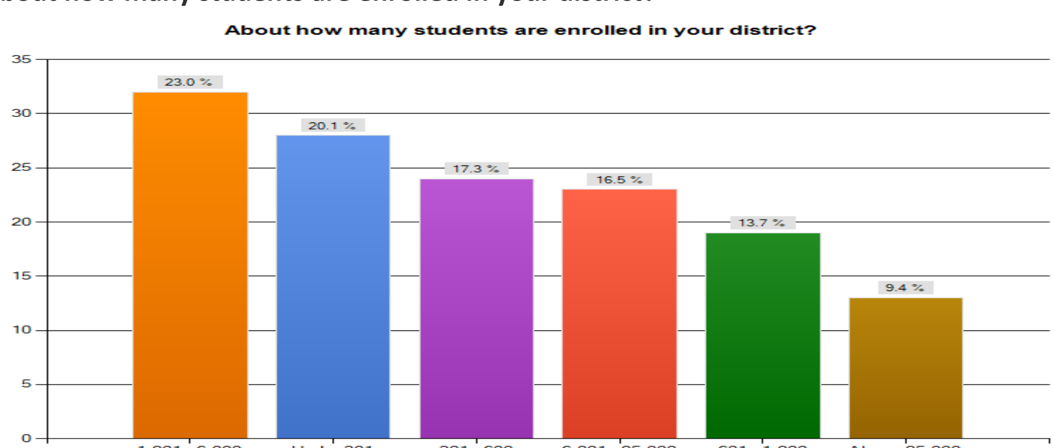
1. Please select the CDE reporting category that best describes the geographic context of your district:



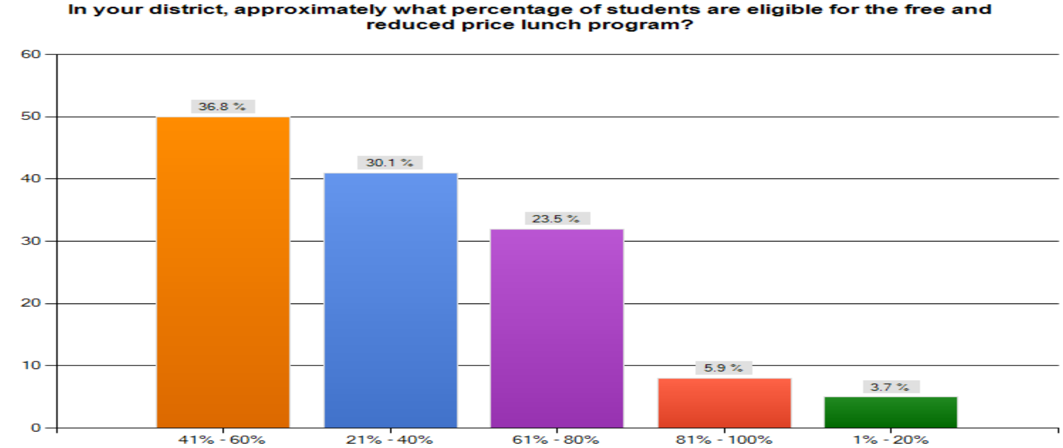
2. What is your title and basic job responsibilities?

Superintendents	26%
Federal Program oversight	23%
Business, CFOs, Accountants, Managers	17%
Principals	12%
Teachers	8%
Curriculum, Learning Services	7%
Assistant Superintendents	2%
Human Resources	2%
BOCES	1%
Deputy Superintendent	1%

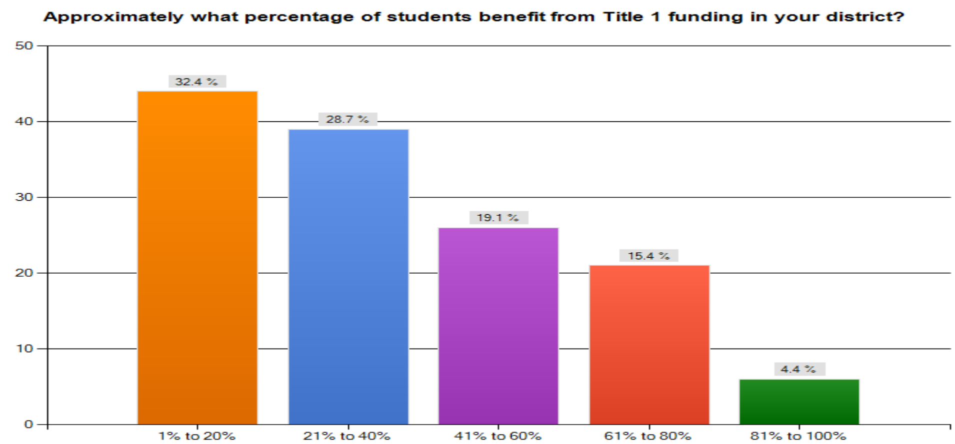
3. About how many students are enrolled in your district?



4. In your district, approximately what percentages of students are eligible for the free and reduced price lunch program?



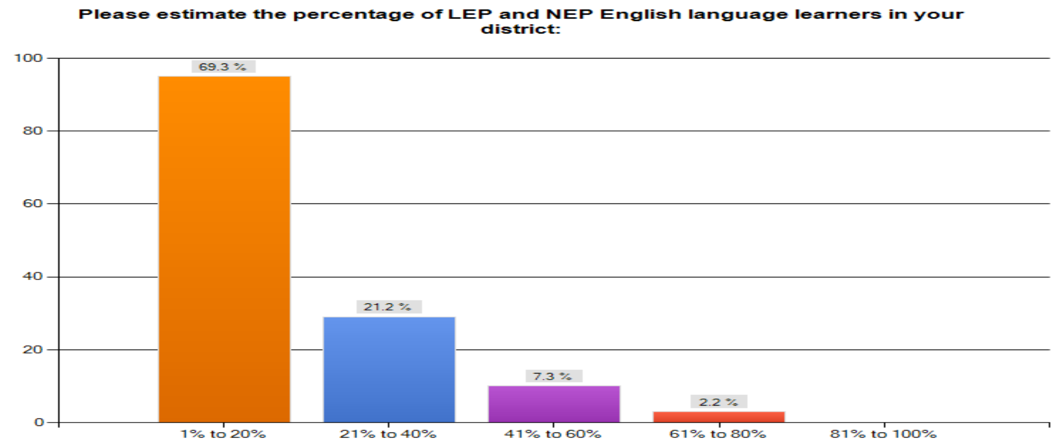
5. Approximately what percentage of students benefit from Title 1 funding in your district?



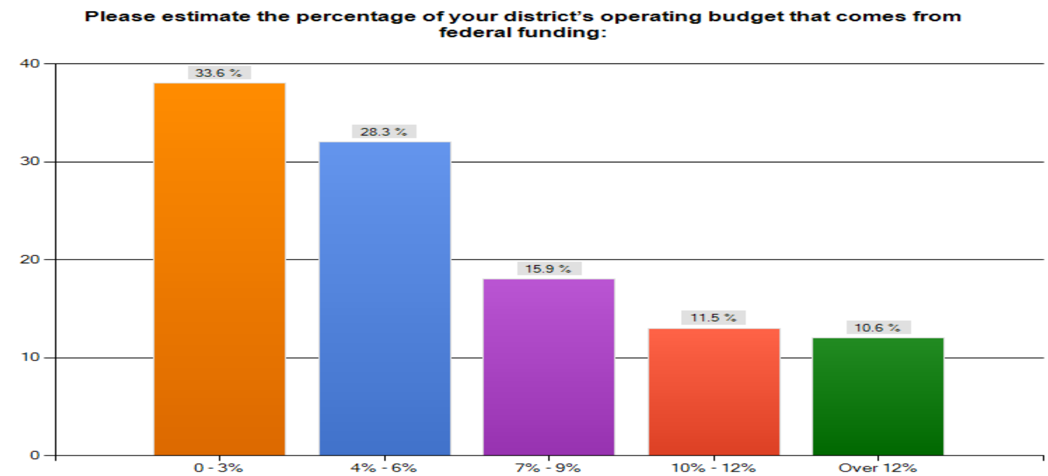
6. Approximately how many schools receive Title 1 funds in your district?

1 school	33%
2 schools	21%
3 schools	7%
4-6 schools	10%
7-10 schools	12%
11-16 schools	7%
20-25	4%
40 schools	<1%
120 schools N = 135	<1%

7. Please estimate the percentage of LEP and NEP English language learners in your district:



8. Please estimate the percentage of your district's operating budget that comes from federal funding:



9. Please provide your perception about the importance of federal funds to student outcomes in the following areas:

	Not at all important	Somewhat important	Important	Extremely important	Don't know
Closing achievement gaps	2.4% (3)	3.9% (5)	22.8% (29)	**70.9% (90)**	0.0% (0)
English language development programs	10.2% (13)	20.5% (26)	25.2% (32)	**43.3% (55)**	0.8% (1)
Improving teacher quality	5.5% (7)	16.5% (21)	27.6% (35)	**50.4% (64)**	0.0% (0)
Evidence-based programs and practices to improve student outcomes	4.0% (5)	11.1% (14)	33.3% (42)	**51.6% (65)**	0.0% (0)
Turning around low achieving school	11.1% (14)	16.7% (21)	23.8% (30)	**42.9% (54)**	5.6% (7)

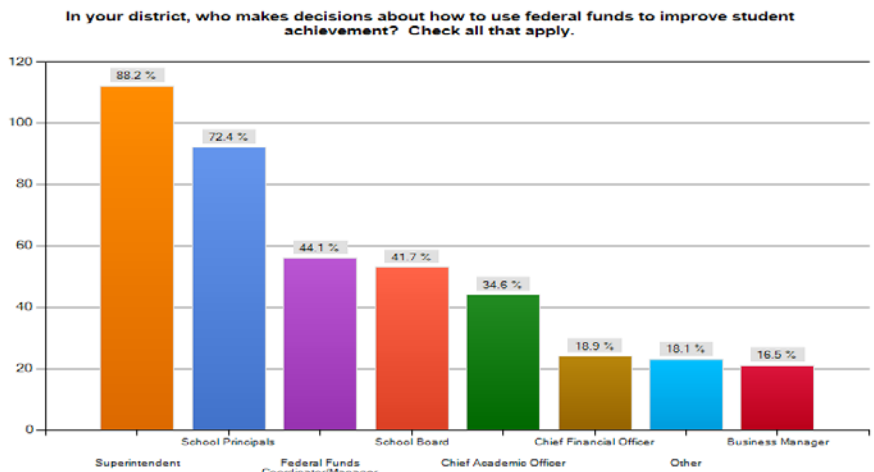
Other Comments (n=8)

Supporting growth for all students
Providing technical assistance to schools
Federal funds not significant for two items above
We are aware of support from federal funds for low performing schools but have no first-hand experience with it.
Covering the cost of mandates and SPED programs
We do not have a turnaround school.
We do not have turn around. Federal dollars don't seem to help from experience in the turnaround process except to line the pockets of vendors
At three percent of our funding and all the mandates, the funds are the only fund that supplements our general fund

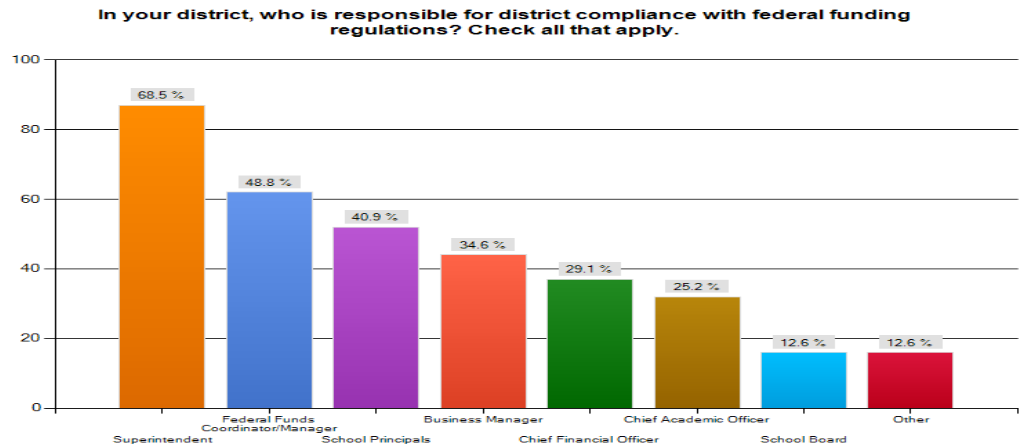
10. Does your district participate in the Colorado Ed Flex Program (i.e., increased flexibility for the use of federal education funds)?

