

111TH CONGRESS
2D SESSION

H. R. 5071

To amend section 1120A(c) of the Elementary and Secondary Education Act of 1965 to assure comparability of opportunity for educationally disadvantaged students.

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 2010

Mr. FATTAH introduced the following bill; which was referred to the
Committee on Education and Labor

A BILL

To amend section 1120A(c) of the Elementary and Secondary Education Act of 1965 to assure comparability of opportunity for educationally disadvantaged students.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ESEA Fiscal Fairness
5 Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are as follows:

1 (1) To remedy the inequitable distribution of
2 State and local funds within the areas served by
3 local educational agencies.

4 (2) To reinforce the supplementary intent of
5 funds made available under title I of the Elementary
6 and Secondary Education Act of 1965, ensuring that
7 these funds serve their original purpose of sub-
8 sidizing the increased costs associated with edu-
9 cating students in concentrated poverty.

10 (3) To address the statutory, regulatory, and
11 enforcement weaknesses that have undermined the
12 role of the comparability requirement in ensuring
13 comparability within school districts.

14 (4) To require the inclusion of real teacher sal-
15 aries in calculations of per-pupil expenditures.

16 (5) To provide sufficient transparency, account-
17 ability, and disclosure to allow parents, communities,
18 educators, and local agency officials to ensure stu-
19 dents have access to the resources they need to
20 achieve at high levels.

21 **SEC. 3. COMPARABILITY OF EXPENDITURES.**

22 Section 1120A(c) of the Elementary and Secondary
23 Education Act of 1965 (20 U.S.C. 6321(c)) is amended
24 to read as follows:

25 “(c) COMPARABILITY OF EXPENDITURES.—

1 “(1) IN GENERAL.—

2 “(A) COMPARABLE FUNDING IN GEN-
3 ERAL.—Except as provided in paragraphs (4)
4 and (5), a local educational agency may receive
5 funds under this part only if the average ex-
6 penditure per pupil of State and local funds in
7 each school served under this part is at least 97
8 percent of the average expenditure per pupil of
9 State and local funds across all schools that are
10 not receiving funds under this part.

11 “(B) COMPARABLE FUNDING AMONG
12 SCHOOLS.—If the local educational agency is
13 serving all of such agency’s schools under this
14 part, such agency may receive funds under this
15 part only if the average expenditure per pupil of
16 State and local funds in each higher poverty
17 school is at least 97 percent of the average ex-
18 penditure per pupil of State and local funds
19 across all lower poverty schools.

20 “(2) EQUIVALENCE.—A local educational agen-
21 cy shall be considered to have met the requirements
22 of paragraph (1), and to be eligible to receive funds
23 under this part, if—

24 “(A) such agency has filed with the State
25 educational agency an up-to-date school-by-

1 school listing of per-pupil expenditures of State
2 and local funds for each school served by the
3 agency; and

4 “(B) the listing identified in clause (i)
5 demonstrates comparability across schools as
6 required by subparagraph (A) or (B) of para-
7 graph (1).

8 “(3) BASIS.—A local educational agency may
9 meet the requirements of subparagraphs (A) and
10 (B) of paragraph (1) across all schools or among
11 schools serving a particular grade span, if the local
12 educational agency compares schools within no more
13 than three grade spans.

14 “(4) MONITORING.—

15 “(A) REGULATIONS BY SECRETARY.—Not
16 later than 4 months after the date of the enact-
17 ment of the ESEA Fiscal Fairness Act, the
18 Secretary shall issue regulations concerning
19 State educational agencies’ and local edu-
20 cational agencies’ responsibilities for meeting
21 the requirements of this subsection.

22 “(B) REGULATIONS BY STATES.—Not
23 later than 6 months after the date on which the
24 regulations required by subparagraph (A) are
25 issued, each State educational agency shall cre-

1 ate and distribute to local educational agencies,
2 and make available to the public, regulations on
3 the responsibilities of local educational agencies
4 for meeting the requirements of this subsection.

5 “(C) PLAN BY LOCAL EDUCATIONAL AGEN-
6 CIES.—Not later than 14 months after the date
7 on which regulations required by subparagraph
8 (B) are distributed, each local educational agen-
9 cy shall develop and submit to the State edu-
10 cational agency a plan, including a time line
11 and annual benchmarks, that will ensure com-
12 parability as described in subparagraphs (A)
13 and (B) of paragraph (1) not later than 3 years
14 after the date on which the regulations required
15 by subparagraph (B) are distributed. The plan
16 shall be made available to the public.

17 “(D) AUDIT.—In each of the fourth and
18 fifth years after the date of the enactment of
19 this Act, the Inspector General of the Depart-
20 ment shall audit 5 States and 10 local edu-
21 cational agencies to determine progress in meet-
22 ing the requirements of this section.

