

Proposed ESSA Comparability Regulation Abuses Local Control of Education and the Separation of Powers

In December when Congress, in a rare instance of bipartisanship, passed the *Every Student Succeeds Act (ESSA)* I hailed it as a law that would “realign the power structure in education, moving decision making authority to states, schools and teachers.” While the actual text of the law still provides a structure that promotes this, the new *Secretary of Education*, John King, has been promoting a regulation to implement the law that threatens to place all of this in jeopardy.

When Senator Lamar Alexander (R-Tenn.), chair of the *Senate Education Committee* and one of the major proponents of ESSA, heard of this proposed regulation he made a major speech blasting the proposal in which he said,

“If this one provision that the department came up with were adopted, these are some of the consequences: It would, number one, require a complete, costly overhaul of almost all of the state and local finance systems in the country. Maybe they need to be overhauled, but we did not decide that they needed to be, and no one is elected in the Department of Education to require that. Number two, it would require forcing of thousands and thousands of teachers to transfer from one school to another school. Perhaps they should transfer, but there are a hundred thousand public schools, there are 3.5 million teachers, and we did not decide in our law that they had to transfer. And the department can't decide that either. It would require states and local school districts to move back to the burdensome practice of detailing every individual cost on which they spend money to provide a basic educational program to all students, which is exactly what we were trying to free states and districts from under the law.” [Education Gadfly, May 13, 2016](#)

The regulation Secretary King is pushing is a new way to implement what is called “comparability.” The concept of comparability is that all schools in a district must be treated in a comparable manner before additional federal funding – intended to improve the quality of schools with large populations of disadvantaged students -- is added. For the past 30 years variations in the personnel expenses from school to school caused by differences in the seniority and training of the staff in schools have not been factored into comparability calculations – as long as the district had a district-wide salary schedule and policies in place to ensure that each school used the same instructional materials and equal numbers of teachers, administrators and other staff. However, because more senior teachers frequently use their seniority to transfer into schools with less challenging student populations the current situation allows for less actual dollars being spent at low poverty schools before the *Title I* resources are added. This policy brief from the [Ed Central](#) explains this complex funding issue in more detail. King’s proposed rule would make dramatic changes to the well-established past practice causing districts to shift significant resources around the district.

This proposal is so extreme that it is also opposed by the NEA, AFT and the *National Governors Association*.

Representative John Kline, (R, Minn.) Chair of the *House Education Committee* in an interview with [Education Week](#) has also opposed the rule making process in general, stating,

"I am not pleased at all. ... It seems to me that the plain language of the statute is that. It is plain language. It is perfectly clear. And when it uses words like 'as determined by the state' that's what it means. Not 'as interpreted by the secretary of education.' So we're watching really, really close. I'm not happy with how it's going right now. ... We've got more still to see. But in general I think the secretary is exceeding the authority granted to him in the statute. We clearly, and repeatedly stated that states would have the decision making authority on a wide range of issues. And the department's already put their own interpretation in there."

King initially attempted to move this proposal through what is called the negotiated rulemaking process, which utilizes a group of practitioners to develop broadly supported rules, but could not generate enough support in the group, so he is on his own in making the change. Of course King is not exactly alone – it is fairly certain that he would not have done this without the knowledge and consent of President Obama.

While the merits of King's proposal may deserve to be debated by policymakers, it is shocking that John King seems to be planning to implement the new policy interpretation unilaterally. This is particularly outrageous in light of the fact that the *Congress* included in ESSA numerous warnings against the *Department of Education* using its regulatory authority to usurp local authority. The important point is that neither Secretary King nor President Obama are policy makers – rather they are policy implementers.

One of the most important concepts that the framers of the *Constitution* put in place was the separation of powers – in which Congress enacts laws, which are interpreted by the courts as necessary, and implemented by the executive branch headed by the President. This separation of powers has served our nation well, preventing all power from becoming concentrated in the hands of one man, the President, and protecting us from the evil that is within all of us. "The heart is deceitful above all things and beyond cure." (Jeremiah 17:9) While Secretary King's intention in promoting this change is no doubt noble, we need to be in prayer that he and President Obama see the danger to our democracy that such a usurpation of power represents and back-off from implementing this regulation.

You can address your comments on these issues or other federal education issues to JMitchell@ceai.org. John Mitchell is the Washington, DC Area Director for the Christian Educators Association.