48% No
16.8% Yes
35% Don't Know

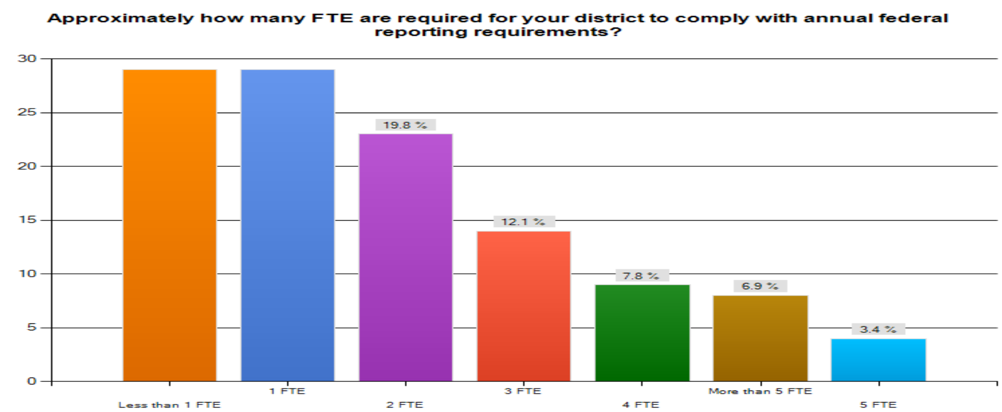
11. In your district, who makes decisions about how to use federal funds to improve student achievement? Check all that apply.



12. In your district, who is responsible for district compliance with federal funding regulations? Check all that apply.



13. Approximately how many FTE are required for your district to comply with annual federal reporting requirements?



14. Do you receive funding under Title I, Part A - Improving the Academic Achievement of the Disadvantaged?

Yes	84.6%
No	15.4%

15. Does a BOCES provide administrative support for your district's Title I funding?

No	69.9%
Yes	25.8%
D/K	4.3%

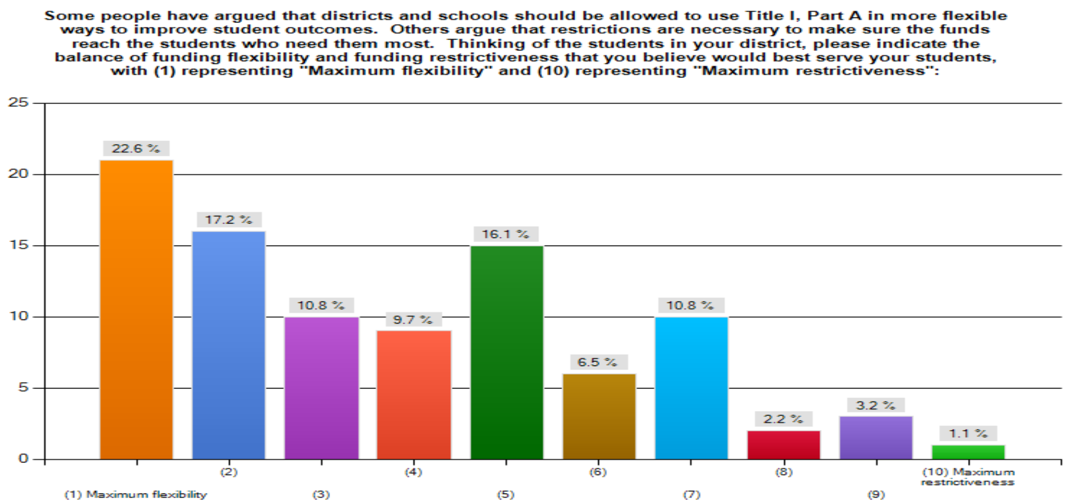
16. Does your district use Title I, Part A funds for school wide or targeted assistance?

School wide programs	40.4%
Targeted assistance to individual students	39.4%
Both	20.2%

17. Based on Title I, Part A allowable uses, please give examples of how your district uses this funding:

	N	% of 86
Salaries	59	69%
Intervention	41	48%
Professional development & coaching	39	45%
Material, supplies	18	21%
Parent/family engagement/education	13	15%
Extended learning time	11	13%
Total (Each respondent could provide up to three examples)	86	

18.



19. Some people have identified certain aspects of Title I, Part A regulations as presenting problems for districts. Thinking of student outcomes in your district, please indicate the extent to which the following aspects of Title I, Part A are easy or difficult for your district:

Extremely beneficial	Very beneficial	Beneficial	Problematic	Very problematic	Extremely problematic	DK	N/A
Comparability	2.2% (2)	7.6% (7)	**26.1% (24)**	23.9% (22)	8.7% (8)	6.5% (6)	5.4% (5)
Supplement not supplant	5.5% (5)	15.4% (14)	24.2% (22)	**30.8% (28)**	13.2% (12)	6.6% (6)	1.1% (1)
Statutory set-asides (SES, Choice)	1.1% (1)	0.0% (0)	5.4% (5)	**33.3% (31)**	19.4% (18)	28.0% (26)	3.2% (3)
Funding priority by school rank-order of poverty	5.4% (5)	4.3% (4)	**23.7% (22)**	20.4% (19)	10.8% (10)	8.6% (8)	5.4% (5)
REAP flexibility	14.3% (13)	3.3% (3)	15.4% (14)	6.6% (6)	1.1% (1)	1.1% (1)	18.7% (17)
Hold-harmless funding	7.6% (7)	8.7% (8)	**21.7% (20)**	16.3% (15)	3.3% (3)	1.1% (1)	20.7% (19)
Annual report to the public	0.0% (0)	6.5% (6)	**46.7% (43)**	23.9% (22)	3.3% (3)	4.3% (4)	6.5% (6)

20. Thinking of student outcomes in your district, please describe features of Title I, Part A that you believe to be most helpful in improving your students' outcomes:

	% of 70
Ability to fund interventions/services for academically neediest students	49%
Ability to fund additional staff/teachers/salaries	40%
Specific compliance/fund allocation rules of Title 1 are helpful to our district (e.g. comparability, flexibility of school wide models)	20%
Ability to fund professional development/coaching	17%
Total (Each respondent could provide up to two examples)	

21. Thinking of student outcomes in your district, please describe features of Title I, Part A that you believe are barriers to helping improve your students' outcomes.

Lack of flexibility in using funds/we cannot use funds in some way/on some things we want to use them on	28%
Not enough money	21%
Paperwork/reporting/reporting administrative burden	19%
N = 68	

22. Do you have any recommendations for reforming Title I, Part A so that it better serves the students in your district? Please explain.

Increase general flexibility for spending Title 1 funds	25%
Increase overall funding for Title 1	9%
Don't rely [entirely] on FRL to distribute funds	9%
Lessen the (general) amount of paperwork/administrative burden	7%
Change the (general) funding timeline for TI funds	5%
Improve state/federal articulation for program improvement	5%
Lessen restrictions for family/parental involvement aspects of TI	5%
N= 56	

23. If your district was given complete flexibility to use Title I, Part A funding to improve student achievement for disadvantaged children, what (if anything) would you like to do differently with these funds?

Funded programs would serve more/different students	22%
Hire more staff/change way in which staffing funding is distributed	21%
Provide more professional development and/or professional development for more teachers	19%
Eliminate SES	10%
Increase funding for interventions/one-on-one help	8%
More money for technology	8%
Less time/money on paperwork/administration	8%
N = 23	

24. Do you receive funding under Title I, Part D - Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk?

Yes 17.9% (19)
No 82.1% (87)

25. Based on Title I, Part D allowable uses, please give examples of how your district uses this funding:

Salaries	39%
Literacy	31%
Interventions	23%
Materials	15%
N	13

26. Thinking of student outcomes in your district, please describe features of Title I, Part D that you believe to be most helpful in improving your students' outcomes:

Salaries	30%
Student assessment	20%
N	10

27. Thinking of student outcomes in your district, please describe features of Title I, Part D that you believe are barriers to helping improve your students' outcomes.

Too little funding (4)	40%
Mismatch between school districts & institutions (3)	30%
Lack of flexibility for districts (2)	20%
N = 10	

28. Do you have any recommendations for reforming Title I, Part D so that it better serves the students in your district? Please explain.

Responsibility for monitoring should be shifted away from school districts	38%
N = 8l	

29. If your district was given complete flexibility to use Title I, Part D funding to improve outcomes for neglected and delinquent children, what (if anything) would you like to do differently with these funds?

Hand off the entire program to a different agency	43%
N = 7	

30. Do you receive funding under Title II, Part A - Preparing, Training, and Recruiting High Quality Teachers and Principals funding?

Yes 83.7% (87)
No 16.3% (17)

31. Does a BOCES provide administrative support for your district's Title II funding?

Yes 38.8%
No 55.2%
D/K 6%

32. Based on Title II, Part A allowable uses, please give examples of how your district uses this funding:

Professional Development	73%
Coaches	26%
Stipends	8%
Class Size Reduction	5%
Curriculum	5%
N = 77 (Each respondent provided up to 3 examples)	

33. Thinking of student outcomes in your district, please describe features of Title II, Part A that you believe to be most helpful in improving your students' outcomes:

Professional development	48%
Coaching	26%
Class size reduction	7%
Improving teacher quality, effectiveness/better instruction	7%
The Highly Qualified Teacher requirement	7%
N =62 (Each respondent provided up to 2 responses)	

34. Thinking of student outcomes in your district, please describe features of Title II, Part A that you believe are barriers to helping improve your students' outcomes.

Too little flexibility/too many restrictions on using money	47%
Too little money	39%
No barriers	14%
N = 44 (Each respondent provided up to 2 responses)	

35. Do you have any recommendations for reforming Title II, Part A so that it better serves the students in your district? Please explain.

More flexibility	46%
More funding	24%
N = 33	

36. If your district was given complete flexibility to use Title II, Part A funding to improve the preparation, training, and recruiting of high quality teachers and principals, what (if anything) would you like to do differently with these funds?

Nothing/maintain status quo	25%
Professional development (Would add/change)	19%
The current low funding levels prevent us from meaningfully using this money	12%
Support state and local initiatives	7%
Hire more staff/teachers	7%
Provide bonuses/incentive pay for reward/retention	7%
N = 44	

37. Do you receive funding under Title III, Part A - English Language Acquisition, Language Enhancement, and Academic Achievement funding?

Yes 62.3% (66)

No 37.7% (40)

38. Does a BOCES provide administrative support for your district's Title III funding?

Yes 38.8% (26)
No 55.2% (37)
DK 6% (4)

39. Based on Title III, Part A allowable uses, please give examples of how your district uses this funding:

Professional development	54%
Staff	40%
Materials and supplies	21%
Parent/family engagement and education	18%
Translation	9%
After-school programs/extended learning time	9%
BOCES handles grant	7%
N = 45 (Each respondent could provide up to three examples)	

40. Thinking of student outcomes in your district, please describe features of Title III, Part A that you believe to be most helpful in improving your students' outcomes:

Professional development	42%
Staff salaries	23%
Materials and supplies	12%
N = 43 (Each respondent could provide up to two examples)	

41. Thinking of student outcomes in your district, please describe features of Title III, Part A that you believe are barriers to helping improve your students' outcomes.

Too little money	58%
Desire to spend money in ways that are not permitted	26%
Burdensome requirements and administration for district	23%
N = 43 (Each respondent could provide up to two examples)	

42. Do you have any recommendations for reforming Title III, Part A so that it better serves the students' in your district? Please explain.

Increase funding	43%
Provide more flexibility for spending money	34%
Decrease requirements and administrative obstacles	20%
N = 35	

43. If your district was given complete flexibility to use Title III, Part A funding to improve outcomes for English language learners, what (if anything) would you like to do differently with these funds?

It's not the flexibility that's the problem, it's the low funding rate	24%
Provide more/ different coaching and professional development	24%
Hire more staff	17%
Would maintain status quo	14%
N= 29	

44. Does your district receive Title III, Part A - Immigrant Set-Aside funding?

Yes 29.5% (18)
No 70.5% (43)

45. Based on Title III, Part A - Immigrant Set-Aside allowable uses, please give examples of how your district uses this funding:

Enhanced instructional services/extended learning opportunities/extended day	42%
Parent liaison/ parent classes	17%
Instructional supplies	8%
Teacher salaries/teacher coaches	25%
Goes into ELL funds not enough for special services	8%
N = 12	

46. Thinking of student outcomes in your district, please describe features of Title III, Part A - Immigrant Set-Asides that you believe to be most helpful in improving your students' outcomes:

Enhanced instructional services/supplies	33%
Parent liaison/parent classes	22%
Partial salary for teacher	22%
Technology based language programs	11%
Homework club	11%
N = 9	

47. Thinking of student outcomes in your district, please describe features of Title III, Part A - Immigrant Set-Aside that you believe are barriers to helping improve your students' outcomes.

Limited Funds/no funds	44%
Lack of flexibility	22%
Supplanting	11%
Supplanting	11%
Assessment testing for ELL when we already have state testing for student growth and achievement	11%
N = 9	

48. Do you have any recommendations for reforming Title III, Part A - Immigrant Set-Asides so that it better serves the students in your district? Please explain.

More funding/insufficient support to meet mandates	57%
In general, this program works very well.	14%
Fund Summer School After School tutoring Family education	14%
More support to parents who do not speak English	14%
N = 7	

49. If your district was given complete flexibility to use Title III, Part A - Immigrant Set-Aside funding, how would you improve outcomes for immigrant children?