23 “(5) INAPPLICABILITY.—This subsection shall
24 not apply to a local educational agency that does not
25 have more than one building for each grade span.

1 “(6) COMPLIANCE.—For the purpose of deter-
2 mining compliance with paragraph (1), a local edu-
3 cational agency —

4 “(A) shall exclude State and local funds
5 expended for the excess costs of providing
6 English language instruction for Limited
7 English Proficient students as determined by
8 the local educational agency;

9 “(B) shall exclude State and local funds
10 expended for the excess costs of providing serv-
11 ices to children with disabilities as determined
12 by the local educational agency; and

13 “(C) may exclude supplemental State or
14 local funds in any school attendance area or
15 school for programs that meet the intent and
16 purpose of this part.

17 “(7) FORCED TRANSFERS.—Nothing in this
18 subsection shall be construed to require the forced or
19 involuntary transfer of any school personnel to com-
20 ply with subparagraph (A) of paragraph (1).

21 “(8) COMPARABILITY AS MINIMUM STAND-
22 ARD.—

23 “(A) IN GENERAL.—Nothing in this sub-
24 section shall be construed to limit or discourage
25 the allocation of State or local funds to schools

1 served under this part in excess of 100 percent
2 of the average per-pupil expenditure for schools
3 not served under this part.

4 “(B) EXCEPTION.—If the local educational
5 agency is serving all schools under this part,
6 nothing shall be construed to discourage the al-
7 location of State and local funds to any higher
8 poverty schools in excess of 100 percent of the
9 average per-pupil expenditure in lower poverty
10 schools.

11 “(9) PUBLIC REPORTING.—

12 “(A) SCHOOL REPORT CARDS.—Beginning
13 with the first academic year that begins after
14 the date of the enactment of the ESEA Fiscal
15 Fairness Act, and for each academic year there-
16 after, each local educational agency shall in-
17 clude on the school report cards required under
18 section 1111(h)(2) the following:

19 “(i) The average per-pupil expendi-
20 tures of State and local funds for the
21 school.

22 “(ii) The average per-pupil expendi-
23 tures of State and local funds for schools
24 in the local educational agency not served
25 under this part or for lower poverty schools

1 when all schools in the local educational
2 agency are served under this part.

3 “(iii) The mean of average per-pupil
4 expenditures of State and local funds for
5 all schools in the State.

6 “(B) UP-TO-DATE SCHOOL-BY-SCHOOL
7 LISTING.—Beginning with the first academic
8 year that begins after the date of the enactment
9 of the ESEA Fiscal Fairness Act and for each
10 academic year thereafter, the State educational
11 agency shall make publicly available the up-to-
12 date school-by-school listings of per-pupil ex-
13 penditures of State and local funds submitted
14 by each local educational agency, as required by
15 paragraph (2)(A)(i).

16 “(10) DEFINITIONS.—For purposes of this sub-
17 section:

18 “(A) EXPENDITURES.—

19 “(i) IN GENERAL.—The term ‘expend-
20 itures’ means—

21 “(I) salary expenditures for class-
22 room teachers, including not only base
23 salaries but also incentive pay, bo-
24 nuses, and supplemental stipends for
25 mentoring or other additional roles;

1 “(II) salary expenditures for in-
2 structional and instructional support
3 staff who are not classroom teachers
4 (such as principals, librarians, para-
5 professionals, academic coaches, and
6 curriculum specialists), including not
7 only base salaries but also incentive
8 pay, bonuses, and supplemental sti-
9 pends for mentoring or other addi-
10 tional roles;

11 “(III) salary expenditures for
12 noninstructional staff, including stu-
13 dent support staff; and

14 “(IV) nonpersonnel expenditures
15 such as—

16 “(aa) professional develop-
17 ment for teachers and other
18 staff;

19 “(bb) instructional materials
20 and supplies;

21 “(cc) computers, software,
22 and other technology;

23 “(dd) contracted services
24 such as distance learning, art,
25 athletics, and technology services;

1 “(ee) library books and
2 media center materials; and

3 “(ff) such other expendi-
4 tures as the Secretary of Edu-
5 cation may require.

6 “(ii) DETERMINATIONS.—For pur-
7 poses of subclauses (I) and (II) of clause
8 (i), in the determination of salary expendi-
9 tures, salary differentials for years of em-
10 ployment shall be included.

11 “(B) HIGHER POVERTY SCHOOL.—The
12 term ‘higher poverty school’ means a school
13 that is in the highest four quartiles of the per-
14 centage of pupils from low-income families in a
15 local educational agency.

16 “(C) LOWER POVERTY SCHOOL.—The
17 term ‘lower poverty school’ means a school that
18 is in the lowest quartile of the percentage of pu-
19 pils from low-income families in a local edu-
20 cational agency.”.

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