Funding is gone
Target more parent involvement/support
Help parents with resources - provide salary for Summer School and After School tutoring and home

liaison professional
Purchase implementation of technology-based language programs

50. Does your district receive Title VI, Part B - Rural Education Achievement Program (REAP) funding?

Yes 31.0 (31)

No 69% (69)

51. Based on Title VI, Part B allowable uses, please give examples of how your district uses this funding:

Standards work	
Resources for disadvantaged students/parental involvement	22%
improve the quality of principals and superintendents	4%
Technology	43%
Salaries/bonuses for teachers	17%
Supplies for ELL students	9%
Flex the money to Title I	17%
Professional development	9%
All day kindergarten	4%
N = 23 (Each respondent could provide up to 3 responses)	

52. Thinking of student outcomes in your district, please describe features of Title VI, Part B that you believe to be most helpful in improving your students' outcomes:

Improvement of math instruction	5%
Parental Involvement	5%
The current flexibility of REAP is great for such a small district.	10%
Distance learning	5%
Teacher retention/salaries	29%
Curriculum and incentive opportunities	10%
Technology	24%
After school program	10%
All day kindergarten	5%
professional development	5%
Reading help for students	5%
Materials	5%
N = 21	

53. Thinking of student outcomes in your district, please describe features of Title VI, Part B that you believe are barriers to helping improve your students' outcomes.

Limitations to usage
There is a clause that if the school is low performing, the dollars are very specific about how to spend them. If we ever fell into those categories, we would lose funding for the technology services.
The amount continues to shrink
Rural location, lack of opportunities
The paperwork requirements and restrictions lead us to us the funds in this manner.
It is very flexible and a great program.

54. Thinking about the use of federal education funds, are there unique barriers facing rural districts? Please explain.

Need more flexibility
Where school choice is not an option, we are held accountable based on statistics that can be very unreliable. We literally can identify students by name who need additional attention or instruction so much of the reporting and analytical responsibility of the administration is tedious and for lack of a better word, useless. It becomes about compliance rather than improvement.
As the administrator of the smallest district in the state, I wear several hats. Please keep flexibility of REAP and Title while minimizing the reporting requirements.
Our dollars sometimes are very small. Therefore, the time commitment required for reporting & submittals simply eliminates the funds...or we give them up to avoid the mismatch.
Always, so many times we have the same mandates as bigger districts and no funds to implement them.
The reporting for rural districts is similar to larger districts, but must be completed with far fewer staff. The federal funds are a fraction of the cost required to appropriately meet the needs of many students, especially special education students.
Census data on income verses Free and Reduced data. They are very different in terms of when and how data is collected.
Too many to detail 80% of all school districts in Colorado are rural without the network of support that bigger districts have. We do not have the people power required to keep up with some of the requirements. Federal money becomes a serious pause when it has so many strings attached. Not because we do not want to be accountable - we DO.
Distance to travel for training or getting trainers to come here. Recruiting HQ teachers/admin (especially young ones).
Can't find personnel/workshops close by for little amount of money
Sometimes it's just a lack of flexibility
Not for us.
Accessibility of training. One hour to nearest city and often hours from offering location, which requires overnight lodging, meals and transportation?
HIGH poverty, lack of services, remoteness from training
There is not enough funding in each category to really make a viable impact. The ability to reap to Title 1 is crucial.
We are very poor. Our bonding and tax base is very small. We are glad there are funds to help in any way possible. Our computers are very old and do not support a lot of new technology.
Lack of funds to purchase technology and bandwidth, one of our biggest needs; inability to attract highly qualified teachers in the areas of math and science

55. Do you have any recommendations for reforming Title VI, Part B so that it better serves the students in your district? Please explain.

More flexibility in uses
Providing training in the district where everyone is trained together offers continuity and allows everyone the opportunity.
We are very grateful for the program.

56. If your district was given complete flexibility to use Title VI, Part B funding to improve student outcomes, what (if anything) would you like to do differently with these funds?

These funds allow for flexible use.

Probably nothing
After paying for the number of people needed to provide intervention for reading, writing, and math professional development for all teachers would be beneficial.
We would like to be able to purchase computer equipment. Without proper computers we cannot run the up to date software.
Purchase technology

57. Please provide any comments you may have about ESEA funds and the federal regulatory environment.

Since there are so many requirements for Title funding, it would be very helpful if CDE could put together a "Title Director Boot Camp" or something like that. I think most Title Directors do the best they can, but often times, they learn how to survive rather than learn all of the requirements and procedures for federal programs.
Need more flexibility around program operations and integrating multiple funding sources to achieve better academic results.
The idea about it a good one. I worry how it'll be assessed
The reporting requirements take so much time away from what we could be doing in circumstances where we wear so many hats.
It is difficult to plan and align the work when you don't know what or how funds will support the identified need.
rely heavily on these funds which only reimburse a small portion of the actual cost
If the state of Colorado funded education comparable to other states the federal dollars we receive would go a lot further toward supporting at risk student achievement
The OCR report this fall took a great deal of time away from our data staff's regular daily work. That report should be streamlined. There are so many intertwining rules that we are always in fear of missing something. The Colorado C-FIRS system is helpful, but sometimes our district auditors are not. Everyone in our district has many responsibilities, so it would be nice if either a) more grant funds could be spent on administration of the federal programs OR b) there were fewer rules and regulations to work with.
The amount of paperwork and the work that goes into compliance doesn't leave much left for making sure that we are getting results and then supporting schools and programs that are not getting results. It's all about compliance.
Eliminate redundancies in ESEA funding reports
Necessity for small districts that we keep these funds formula grant funds not competitive grant funds.
These supplemental funds are absolutely necessary for the education reforms that are currently under way across the country in order to make the academic gains for students most at-risk. Districts need the flexibility to make the best decisions possible to serve the unique needs of their individual student populations.
We receive minimal funds that require too much paperwork. hardly work doing
Think of a way to incentivize good performance rather than punishing districts/schools. What impact has NCLB really had on closing achievement gaps? It has forced us to pay attention to them, but really closing them? Not yet.
Simplify and make the funding more flexible
Too many regulations to oversee and they seem to change each time the DOE visits Colorado.
Never know if we will receive Title VIB -
Often difficult to provide the wide range of support as envisioned in ESEA given the continuing and growing instructional, affective, and educational needs of students particularly in the current

environment and economy
Appreciate additional funding, but would like to be creative in use.
compliance demands breed resentment
Let us govern how we use the funds
Too much time spent trying to validate what we are doing to meet the parameters set by title funding. If a school's data demonstrates a system that works and is improving, why not let them do what needs to be done!!!!
I support the federal government and want desperately for the country to bounce out the
The ESEA has been an important part of education funding in this country. It help to level the playing field between districts that might otherwise be inequitable and gives students in each district a shot at a more equal education. I think the focus needs to continue to be on disadvantaged students and districts, and not so much on high-stakes testing.
While I understand the intent behind some of the rules, it takes a lot of time to understand and make sure compliance is happening. It's realistic if this was my only role, but because I have multiple responsibilities within our district, being highly effective in this area is challenging.
Federal regulations go well beyond state regulations, require much time in preparing applications, preparing documents to request money, and monitoring to assure compliance with the detailed evaluation checklists.
Need more of a technical assistance rather than a gotcha attitude
Repeated mandates and broadening of requirements have not been funded. We spend 10% of our revenues from state funds to ensure we meet requirements for special education that are not covered by federal or state dollars
we spend as much time reporting as teaching
More funding should be available. Grants should not be competitive.
Guidance documents are usually fairly open-ended; however, audits are extremely rigid. These two should match up so districts are prepared. If something is not allowable, say so. Stop hiding behind ambiguous terms such as "high-quality." Without a definition, that can have different criteria to different people.
Reduce the paperwork burden
The amount of money does not equal the amount of mandates and accountability required.
Don't increase regulation, increase accountability. Cut off funds when lack of progress is shown. This is the only way to actually get failing schools to improve
N/A
Because there are so many rules and regulations, you have to put systems and people in place to do this. It seems like there are so many people managing Title I funds at the state level that a lot of money is spent there instead of at the school level. Additionally, there are so many different ways we are required to report, isn't there some way to put it into one system? Thank goodness we are small and can manage the reports. I don't get paid extra to take on this duty of reports, etc. In fact, no one does in our
too much regulation not enough funding
Regulations too restrictive; should allow more district flexibility with funding usage, not waste other funds on coming here to do onsite reviews. Can do technology reviews just as easy. Those $ could be used to educate students. Accountability should be very for student growth, but that can be shown by data sent electronically.
The sheer number of reports can be daunting. Regulations intended for large districts such as comparability and proving consultation with non-public schools mean that many small districts cannot manage these funds by themselves and sometimes do not get the targeted services their students

deserve. Perhaps looking into regulations that take a district's size and physical isolation into account would help mediate this.
None
Cuts over the past years have been harmful for teachers and students.
INSUFFICIENT FUNDING TO MEET MANDATES
Too much reporting on a monthly and yearly basis. Too many restrictions and not enough flexibility for the district to use the funds appropriately for student achievement for all.
It's very time consuming to make sure that the budget amounts and the summaries match perfectly. The state doesn't allow for the district to have even minor differences.
Sometimes the laws don't make sense; why can't a principal provide a meal for all parents in a school for a back to school night, for example? Why is that no parent involvement? The supplant law really restricts improvement planning because it is often too costly to come from only one avenue.

58. Thinking about the reporting requirements associated with federal funds, please indicate how burdensome the reporting requirements are for your district on a scale of 1-10, with (1) being "Not burdensome at all" and (10) being "Extremely burdensome."

Not Burdensome At All		0%
	2	3.20%
	3	3.20%
	4	5.30%
	5	9.50%
	6	9.50%
	7	14.70%
	8	24.20%
	9	18.90%
Extremely Burdensome		11,6%

59. Do you have any other comments or suggestions about federal education programs and requirements that you would like Congress to know?

In small school districts, the Title Director also has many other roles. This makes it difficult for that person to focus on federal programs. Although the CDE staff is very helpful and knowledgeable, sometimes the people in the field don't know what they don't know and schedules make it difficult to be available each time CDE has a webinar. An in-depth training of requirements, reporting, and "need to knows" would be helpful to make sure that the field has a clear understanding of what is required, etc.
Do not cut funding. Establish more local accountability. Use evidence-based programs and activities.
more flexibility in spending options
The strings attached have really hurt some fundamentally good ideas because of the reporting and accountability requirements that simply take tons of time to complete.
funding is very limited and the district is approaching 15% SPED population with rapid increases in severe needs populations
I think there is a role that the federal government must play to ensure that all kids have equal access to a good education.
see # 41
BOCES does this
Given the limited availability of staff, reporting is too burdensome.
Sometimes competitive grants are out of our rural reach due to the time commitment the staff must commit to in order to apply and complete reports.
We are a BOCES that every district assigns their Title funds over to us. Collaboratively we decide how these funds will be spent. Our Federal Program Director does most of the reporting for our districts.

Flexibility to federal education programs and use of the funds is going to be the key for districts to improve the academic achievement of all students and close the achievement gaps. In many cases, this supplemental funding is insufficient to make the gains, but without it districts likely would not be able to keep a laser focus on the achievement gaps that are affecting so many students, individual schools and districts.
Fed programs can help a lot of students and are very good when there is enough money to make a difference.
The funding allocation for districts is not equitable. By using census data we are not taking into disproportionate underreporting from the groups of people we are in fact trying to reach- those new to the country and living in poverty. Required set asides should not be set asides but additional allocations otherwise we are actually creating less equity by taking away the flexibility of districts that need it most.
We are leery of funding new programs with Title money because of all of the strings attached. Keeping up with reporting requirements may not make it worth receiving the money in the long run.
Please no more unfunded mandates. We appreciated the NCLB waiver. Reporting systems need to be easier for the schools and public to understand. Be sure to ask those of us in the field prior to doing something of significance.
Accountability is good but reporting demographic information to CDE repeatedly takes precious time and money. Reporting needs to be streamlined.
I understand the requirements for ESEA funding, but for a small district this is burdensome.
In a highly mobile community (a lot of immigrants and migrant workers) basing the allocations on Census Data is misleading. The students within the district that need help are not represented in the funding allocations in a less affluent and mobile communities.
At times, it is tempting to decline federal funds because of the requirements and reporting associated with them. However, we do receive enough funds from federal sources that we cannot afford to make this step without additional revenue to supplement the loss that would occur if we did decline federal funds.
Congress needs more input from those of us "in the field and classrooms' to understand the depth of current student needs and be open to suggestions/possibilities from the folks held accountable for student achievement and growth. I have been in education for 46 years and have seen many changes...both good and bad...and yet have not heard the voices of colleagues and peers who are the ones addressing student needs every day!
Don't cut these valuable programs; instead please continue to improve these programs so we can invest in our future - our children.
Let the states and districts direct the resources to meet student needs
Fund full day Kindergarten Do not have Kindergarten to GOLD assessment
When a school is doing well, ask how they can support instead of having the schools have to justify everything they ask for.
I support the federal government and want desperately for the country to bounce out the economic doldrums that we are experiencing. But, that being said, it is difficult to understand why there is soooooooo much red tape for everything. I have been in education for 31 years. I am actually really good at my job, but I am ready to leave education because it has turned into a sea of forms and an ocean of compliance requirements. Really! It has stopped being about kids. We have lost our way. The people who are making the regulations are too far away from children. Anyone of you reading this need to spend one week in a school!
The future of economically disadvantaged students MUST be attended to in order to break the cycle of poverty. Any programs associated with education improvements must be sensitive to individual state & district issues that are barriers to providing students with adequate supports for home and school.
Even though the amount is a very small part of our budget as a whole, it is an important part. Some of the paperwork and reporting requirements seem unnecessary, but understandable.
We have had to reduce the number of Title I funded teachers in a targeted assistance program from 2.0 to 1.0 FTE due to federal funding cuts, which limits our capacity to remedy significant reading deficiencies.
The Title I coordinator should not require more reports than are necessary for the grant.
The recent Civil Rights report was an worthless reporting process which provides data that influences

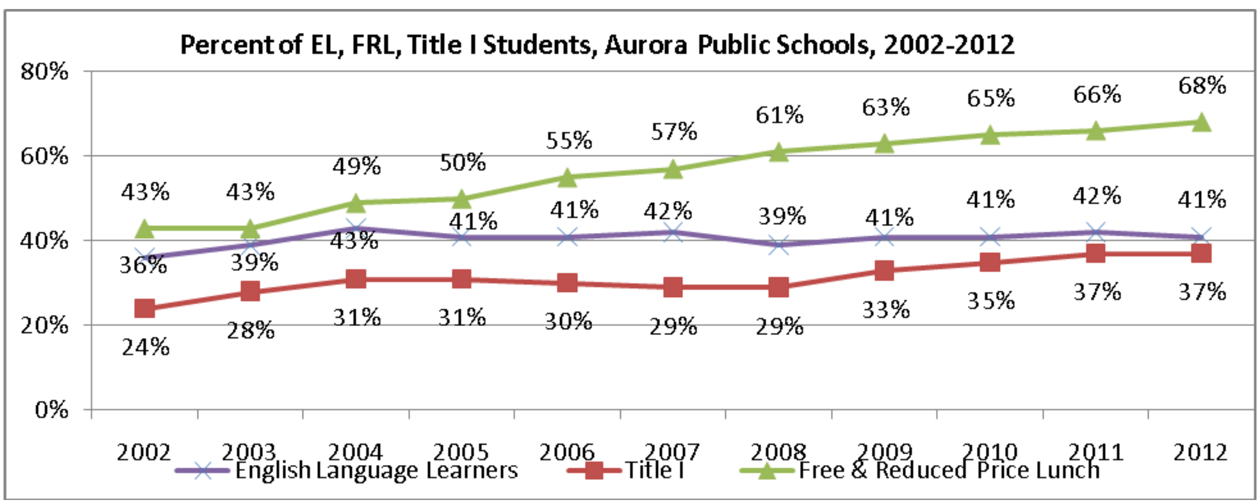
nothing in the classroom
Leave education up to the local and state governments.
These programs need to be fully funded!
Adequately fund mandates.
Make a decision! Stop playing politics and protect and support public education. PS- Charter Schools don't work any better than public. Check the data
The cut back in the past 2 years has been extremely difficult especially for rural districts. This money is extremely important for at risk students and families and needs to increase instead of decrease.
Get rid of some of the high cost management at the federal and state levels and release those funds to districts. We don't need more rules, regs, or paperwork! We need either personnel or money to do our jobs.
Congress should look at following the Colorado model of fewer reports, i.e. one report that would include data for all interested parties. Only collect data that will be used to enhance education.
I feel that there is often a sentiment that underachieving schools are filled with teachers and administrators who don't care if students learn and therefore grant funds are best used for paying others to teach the kids through programs such as Supplemental Educational Services, School Choice and paying non-public schools where local students attend. In my experience, this “Bad School” theory is almost never the case. Educators care about kids with a very few exceptions. They might need some guidance in research and best practices on how to turn a school around, but pulling funds from a struggling school is the opposite of what needs to take place.
None
I believe that reporting is important to continued success of programs, however, because there is not enough money to fund a position to do this, the responsibility falls on my shoulders which takes away from instructing students.
As a small district (1500 students) there is only me to do all the various types of reporting for state and federal accountability. That is extremely burdensome and takes away from my ability to support the instructional & curricular needs of our district
Our District is fairly cutting-edge when it comes to accountability, strategies, and goal-setting. The best outcomes, based upon that lens, arrive from the ability to be able to align our goals in a sensible way, instead of trying to "herd cats" by meeting too many goals in too many directions. Aligning the federal resources to MEASURABLE goals already used at the state level for the at-risk population will allow us to use a laser-like focus towards achieving what we need to for those students, instead of using our time to figure out how we can meet all of the reporting and funding use mandates work while making a minimal impact on student achievement.
ESEA funding is critical to educational equity in our nation. This should be one of our highest priorities.
Education is funded at very high levels. The education system is broken in that many levels work to justify their performance, lack of performance and the rate of pay. Teachers in rural districts frequently do not make enough to even be above poverty themselves, yet, large urban districts are over bloated with excess revenue based on property tax revenues and student counts. Perhaps looking at the return on investment is needed where education is concerned. Throwing money at a broken jar is never going to fix the jar.
THESE FUNDS DO NOT SUFFICIENTLY SUPPORT THE LEGISLATIVE MANDATES.
Less strings and less paperwork help us get our jobs done better.
It would be helpful to allow some room to move funds from one grant to another. It would also be great if everything did not need to match 100% between the summaries and grants. We have also found that items you used to be able to purchasing grants funds, you cannot longer purchase. Example: certain software is no longer eligible.
We spend more time writing reports than we do helping students.

Appendix C – District Case Studies – Aurora and Strasburg

Adams-Arapahoe 28J School District (Aurora Public Schools)

Aurora is the 56th largest city in the U.S. and the second largest city in the metro area behind Denver.[196] Between 2000 and 2010, Aurora's population grew by 16 percent, from 276,393 people in 2000 to 325,078 people in 2010. Aurora straddles three Colorado counties: Arapahoe, with 86 percent of the city's population, Adams, 14 percent of population, and Douglas, 0.05 percent of population. In 2010, Most of Aurora's residents over age 25 have at least a high school diploma or equivalent (84.7 percent). Most residents work in management/professional occupations (29.5 percent) or sales and office occupations (27.9 percent). Nineteen percent of residents work in service occupations, 11. 2 percent work in production/transportation and 12.0 percent work in construction/maintenance operations. The city's 2010 median household income of $50,468 is lower than the state's median household income of $57,700.[197]

In 2012, the Aurora Public Schools (APS) served 39,835 students.[198] Small Area and Income Poverty (SAIPE) data indicate that 26 percent of Aurora school district children aged 5 to 17 years live in poverty (10,363 children).[199] Thirty-seven percent of students are English Learners—86 percent of which are native Spanish speakers. Students come from 130 different countries and speak 120 different languages.[200] According to CDE 2012 pupil membership data, 81 percent of APS students are minority, 68 percent qualify for the free or reduced-price lunch program, and 36 percent participate in the Title I program. The chart below shows the growth in APS English learners, free or reduced price eligible students, and Title 1 students from 2002 to 2012.



Source: CDE Fall Pupil Membership, 2002-2012

196 City of Aurora, 2012 https://www.auroragov.org/cs/groups/public/documents/document/013586.pdf
197 American Community Survey (ACS) Fact Finder, 2011 inflation adjusted dollars
198 Aurora Public School Demographics (on-line), 2012
199 SAIPE School District Estimates, 2011
200 Aurora Public School Demographics (on-line), 2012

In 2012, APS entered its second year of accredited with Priority Improvement plan, the second lowest category of district accreditation, meaning that the district did not fully meet statewide performance standards. Under ESEA, districts or schools that do not meet statewide performance standards for two consecutive years must offer children the option to transfer to a higher-performing school in the same district (school choice). In the following year, districts must also offer supplemental education services (SES). ESEA stipulates that school districts set-aside 20 percent of their Title I funds for SES and choice and districts must send written notification to parents. Under Colorado's ESEA Flexibility waiver, APS is required to set aside 15 percent (about $1.7 million for APS). Any unused funds in one school year revert back to general Title I funds the following school year.

In addition to the SES and choice set-aside, a district in Priority Improvement or Turnaround status must also set-aside 10 percent of its Title I allocation for professional development in those areas where the district is not meeting state expectations. Districts with Title I allocations of $500,000 or more are also required to set aside one percent for parental engagement; of that one percent, 95 percent must go to Title I schools.

"SES and choice set-asides just sit there…unused…they aren't helping kids"

SES and choice are frustrating for APS for several reasons. First, the amount set aside is restricted to the designated use. "Not only does the research show that these programs don't help improve academic achievement, we can't put the unused funds to use in ways that would help other Title I kids…it just sits there until the following year…unused." APS struggles with too many service providers, many of whom offer tutoring that is not in sync with what the district is doing. This disconnect doesn't help, instead it "causes problems for kids, for parents, for schools…" The district feels the same disconnect with the choice option: "[R]esearch shows that most people don't change schools because poor performance…kids may change schools due to behavior problems…but generally not because of low performance."

"It would be nice for districts to have some autonomy in SES and Choice…Something like innovative districts have…"

APS has made the strategic decision to focus on a different type of choice that is "within" schools, not "between" schools. In all APS K-12 schools, students are given a choice to choose an academic track that they are interested in (Technology, Health, Business, Arts and Communication). Students may choose to change tracks but keeping students interested from the beginning improves student outcomes. APS believes that this type of choice better serves students, parents, and the community. However, because of its obligations to the SES and choice options, district personnel believe they spend unnecessary time on administrative issues (such as sending out parent letters, dealing with SES providers, figuring out transportation problems, and so on) that could be better spent helping students using the district's chosen strategy.

"It would be nice to have more flexibility in how funds are used…"

Overall, APS leaders feel they have a good system for tracking and reporting ESEA-related activities, and they feel they can address comparability and supplement-not-supplant issues with relative ease. One interviewee said that "comparability is a good idea for making sure Title I dollars are going where they should." The problem for APS is that the state says that districts must first try to meet comparability by calculating student to teacher ratio before trying alternative methods. This works for most districts that assign both FTEs and categories of personnel to schools. However, APS assigns schools a set number of FTEs and then gives school principals have the flexibility to allocate those teachers in ways that meet the needs of that particular school. As a result, student to teacher ratios have too much variation to show comparability. From APS' perspective, CDE knows this but still insists that APS calculate student teacher ratio before any of the alternatives. As one administrator said, "It would be nice, if you know what works, to just do the calculation once."

District personnel feel that charter schools within APS do cause some additional administrative burden when it comes to comparability. Charter schools get Title I funds from the district, but they have more autonomy than traditional district schools and are not in the district financial system. As a result, "It's hard to get the instructional budgets for charters." The problem from APS' perspective is that the district has no real authority to oversee charter school use of Title I funds. "If for some reason the charter collapses, the district has to pick up the pieces…it's not a level playing field…"

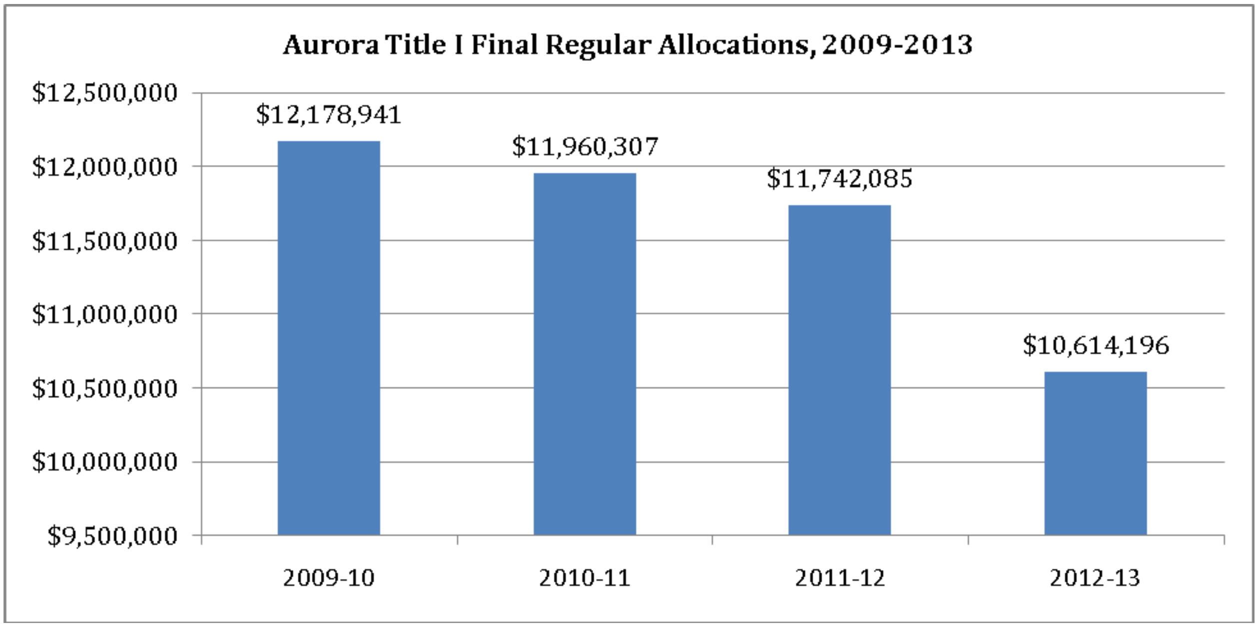
Similar to comparability, APS interviewees believed that supplement-not-supplant is a good concept. However, "It would be nice to have more flexibility around what is supplement and what is supplant. That can get tricky especially with everything changing all of the time."

Rank –order of funding creates some problems for APS. The biggest problem is that those funds have to go to high-poverty schools, even if some high-poverty schools are also already high-performing schools. Administrators argue that putting additional money in already successful schools is not the best investment when there are lower-poverty/low-performing schools that could really use those funds to help students.

One APS respondent stressed that more autonomy at district level to consolidate funds would be helpful—even if the district or school is not in Priority Improvement or Turnaround status. For example, when a school district is on Turnaround or Priority Improvement, they are required to set aside 10 percent of Title I funds for learning needs. There is flexibility to use those funds district-wide in schools with the greatest academic need. Some high poverty schools are doing really well, and some lower poverty schools are doing poorly. In this way, the district can transfer much-needed Title I funds to a lower poverty school that is not performing well. "But, if you're not on Turnaround or Priority Improvement you don't have the same option… It's an incentive to stay on Priority Improvement so you can have the flexibility to use the funds for highest need schools."

"It would be nice to have some funds set-aside to use for high need schools regardless of school performance…funds just seem to be decreasing every year…Title I has something like 600 'must" and "shall" in the law which are really hard to decipher…Still, it's good to keep the spirit of Title I—those funds need to go to help economically disadvantaged kids..."

The chart below shows the decline in Title I allocations to Aurora Public Schools. The 2009-10 amount of $12.1 million does not include the ARRA appropriation of $9.9 million.



Source: CDE NCLB Allocations & Fiscal Files Final Regular Allocations, 2009 – 2013; Dollars not adjusted for inflation; 2009 allocation excludes ARRA – Chart shows Title I allocations only.

"It would be nice to do the paperwork just once a year…"

APS is fairly satisfied with Title II funding. While ten percent of Title I dollars are used for professional development, APS uses Title II for professional development in math and reading. The monies are used to pay salaries of district-wide coaches that are assigned to schools. Teachers in every school get professional training in math and literacy from coaches. Title II is fairly flexible which has allowed APS to use the funds for teacher recruitment and retention.

Because APS in a Priority Improvement district, it completes a consolidated application each year. As part of the application, the district completes a Title II financial statement. This is the same financial statement that the district does for the state. But the state requires the district to complete the financial report a second time.

"Title III funding is too restrictive…we can't pay teacher salaries with the funds and, teachers are what we need most of all…"

APS has more than 15,000 English learners and a total Title III budget of $1 million. APS also receives Title III set-aside funds for immigrants. Of all the ESEA funding steams, Title III has the least flexibility and minimal funding. The state provides some additional funding for English learners, which is helpful but not sufficient. Currently, the district has seven FTEs for English learners - not enough teachers to meet the need. Title III funds can be used for professional development for English language teachers but the funds cannot be used for salaries, and APS needs qualified English language teachers.

For example, APS missed one of three AMAOs and is on an improvement plan—meaning that they must describe their plan for addressing the problem in their annual Unified Improvement Plan (UIP). But there are no funding consequences for being on Priority Improvement. APS believes that a large part of the problem is too few English language instructors.

Another problem is the cost of testing. Title III cannot be used for testing costs and "English learner testing costs are significant…it often requires one teacher to sit with one student throughout the entire test…"

Last year, APS was in violation of the Office of Civil Rights (OCR). "Federal and state rules don't always sync with OCR," said one interviewee. Since the violation, APS and OCR have put in place a compliance agreement.

General District Information

District Setting

USDOE Designation: City, Large – Locale Code 11 – Territory inside an urbanized area and inside a principal city with population of 250,000 or more

CDE Designation: Denver-Metro

Total Number of Schools in District**:** 59

- Preschools 1
- Elementary Schools 26
- P-8/K-8 4
- Middle Schools 6
- 6-12 Academy School 1
- Comprehensive High Schools 4
- P-20 School 1
- On-line School 1
- Pilot Schools 4
- Voc/Tech College 1
- Gifted/Talented School 1
- Charter Schools 6
- Home School Support Program 1

Schools Receiving Title 1 Funds:

- Elementary 19
- Middle Schools 4
- Non-public Schools 4

Average Salary by Setting for Professional Instruction, 2002 and 2011

Setting	Number of Districts		FTE		Classroom Instruction Avg. Salary		Instructional Support Avg. Salary		Other Instructional Support Avg. Salary	
	2002	2011	2002	2011	2002	2011	2002	2011	2002	2011
Denver-Metro	***16***	***16***	***23,830***	***25,670***	***$46,032***	***$53,709***	***$54,529***	***$58,814***	***$50,532***	***$59,065***
Urban-Suburban	24	25	11,864	13,132	$41,023	$44,966	$46,505	$49,971	$45,294	$50,628
Outlying City	13	13	2,602	2,392	$38,631	$43,960	$42,182	$47,646	$40,671	$46,308
Outlying Town	49	50	4,425	4,364	$36,941	$42,633	$42,606	$46,992	$38,680	$45,986
Rural	86	86	2,547	2,333	$33,335	$38,206	$37,520	$39,347	$31,176	$45,180
BOCES	23	19	199	116	$36,421	$41,533	$35,542	$46,694	$39,619	$45,592
STATE AVERAGE					$42,663	$49,042	$49,607	$54,470	$47,428	$55,044

Source: CDE Full-Time Equivalence (FTE), Average Salary by Setting for Professional-Instruction, 2002 and 2011 (latest data available)

Enrollment (P-12) and FTE, 2002 and 2012

	2002		2012	
	District	**State**	**District**	**State**
Total Student Enrollment	32,253	751,862	39,835	863,561
Total Number of FTE Staff	1,765		2,064	

Source: CDE Pupil Membership and Pupil Teacher Ratios, 2002 and 2012

Students by Instructional Program and FRL, 2002 and 2012

Percent of Students by Instructional Program						
	2002		**2012**		**Percentage Point Change 2002-2012**	
	District	**State**	**District**	**State**	**District**	**State**
Gifted and Talented	4.5%	6.3%	5.1%	7.7%	0.6%	1.4%
Students with Disabilities	10.8%	10.1%	10.3%	9.8%	-0.5%	-0.3%
English Learners	35.6%	11.5%	39.0%	14.4%	3.4%	3.0%
Immigrant	0.2%	1.4%	3.9%	0.0%	3.7%	-1.4%
Migrant	2.1%	0.7%	0.3%	0.3%	-1.8%	-0.4%
Title I	23.3%	15.4%	35.8%	22.9%	12.5%	7.5%
Percent FRL (P-12)	*43.0%*	*29.0%*	68.0%	*41.9%*	*25.0%*	*-6.1%*

Source: CDE Pupil Membership by Instructional Program and Pupil Membership by Free and Reduced Lunch Eligibility, 2002 and 2012

Cohort Four Year On-Time Graduation Rates, 2008-09 and 2011-12

	2008-2009		**2011-2012**	
	District	**State**	**District**	**State**
All Students	74.6%	70.7%	48.0%	75.4%
Special Education	44.1%	50.5%	27.9%	52.7%
English Learner	34.0%	47.1%	29.2%	53.3%
Economically Disadvantaged	45.9%	55.3%	64.4%	61.4%

Source: CDE Four-Year On-Time Graduation Rates by Cohort, 2008-09 and 2011-12

Percent of District Total Operating Budget (excluding capital) that is NCLB

2010-2011	**Expenditures**	**% of Total Operating Budget[a]**
District Revenue (all sources)	$382,126,113	3.9%
Title I	$11,960,307	3.1%
Title II	$1,668,534	0.4%
Title III	$1,213,476	0.3%
Total Federal Allocations	$14,842,317	

Source: CDE School District Revenues and Expenditures and NCLB Final Regular Regulations

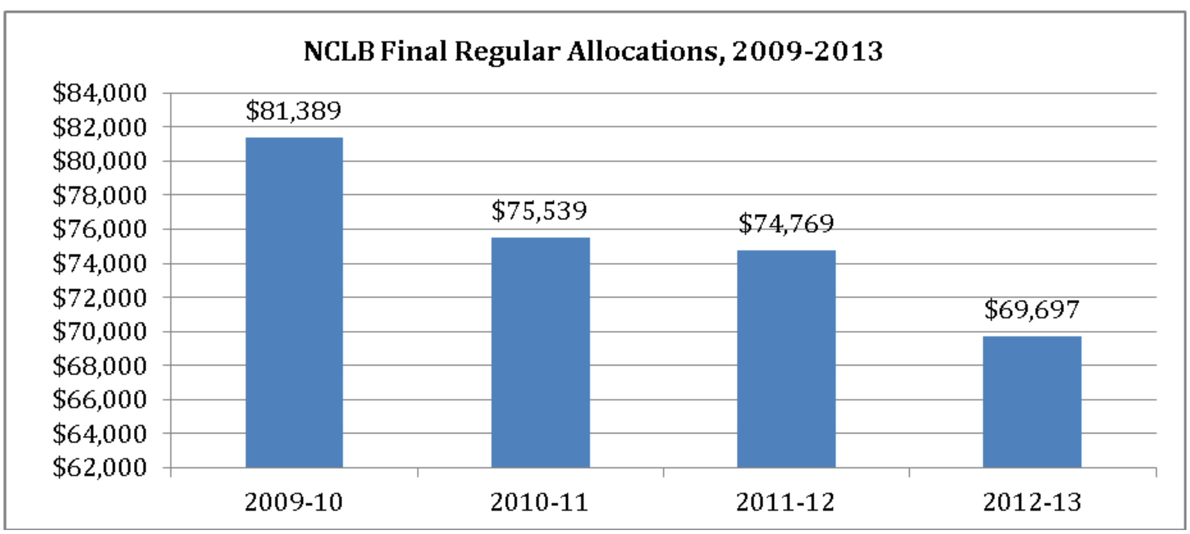
[a]Percent Total Budget based on Total District Revenues (i.e. Federal, State, and Local excluding capital construction) and all NCLB allocations.

Strasburg 31J School District

Strasburg, in Adams County, is a small rural town about 36 miles east of Denver. Since 2000, the town has experienced significant population growth, from 1,811 people in 2000 to 2,447 people in 2010 (35 percent increase). Most Strasburg residents aged 25 and older (92 percent) have graduated from high school or have some type of post-secondary education. Most residents work in sales/office (37 percent) or management/ business (25 percent) occupations. Strasburg's median household income of $74,400 is substantially higher than the state's median household income of $57,700.[201] According to the U.S. Census, Small Area Income and Poverty Estimates (SAIPE), the Strasburg school district has a relatively low child poverty rate—eight percent in 2011 (latest available data). Strasburg has one elementary school, one middle school, and one high school.

Strasburg did not participate in the Title I program until 2009 when the state began to more closely align state and federal accountability guidelines. Strasburg targets its Title I dollars for K-5 for early literacy. All Title I monies go to pay the salary of the district's only Title I instructor. Because there is only one elementary school and one instructor, supplement-not-supplant and comparability requirements are not major concerns for this district. Title I funding, however, makes up less than one percent of the district's total operating budget and allocations have steadily declined even as the percentage of disadvantaged students has climbed. Strasburg administration noted:

> *Rural districts have an unequal burden. ESEA funding and reporting is geared toward urban needs not rural needs…It would be nice if CDE or USDOE had a size factor that takes into account a small districts reporting capabilities compared to a larger district. There are a lot of requirements and a great deal of time spent on managing everything—with very little funding in return.*



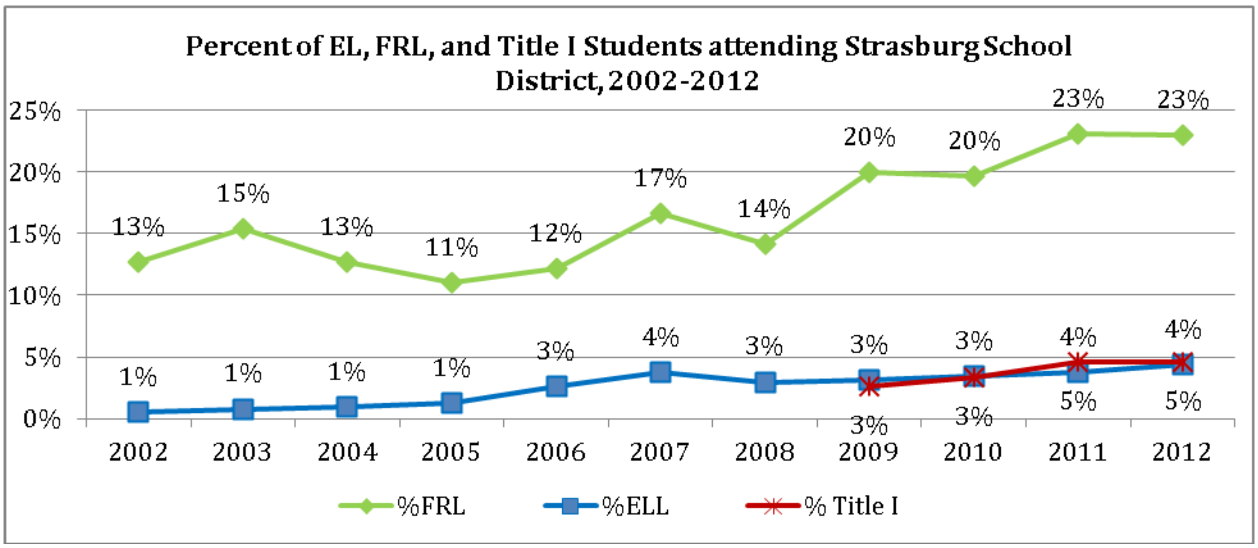
Source: CDE NCLB Allocations & Fiscal Files Final Regular Allocations, 2009 – 2013; Dollars not adjusted for inflation; 2009 allocation excludes ARRA.

---

[201] American Community Survey (ACS) Fact Finder, U.S. Census, 2012

In addition to declining ESEA allocations, the district has experienced four consecutive years of diminishing state and local funding. As a consequence, teachers have not had any cost-of-living increases or bonuses and they have seen cuts to their health and retirement benefits. Still, the district's teaching staff is stable. Between 2010-11 and 2011-12, the district saw only 1.6 percent in teacher turnover.[202] As Title I funds and state and local funds decrease, "…there's not enough to take care of growing need for disadvantaged kids, technology needs…there's just not enough dollars to cover the costs."

The following chart shows the percentage of English Learners (EL), FRL, and Title I students in Strasburg from 2002 to 2012. As the chart shows, poverty climbed from 13 percent to 23 percent during this time period. Since 2006, the percentage of EL students has remained relatively stable between 2002 and 2012. Since 2009, the percentage of Title I students has ranged between three percent and five percent.



Source: CDE Fall Pupil Membership, 2002-2012

"We don't qualify for REAP or RLIS"

When Congress enacted NCLB , they recognized that rural districts tend to face unique challenges in providing a quality education to all students. In an effort to address this reality, Congress created the Rural Education and Achievement Program (REAP) as part of NCLB. There are two programs in REAP, each with very stringent eligibility requirements. If a district does not meet these requirements, it neither receives additional Title I dollars (either SRSA or RLIS); nor is it able to utilize REAP-Flex, which provides districts with a great deal of flexibility in using their ESEA funding. While Strasburg meets the definition of rural, it does not qualify for the REAP program.

Strasburg is classified as rural under both Colorado and the USED definitions of rural. However, Strasburg has qualified for neither REAP nor RLIS since 2006. USED gives Strasburg a locale code of 8, meaning that it is located inside a metropolitan statistical area (MSA) with a population of fewer than 2,500 people. With a locale code of 8, Strasburg qualifies for the Rural Education Achievement Program (REAP) if, in addition to a locale code of 7 or 8, the district's

[202] Strasburg School District 31-J, 2011-12 District Accountability Committee Report

average daily attendance is less than 600. Strasburg does not meet the average daily student population requirement. According to CDE membership data, Strasburg's student enrollment totaled 1,001 children in 2012.

Under USED regulations, rural districts with a locale code of 6, 7, or 8 *and* at least 20 percent of enrolled children living in poverty may be eligible for the Rural Low Income Schools (RLIS) program. Poverty is determined using U.S. Census, Small Income Area and Poverty (SAIPE) data. In 2011, SAIPE data showed the school district's poverty was less than 10 percent. As such, Strasburg does not qualify for RLIS. If the percent of eligible free or reduced-price lunch (FRL) were as a measure of poverty instead of SAIPE data, Strasburg would meet the 20 percent poverty threshold. CDE fall pupil membership data indicate that 23 percent of children enrolled in Strasburg schools qualify for the free or reduced-price lunch program (FRL).[203]

USED Determination of REAP/SRSA and RLIS Eligibility for Strasburg School District, 2006 – 2012

School Year	Locale codes of schools in the LEA	Each school has a locale code of 7 or 8	Average Daily Attendance	Is county population density less than 10 persons/sq. mile	Percentage of children from families below poverty line	Does LEA meet low-income poverty requirement	Does each school in LEA have locale code 6, 7 or 8	SRSA Rural Eligible	RLIS eligible
2012	8	YES	877	NO	5.91	NO	YES	NO	NO
2011	8	YES	887	NO	12.58	NO	YES	NO	NO
2010	8	YES	896	NO	8.78	NO	YES	NO	NO
2009	8	YES	871	NO	12.62	NO	YES	NO	NO
2008	8	YES	933	NO	9.22	NO	YES	NO	NO
2007	8	YES	819	N0	6.89	NO	YES	NO	NO
2006	8	YES	842	NO	6.85	NO	YES	NO	NO

Source: USDOE Annual SRSA Eligibility Spreadsheets, 2006-2012

"Rural districts have an unequal burden…BOCES is a big help for some of this."

Strasburg's Title II and Title III allocations are pooled with the Title II and Title III allocations of more than 20 school districts. The East Central Boards of Cooperative Educational Services (ECBOCES) provides administrative oversight, arranges for and provides services and professional development opportunities. For Strasburg and the other districts, pooling of resources allows districts to access a greater range of services and trainings than they would otherwise. For example, in 2012-13, Strasburg received a total of $9,604 in Title II dollars and $2,601 in Title III dollars. The amount "isn't enough to do much of anything" for our educational staff. ECBOCES provides quality professional development for opportunities for all of its districts—opportunities that individual districts would not be able to afford on their own. "BOCES helps a great deal…we have had trouble getting the type of professional development we need…with 20 plus

[203] CDE Fall Pupil Membership, 2012 - Public school children qualify for free lunches if their family's income is less than 130 percent of the federal poverty level ($29,965 for a family of four in 2012); children qualify for reduced-price lunches if their family's income is less than 185 percent of the federal poverty level.($42,643 for a family of four in 2012).

districts it's hard to meet everyone's needs but, we're working on better targeting professional development to district needs."

Not only do the districts get better professional development training, they do not have to worry about reporting requirements or grant management. This is a significant help to Strasburg and other small districts that feel overwhelmed with ESEA paperwork. "We just don't have the staff to manage everything." In addition, BOCES is able to search for and write grants for other funding opportunities. Even with 20 plus districts, ECBOCES has trouble securing some competitive grants such as Investing in Innovation because they cannot meet the grant guidelines for minimum size requirement (100,000 to 500,000 students), match requirements, or show that they will have a large-scale impact.

"Technology is a big problem for small districts"

Strasburg and other small districts often struggle to meet the reporting requirements for CDE and USED and to keep up with ever-changing rules. In part, this is due to a limited number of staff who is stretched too thin. It is also due to an inadequate technological infrastructure. Many small districts lack the necessary software and equipment to meet reporting requirements. Without help from the state or from the federal government, it will be nearly impossible to align systems and meet reporting requirement—especially as reporting requirements continue to grow.

"ESEA funding and reporting is geared toward urban needs, not rural…"

Strasburg is a small rural community with one elementary school, one middle school, and one high school. The median household income is relatively high, yet the district is experiencing growing percentages of FRL students. At the same time poverty is growing, Title I funding is declining. While Strasburg is designated as rural under USDOE, it does not qualify for any of the programs Congress intended to help rural school districts. This is due to stringent eligibility requirements and inaccurate measures of student poverty. While Strasburg believes that Title I funding is valuable to the district's disadvantaged students, ESEA funding is less than one percent of the district's annual total operating budget. The combination of minimal Title I funding a growing population in need, insufficient technological infrastructure, and increasing ESEA reporting requirements concerns district staff. Increasingly, staff is weighing the benefit of Title I compared to the costs of providing administrative oversight. In contrast, Title II and Title III funds are overseen by ECBOCES which removes administrative responsibility and provides Strasburg with better professional development and training opportunities than it could otherwise afford.

Strasburg School District Information

District Setting

USDOE Designation:	Rural, locale code 8
CDE Designation:	Rural
Total Number of Schools in District:	3
• Number Elementary	1
• Number Middle School	1
• Number High School	1

Schools Receiving Title I Funds: 1

- Targeted Assistance Program: Yes (Early Reading Literacy for K-5 students)
- Schoolwide Assistance: No
- Number Title I FTE Instructors: 1

Average Salary by Setting for Professional Instruction, 2002 and 2011

Setting	Number of Districts		FTE		Classroom Instruction Avg. Salary		Instructional Support Avg. Salary		Other Instructional Support Avg. Salary	
	2002	2011	2002	2011	2002	2011	2002	2011	2002	2011
Denver-Metro	16	16	23,830.1	25,669.7	$46,032	$53,709	$54,529	$58,814	$50,532	$59,065
Urban-Suburban	24	25	11,863.5	13,132.2	$41,023	$44,966	$46,505	$49,971	$45,294	$50,628
Outlying City	13	13	2,602.0	2,391.8	$38,631	$43,960	$42,182	$47,646	$40,671	$46,308
Outlying Town	49	50	4,424.7	4,364.3	$36,941	$42,633	$42,606	$46,992	$38,680	$45,986
Rural	***86***	***86***	***2,547.0***	***2,333.1***	***$33,335***	***$38,206***	***$37,520***	***$39,347***	***$31,176***	***$45,180***
BOCES	23	19	199.1	115.9	$36,421	$41,533	$35,542	$46,694	$39,619	$45,592
STATE AVERAGE					$42,663	$49,042	$49,607	$54,470	$47,428	$55,044

Source: CDE Full-Time Equivalence (FTE), Average Salary by Setting for Professional-Instruction, 2002 and 2011 (latest data available)

Enrollment (P-12) and FTE, 2002 and 2012

	2002		2012	
	District	State	District	State
Total Student Enrollment	823	751,862	1,001	863,561
Total Number of FTE Staff	41	---	56	---

Source: CDE Pupil Membership and Pupil Teacher Ratios, 2002 and 2012

Students by Instructional Program and FRL, 2002 and 2012

	2002		2012		Percentage Point Change 2002-2012	
	District	State	District	State	District	State
Gifted and Talented	0.0%	6.3%	3.8%	7.7%	3.8%	1.4%
Students with Disabilities	0.0%	10.1%	15.3%	9.8%	15.3%	-0.3%
English Learners	0.5%	11.5%	4.4%	14.4%	3.9%	3.0%
Immigrant	0.0%	1.4%	0.0%	0.0%	0.0%	-1.4%
Migrant	0.0%	0.7%	0.2%	0.3%	0.2%	-0.4%
Title I[b]	0.0%	15.4%	4.6%	22.9%	4.6%	7.5%
Percent FRL (P-12)	13.0%	29.0%	23.0%	41.9%	10.0%	-6.1%

Source: CDE Pupil Membership by Instructional Program and Pupil Membership by Free and Reduced Lunch Eligibility, 2002 and 2012

[b]Note: Strasburg did not participate in Title I until 2009

Cohort Four Year On-Time Graduation Rates, 2008-09 and 2011-12

	2008-2009		2011-2012	
	District	**State**	**District**	**State**
All Students	92.8%	70.7%	84.4%	75.4%
Special Education	90.0%	50.5%	85.7%	52.7%
English Learner	100.0%	47.1%	60.0%	53.3%
Economically Disadvantaged	92.3%	55.3%	80.0%	61.4%

Source: CDE Four-Year On-Time Graduation Rates by Cohort, 2008-09 and 2011-12

Fiscal Agent or Consortia: Yes (ECBOCES for Title II, Title III)
REAP-Flex: No
SRSA: No
RLIS: No

Percent of District Total Operating Budget (excluding capital) that is NCLB

Budget Year 2010-2011	**Expenditures**	**Percent of Total Operating Budget that is NCLB** [a]
District Revenue (all sources)	$7,069,453	0.9%
Title I	$69,697	1.0%
Title II	$9,605	0.1%
Title III	$2,601	0.0%
Total Federal Allocations	$81,903	

Source: CDE School District Revenues and Expenditures and NCLB Final Regular Regulations
[a]Percent Total Budget based on Total District Revenues (i.e. Federal, State, and Local excluding capital construction) and all NCBL allocations for the year.

Appendix D – Colorado's ESEA Flexibility Waiver Approval Letters

<u>February 9, 2012 Approval Letter</u>

February 9, 2012

Mr. Robert Hammond
Commissioner of Education
State Department of Education
201 East Colfax Avenue, Suite 500
Denver, CO 80203-1799

Dear Commissioner Hammond:

I am pleased to approve Colorado's request for ESEA flexibility. I congratulate you on submitting a request that demonstrates Colorado's commitment to improving academic achievement and the quality of instruction for all of the State's elementary and secondary school students.

Last fall, the U.S. Department of Education (Department) offered States the opportunity to request flexibility from certain requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, in exchange for rigorous and comprehensive plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. This flexibility is intended to support the groundbreaking reforms already taking place in many States and districts that we believe hold promise for improving outcomes for students. We are encouraged by the innovative thinking and strong commitment to improving achievement for all students that is evident in Colorado's request.

Our decision to approve Colorado's request for ESEA flexibility is based on our determination that the request meets the four principles articulated in the Department's September 23, 2011, document titled *ESEA Flexibility*. In particular, Colorado has: (1) demonstrated that it has college- and career-ready expectations for all students; (2) developed, and has a high-quality plan to implement, a system of differentiated recognition, accountability, and support for all Title I districts and schools in the State; (3) committed to developing, adopting, piloting, and implementing teacher and principal evaluation and support systems that support student achievement; and (4) provided an assurance that it will evaluate and, based on that evaluation, revise its administrative requirements to reduce duplication and unnecessary burden on districts and schools. Our decision is also based on Colorado's assurance that it will meet these four principles by implementing the high-quality plans and other elements of its request as described in its request and in accordance with the required timelines. In approving Colorado's request, we have taken into consideration the feedback we received from the panel of peer experts and Department staff who reviewed Colorado's request, as well as Colorado's revisions to its request in response to that feedback.

The waivers that comprise ESEA flexibility are being granted to Colorado pursuant to my authority in section 9401 of the ESEA. A complete list of the statutory provisions being waived is set forth in the table enclosed with this letter. Consistent with section 9401(d)(1) of the ESEA, I am granting waivers of these provisions through the end of the 2013–2014 school year. At that time, Colorado may request an extension of these waivers. Please note that this approval does not include Colorado's request for a waiver of certain requirements to redefine the Annual Measurable Achievement Objectives required under Title III of the ESEA, which is not included in ESEA flexibility. We will respond to Colorado's Title III waiver request separately.

In the coming days, you will receive a letter from Michael Yudin, Acting Assistant Secretary for Elementary and Secondary Education, containing additional information regarding Colorado's implementation of ESEA flexibility, as well as information regarding monitoring and reporting. Please note that the Department will closely monitor Colorado's implementation of the plans, systems, and interventions detailed in its request in order to ensure that all students continue to receive the assistance and supports needed to improve their academic achievement. Colorado continues to have an affirmative responsibility to ensure that it and its districts are in compliance with Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age in their implementation of ESEA flexibility as well as their implementation of all other Federal education programs. These laws include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, the Age Discrimination Act of 1975, and requirements under the Individuals with Disabilities Education Act.

A copy of Colorado's approved request for ESEA flexibility will be posted on the Department's Web site at: http://www.ed.gov/esea/flexibility/requests. Again, I congratulate you on the approval of Colorado's request for ESEA flexibility and thank you for the work that you and your staff have done. I look forward to continuing to support you as you implement Colorado's ESEA flexibility request and work to improve the quality of instruction and academic achievement for all students.

Sincerely,
Arne Duncan
cc: Governor John Hickenlooper
Keith Owen, Associate Commissioner

Provisions Waived Through Approval of Colorado's Request for ESEA Flexibility		
ESEA Section	Description	Notes
State-Level Reservations for School Improvement		
1003(a)	Requires State educational agency (SEA) to reserve 4 percent of its Title I, Part A allocation for school improvement activities and to distribute at least 95 percent to local educational agencies (LEAs) for use in Title I schools in improvement, corrective action, and restructuring	The reservation is not waived; SEA may distribute section 1003(a) funds to LEAs for use in priority and focus schools
School Improvement Grants		

1003(g)	Requires SEA to award School Improvement Grant (SIG) funds to LEAs with Title I schools in improvement, corrective action, or restructuring	Waiver permits SEA to award SIG funds to an LEA to implement one of the four SIG models in any priority school
2013–2014 Timeline		
1111(b)(2)(E) - (H)	Establishes requirements for setting annual measurable objectives (AMOs)	Waiver permits SEA to set new ambitious but achievable AMOs
Schoolwide Poverty Threshold		
1114(a)(1)	Requires 40 percent poverty threshold to be eligible to operate a school-wide program	Waiver permits LEA with less than 40 percent poverty to operate a school-wide program in a priority school or a focus school that is implementing a school-wide intervention
School Improvement Requirements		
1116(b) (except (b)(13))	Requires LEA to identify schools for improvement, corrective action, and restructuring with corresponding requirements	1116(b)(13), which requires LEA to permit a child who has transferred to remain in the choice school through the highest grade in the school, is not waived
LEA Improvement Requirements		
1116(c)(3) and (5) – (11)	Requires SEA to identify LEAs for improvement and corrective action with corresponding requirements	
1116(e)	Requires SEA and LEAs to take a variety of actions to offer supplemental educational services to eligible students in schools in improvement, corrective action, restructuring	
Reservation for State Academic Achievement Awards Program		
1117(b)(1)(B)	Limits the schools that can receive Title I, Part A funds reserved for State awards program	Waiver allows funds reserved for State awards program to go to any reward school

Highly Qualified Teacher Plan Accountability Agreement Requirement		
2141(c)	Requires SEA/LEA agreement on use of Title II, Part A funds for LEAs that miss AYP for three years and fail to make progress toward reaching annual objectives for highly qualified teachers	Waiver includes existing agreements and applies to restrictions on hiring paraprofessionals under Title I, Part A
Limitations on Transferability of Funds		
6123(a)	Limits to 50 percent the amount an SEA may transfer from a covered program into another covered program or into Title I, Part A	Waiver applies to the percentage limitation, thereby permitting SEA to transfer up to 100 percent from a covered program
6123(b)(1)	Limits to 50 percent or 30 percent the amount an LEA may transfer from a covered program into another covered program or into Title I, Part A	Waiver applies to the percentage limitations as well as to the restrictions on the use of transferred funds
6123(d)	Requires modification of plans and notice of transfer	
6123(e)(1)	Transferred funds are subject to the requirements of the program to which they are transferred	Waiver permits an LEA to exclude funds transferred into Title I, Part A from the base in calculating any set-aside percentages
Rural Schools		
6213(b)	Requires LEAs that fail to make AYP to use funds to carry out the requirements under ESEA section 1116	
6224(e)	Requires SEA to permit LEAs that fail to make AYP to continue to receive a Small, Rural School Achievement grant only if LEA uses funds to carry out ESEA section 1116	

[1] The corresponding regulations that implement these statutory provisions are also waived. Any ESEA statutory provision not listed in this table is not waived.

May 3, 2012 Approval Letter

May 3, 2012

The Honorable Robert Hammond
Commissioner of Education
Colorado Department of Education
201 E. Colfax Avenue, Suite 500
Denver, Colorado 80202

Dear Commissioner Hammond:

I am writing in response to the Colorado Department of Education's (CDE's) request to waive certain requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. In particular, CDE requested waivers of the requirements of (1) ESEA sections 1116(a)(1)(A)-(B) and 1116(c)(1)(A) and the corresponding regulatory provisions that require each local educational agency (LEA) and the State educational agency (SEA) to determine adequate yearly progress (AYP) for all schools and LEAs, respectively; and (2) ESEA sections 1113(a)(3)-(4) and 1113(c)(1) and the corresponding regulatory provisions that require an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. CDE submitted this request in response to a voluntary opportunity that the U.S. Department of Education provided to all SEAs requesting ESEA flexibility.

In addition, as part of its request for ESEA flexibility, CDE requested a waiver of ESEA section 3122(a)(3)(A)(iii), which requires an SEA to include, as the third of three annual measureable achievement objectives (AMAO 3) used in making accountability determinations under Title III of the ESEA, objectives based on making adequate yearly progress (AYP) for the subgroup of English Learners in accordance with section 1111(b)(2)(B) of the ESEA. Making AYP includes meeting annual measurable objectives (AMOs) in reading/language arts and mathematics, the minimum participation rate of 95 percent, graduation rate for high schools, and the other academic indicator for elementary and middle schools. CDE requested this waiver so that it may use for AMAO 3 the same targets for English Learners as CDE uses for all students in its State-developed differentiated recognition, accountability, and support system in reading, writing, and mathematics, in place of the State's new AMOs.

After reviewing CDE's request, I am granting, pursuant to my authority under ESEA section 9401, the following waivers:

- A two-year waiver of ESEA sections 1116(a)(1)(A)-(B) and 1116(c)(1)(A) and the corresponding regulatory provisions so that CDE and its LEAs are not required to make AYP determinations based on assessments administered in the 2011–2012 and 2012–2013 school years, respectively. I am granting this waiver because it is likely to increase the quality of instruction and improve the academic achievement of students by enabling CDE and its LEAs to focus on implementing the differentiated recognition, accountability, and support system described in its approved ESEA flexibility request that CDE believes will better differentiate among schools and provide more useful information on LEA and school performance to educators, parents, and the public than AYP does.

- A two-year waiver of ESEA sections 1113(a)(3)-(4) and 1113(c)(1) and the corresponding regulatory provisions so that CDE may permit, for the 2012–2013 and 2013–2014 school years, an LEA to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that CDE has identified as a priority school even if that school has a lower poverty rate than other Title I-participating schools in the LEA. I am granting this waiver based on my determination that, because these high schools have low graduation rates, receiving Title I, Part A funds would enable them to better increase the quality of their instruction and improve the academic achievement of all of their students, and concurrently to increase their graduation rates.

- A two-year waiver of ESEA section 3122(a)(3)(A)(iii) so that CDE may use, for purposes of AMAO 3, the same targets that is uses in the growth component of its State-developed differentiated recognition, accountability, and support system in reading, writing, and mathematics, in place of the State's new AMOs. Colorado's targets for student performance are an essential part of its School and District Performance Frameworks, on which the State's new Title I accountability system is based. Although Colorado's AMOs reflect the State's aspirations for the proficiency of all students and all student subgroups, the School and District Performance Frameworks are directly linked to school and district identification, as well as the supports and consequences related to that identification. Accordingly, granting this waiver is likely to increase the quality of instruction and improve the academic achievement of English Learners by providing consistent and meaningful improvement targets for LEAs that are directly linked to the support to be provided to English Learners through CDE's accountability system.

As CDE has assured in its request, it must:

- Report on its State report card the following data, which mirror the components of AYP:
  - For the "all students" group and each subgroup described in ESEA section 1111(b)(2)(C)(v)(II) —
    - information on student achievement at each proficiency level;
    - data comparing actual achievement levels to the State's annual measurable objectives (AMOs);
    - the percentage of students not tested;
    - performance on the other academic indicator for elementary and middle schools; and
    - graduation rates for high schools.

- Ensure that its Title I LEAs report the above-referenced data on their local report cards for each school and the LEA as a whole.

- Continue to comply with all other reporting requirements in ESEA section 1111(h)(1)(C) and ensure that its LEAs continue to comply with all other reporting requirements in ESEA section 1111(h)(2)(B), including the requirement for both the SEA and LEAs to report information on achievement at each proficiency level disaggregated by gender and migrant status.

- Hold any Title I-eligible high schools that are served through the waiver of ESEA section 1113 accountable for meeting CDE's new AMOs and include those schools in its differentiated recognition, accountability, and support system as it does all other Title I schools.

- Ensure that any LEA that takes advantage of the waiver of ESEA section 1113 with respect to Title I-eligible high schools implements interventions in those schools consistent with the turnaround principles as set forth in CDE's ESEA flexibility request and complies with all other Title I requirements with respect to the schools.

- Continue to include in AMAO 3 a determination of whether the subgroup of English Learners has met the required 95 percent participation rate and the CDE's graduation rate goal or target or the other academic indicator, as applicable.

I appreciate the work you are doing to move forward with implementing your approved ESEA flexibility request. If you have any questions, please contact Victoria Hammer via email or phone at Victoria.Hammer@ed.gov or 202-260-1438.

Sincerely,
/s/
Deborah S. Delisle
Assistant Secretary for Elementary and Secondary Education

Appendix E – Overview of ESEA Programs Relevant to Rural Schools and Districts

The information in this appendix is taken from USED Guidance on the Rural Education Achievement Program, 2003 and 2007.

Like urban schools, rural schools face challenges in meeting the educational needs of children living in poverty and growing numbers of racially, ethnically, and linguistically diverse student populations. In addition, rural districts are challenged by longstanding technology gaps, transportation problems, and low teacher salaries.

Recognizing the unique characteristics of rural schools, NCL B established the Rural Education Achievement Program (REAP) under Title VI, Part B of the Elementary and Secondary Education Act. REAP provides eligible districts with flexibility in spending their ESEA funds so that they may better meet NCLB requirements. REAP also provides additional financial assistance to qualifying districts. This program differs from other aspects of NCLB in that a qualifying rural district is *entitled* to funds and need not formally apply. REAP is an important program that gives rural districts greater flexibility in their use of federal funding under NCLB to help them meet the many challenges associated with being rural.

REAP has two programs, each with different eligibility requirements. The Small, Rural School Achievement Program (SRSA) in turn has two subcomponents: REAP-Flex and the SRSA Grant Program. The other program that is part of REAP is the Rural, Low-Income Schools Program (RLIS). Any district eligible for SRSA is automatically ineligible for RLIS. A discussion of specific eligibility and program requirements for each program follows.

Small, Rural School Achievement Program (SRSA)

REAP provides funding flexibility (REAP-Flex) and additional funds (SRSA Grant Program) to assist rural districts in meeting their state's definition of adequate yearly progress (AYP). Eligibility is restricted by statue. Districts meeting these requirements do not compete but are *entitled* to funds. Award amounts are issued annually and based on a formula.

Eligible districts request SRSA Grant Program funds directly from the USDOE (a list of eligible districts is posted on USDOEs website each year and SEAs are expected to notify all LEAs of their eligibility and provide them with a date by which they need to notify the SEA that they plan to participate). Any district eligible for SRSA is automatically ineligible for RLIS (discussed below).

To be eligible for REAP-Flex and the SRSA Grant Program, districts must meet two criteria:

1. Have a total average daily attendance of less than 600 students, *or* serve only schools that are located in counties that have a population density of fewer than 10 persons per square mile, **and**
2. Serve only schools that have a NCES school locale code of 7 or 8 (as assigned by the U.S. Department of Education's National Center for Education Statistics) or that are located in an area defined as rural by a state

governmental agency. In instances where a state agency defines the area as rural, the USDOE must agree to the rural designation before the district may participate in REAP Flex.

Though funds go directly to eligible LEAs, the U.S. Department of Education's General Administrative Regulations (EDGAR) require SEA administrative responsibilities over REAP-Flex and for ensuring that LEAs comply with SRSA program accountability provisions. After the third year of participation a SEA must make determinations regarding an LEA's continuing participation in both REAP-Flex and the SRSA grant program.

Charter school eligibility for the SRSA program (i.e., REAP-Flex and the SRSA grant program) depends upon whether the charter school is a LEA or a school within a LEA. If a charter school is a LEA, it is eligible to participate in REAP-Flex and receive an allocation under the SRSA grant program so long as it meets the LEA eligibility criteria. A charter school that is a public school but not a LEA may participate in the program through its LEA, provided the LEA meets the SRSA eligibility criteria.

REAP-Flex

An LEA that meets the eligibility requirements of the SRSA program may exercise REAP-Flex authority without the approval of either its SEA or the USED. However, before exercising REAP-Flex authority, an eligible LEA must annually notify its SEA of its intent to do so by the notification deadline established by the SEA. While an LEA that meets the SRSA program requirement does not have to apply to the USED before exercising its REAP-Flex authority, it must apply to the USED to receive a SRSA grant.[204]

REAP-Flex allows districts a great deal of flexibility in using their ESEA funding. There are no set-aside requirements and districts may use REAP-Flex for one or more of the following program activities authorized under ESEA:

- Title I, Part A (Improving Achievement for Disadvantaged Children)
- Title II, Part A (Improving Teacher Quality State Grants)
- Title II, Part D (Educational Technology State Grants)
- Title III (Language Instruction for Limited English Proficient and Immigrant Students)
- Title IV, Part A (Safe and Drug-Free Schools and Communities)
- Title IV, Part B (21st-Century Community Learning Centers)
- Title V, Part A (State Grants for Innovative Programs).

SRSA Grant Program

The SRSA Grant Program provides districts with additional funds based on formula. SRSA Grant Program funds may be used for one or more of the following activities authorized under REAP-Flex: [205]

- Title II, Part A (Improving Teacher Quality State Grants)

[204] U.S. Department of Education, Guidance on the Rural Education Achievement Program, 2003, 2007
[205] Ibid

- Title II, Part D (Educational Technology State Grants)
- Title IV, Part A (Safe and Drug-Free Schools and Communities)
- Title V, Part A (State Grants for Innovative Programs).

Research by the U.S. Department of Education indicates that REAP-Flex is widely used. Nearly 80 percent of REAP-Flex districts report using the flexibility to maintain stable levels of effort for ongoing activities affected by budget cuts. For example, a district with a reduction in Title I, A funding used its REAP-Flex to offset the reduction. Other common uses of flexibility include targeting services to particular student groups and providing support to high-priority programs that improve academic outcomes.[206]

Rural, Low-Income Schools Program (RLIS)

REAP's second program, the Rural, Low-Income Schools Program (RLIS), is intended to provide financial assistance to rural districts that are not SRSA-eligible. Like the SRSA program, districts do not compete but are *entitled* to funds if they meet basic eligibility requirements. Eligibility is restricted by statute.

The RLIS program is a state-administered formula program. SEAs apply for funds through the consolidated state application or a program-specific application. States receive their funds after approval of their consolidated or program-specific application. Eligible LEAs apply directly to their State for funds. If a SEA does not participate, awards are issued by USED either competitively or by formula. Not all LEAs that are eligible for an RLIS award will receive a grant, especially in states in which the SEA chooses to award RLIS subgrants on a competitive basis. SEAs may reserve up to five percent of its RLIS allocation for administrative costs and to provide technical assistance to LEAs eligible to receive RLIS funds.

A charter school is eligible to participate in the RLIS program if it is an LEA and meets LEA eligibility criteria. If a charter school is not an LEA, it may participate in the program through its LEA if the LEA meets the RLIS eligibility criteria.

LEAs are eligible to apply to the SEA for a subgrant if:

1. The LEA is not eligible for a grant under the Small Rural Achievement Program (SRSA)
2. If 20 percent or more of children ages 5 to 17 years served by the LEA are from families with incomes below the poverty line, and
3. All schools served by the LEA are designated with a school local code of 6, 7, or 8.

The USDOE allocates funds to SEAs based on a ratio of the number of students in average daily attendance served by eligible LEAs to the number of all students served by eligible LEAs in the state for a given fiscal year. SEAs award grants to eligible LEAs on one of the following: competitive basis; according to a formula based on the number of students in average daily attendance; or according to an alternative formula agreed on by the USDOE. LEAs may use RLIS funds for:

- Teacher recruitment and retention, including signing bonuses and other financial incentives
- Teacher professional development

[206] Ibid

- Educational technology, including software and hardware
- Parental involvement activities
- Activities authorized under the Safe and Drug-Free Schools and Communities State Grant program
- Activities authorized under Title I, A
- Activities authorized under Title III

Appendix F – Additional District Data

Comparison of FY09 CDE Fall Pupil Membership and Title I-A Grants with Estimated FY09 Title I-A Grants with Altered Weights for the Targeted Grant and Education Finance Incentive Grant (EFIG) Formulas for Colorado's Highest Poverty Districts (≥60 Percent FRL)

CDE District Setting District Name	CDE FY09 Fall Pupil Membership # FREE AND REDUCED	CDE FY09 Fall Pupil Membership % FREE AND REDUCED	CRS Estimated FY 09 Targeted Grant without Number Weighting	Gain (Loss) in FY09 Targeted Grant Due to Number Weighting in Current Formula	CRS Estimated FY 09 EFIG Grant without Number Weighting	Gain (Loss) in FY09 EFIG Grant Due to Number Weighting in Current Formula	CRS Estimated FY 09 EFIG and Targeted Grants without Number Weighting	Gain (Loss) FY09 Due to Number Weighting in Current Formula Targeted and EFIG
Denver Metro								
ADAMS COUNTY 14	6,096	82.13%	$663,000	-$127,800	$771,000	-$282,400	$3,176,100	($410,200)
ADAMS-ARAPAHOE 28J	22,677	61.34%	$2,736,700	$397,100	$3,142,100	$133,400	$12,950,900	$530,500
DENVER COUNTY 1	54,485	70.53%	$7,101,400	$2,359,500	$8,235,500	$2,848,900	$33,293,300	$5,208,400
MAPLETON 1	3,950	68.40%	$269,600	-$33,600	$305,000	-$89,300	$1,430,300	($122,900)
SHERIDAN 2	1,245	78.06%	$268,100	-$51,700	$367,700	-$134,700	$1,256,700	($186,400)
WESTMINSTER 50	7,383	74.86%	$788,600	$59,300	$880,300	-$71,300	$4,066,400	($12,000)
Urban-Suburban								
HARRISON 2	7,643	67.58%	$762,300	$7,100	$841,100	-$112,800	$3,832,200	($105,700)
PUEBLO CITY 60	12,565	68.65%	$1,764,300	-$106,100	$2,113,000	-$470,500	$8,017,300	($576,600)
Outlying City								
ALAMOSA RE-11J	1,390	67.94%	$238,600	-$46,000	$288,400	-$105,600	$1,073,800	($151,600)
EAST OTERO R-1	933	70.79%	$317,200	-$61,100	$454,700	-$166,600	$1,290,700	($227,700)
FORT MORGAN RE-3	2,213	68.47%	$122,600	-$16,600	$142,500	-$41,900	$710,800	($58,500)
LAMAR RE-2	1,090	63.45%	$156,500	-$28,200	$184,100	-$54,000	$740,300	($82,200)
TRINIDAD 1	903	64.45%	$86,500	-$16,700	$96,100	-$31,900	$450,000	($48,600)
Outlying Town								
CENTER 26 JT	537	88.76%	$144,900	$0	$179,800	-$800	$627,500	($800)
CROWLEY COUNTY RE-1-J	331	66.87%	$76,100	-$14,700	$99,000	-$36,300	$328,000	($51,000)
DEL NORTE C-7	409	68.51%	$85,200	-$16,400	$109,600	-$40,200	$368,300	($56,600)
LAKE COUNTY R-1	764	63.25%	$51,800	-$7,600	$60,300	-$18,200	$299,300	($25,800)
LAS ANIMAS RE-1	452	76.35%	$77,800	-$15,000	$100,900	-$37,000	$335,100	($52,000)
ROCKY FORD R-2	653	74.37%	$210,400	-$40,600	$302,000	-$110,600	$855,400	($151,200)
WELD COUNTY S/D RE-8	1,513	62.44%	$98,100	-$18,900	$114,300	-$41,900	$483,900	($60,800)
Rural								

PLATTE VALLEY RE-3	79	68.70%	$5,400	$0	$5,600	-$600	$31,900	($600)
AGUILAR REORGANIZED 6	98	73.68%	$22,100	-$1,000	$28,100	-$700	$117,900	($1,700)
BETHUNE R-5	88	69.84%	$10,700	-$1,300	$13,200	-$3,100	$53,300	($4,400)
CAMPO RE-6	33	67.35%	$6,300	-$1,200	$8,200	-$1,900	$31,600	($3,100)
CENTENNIAL R-1	178	80.91%	$34,100	-$6,100	$44,800	-$13,800	$183,000	($19,900)
HOLLY RE-3	196	67.35%	$33,000	-$5,800	$39,700	-$11,600	$153,500	($17,400)
HUERFANO RE-1	448	72.26%	$86,300	-$9,400	$107,300	-$23,500	$401,600	($32,900)
KIM REORGANIZED 88	38	62.30%	$0	$0	$0	$0	$0	$0
MANZANOLA 3J	142	80.23%	$50,200	-$9,700	$76,500	-$28,000	$197,500	($37,700)
MIAMI/YODER 60 JT	203	61.70%	$32,300	-$6,200	$37,000	-$13,600	$153,300	($19,800)
MONTE VISTA C-8	751	63.59%	$89,800	-$17,300	$105,100	-$38,500	$417,300	($55,800)
NORTH CONEJOS RE-1J	736	70.03%	$88,700	-$17,100	$106,900	-$39,200	$400,900	($56,300)
PLAINVIEW RE-2	54	65.06%	$3,100	-$600	$3,600	-$1,300	$14,400	($1,900)
SANFORD 6J	219	64.41%	$19,100	-$3,700	$21,600	-$7,800	$92,200	($11,500)
SIERRA GRANDE R-30	195	77.38%	$44,300	-$8,500	$62,300	-$20,500	$188,300	($29,000)
SILVERTON 1	45	68.18%	$4,200	-$800	$4,700	-$1,600	$23,300	($2,400)
SOUTH CONEJOS RE-10	203	72.50%	$57,000	-$11,000	$75,400	-$26,600	$248,500	($37,600)

NCES, Common Core of Data, Locale Codes: Metro –Centric and Urban-Centric

Previous Metro-Centric Locale Codes

1 - Large City: A central city of a CMSA or MSA, with the city having a population greater than or equal to 250,000.
2 - Mid-size City: A central city of a CMSA or MSA, with the city having a population less than 250,000.
3 - Urban Fringe of a Large City: Any territory within a CMSA or MSA of a Large City and defined as urban by the Census Bureau.
4 - Urban Fringe of a Mid-size City: Any territory within a CMSA or MSA of a Mid-size City and defined as urban by the Census Bureau.
5 - Large Town: An incorporated place or Census-designated place with a population greater than or equal to 25,000 and located outside a CMSA or MSA.
6 - Small Town: An incorporated place or Census-designated place with a population less than 25,000 and greater than or equal to 2,500 and located outside a CMSA or MSA.
7 - Rural, Outside MSA: Any territory designated as rural by the Census Bureau that is outside a CMSA or MSA of a Large or Mid-size City.
8 - Rural, Inside MSA: Any territory designated as rural by the Census Bureau that is within a CMSA or MSA of a Large or Mid-size City.

Current Urban-Centric Locale Codes

11 - City, Large: Territory inside an urbanized area and inside a principal city with population of 250,000 or more.
12 - City, Midsize: Territory inside an urbanized area and inside a principal city with population less than 250,000 and greater than or equal to 100,000.
13 - City, Small: Territory inside an urbanized area and inside a principal city with population less than 100,000.
21 - Suburb, Large: Territory outside a principal city and inside an urbanized area with population of 250,000 or more.
22 - Suburb, Midsize: Territory outside a principal city and inside an urbanized area with population less than 250,000 and greater than or equal to 100,000.
23 - Suburb, Small: Territory outside a principal city and inside an urbanized area with population less than 100,000.
31 - Town, Fringe: Territory inside an urban cluster that is less than or equal to 10 miles from an urbanized area.
32 - Town, Distant: Territory inside an urban cluster that is more than 10 miles and less than or equal to 35 miles from an urbanized area.
33 - Town, Remote: Territory inside an urban cluster that is more than 35 miles from an urbanized area.
41 - Rural, Fringe: Census-defined rural territory that is less than or equal to 5 miles from an urbanized area, as well as rural territory that is less than or equal to 2.5 miles from an urban cluster.
42 - Rural, Distant: Census-defined rural territory that is more than 5 miles but less than or equal to 25 miles from an urbanized area, as well as rural territory that is more than 2.5 miles but less than or equal to 10 miles from
43 - Rural, Remote: Census-defined rural territory that is more than 25 miles from an urbanized area and is also more than 10 miles from an urban cluster.

For more information on the Buechner Institute for Governance, please visit out website and learn more about:

- Current research projects
- Areas of expertise
- Leadership and professional development programs
- Our public policy forum series and other hosted events
- Solutions—Health policy journalism, ideas and analysis
- The Buechner Institute for Governance Advisory Board

www.spa.ucdenver.edu/BIG

303-315-2490

big@ucdenver.edu

Buechner Institute
for Governance

Lead. Solve. Change.