The futility of ESEA’s ‘Maintenance of Effort’ requirement

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With the passage of the House GOP’s version of the ESEA reauthorization, we have begun to see more public protest against one its key provisions: repeal of Title I’s longstanding maintenance of effort (MOE) requirement, which—in its current form—mandates that school districts each year spend state and local resources equivalent to 90 percent of the previous year’s level or suffer a proportionate cut in their ESEA grants.

Despite House Education and the Workforce Chairman John Kline’s (R-Minnesota) years-long campaign against MOE, I so far have seen only tepid opposition from the left. (The Center for American Progress has been on the issue for a while.) But MOE featured prominently in the Obama administration’s recent veto threat, which warned that elimination of MOE “could reduce overall investment in public education.” Perhaps this will spark more attention—but the game is not worth the candle. MOE’s teeth were pulled in 1981 by Ronald Reagan. In its modern form, MOE simply can’t do what its advocates say it will do—i.e., maintain a consistent level of state and local investment in education. And, at least in the current political climate, there is no real chance of restoring its bite.

The history

Enacted as part of the original ESEA back in 1965, MOE was one of the original Title I provisions designed to ensure equitable funding for poor kids. To see what MOE was actually intended to achieve, it is helpful to step back in time and review the poisonous political and racial environment that led to its incorporation into the ESEA:

When faced with an order to integrate, Prince Edward County [Virginia] closed its entire school system in September 1959 rather than integrate. The county kept its entire school system closed until 1964. Many white students were able to get educated at the newly-created Prince Edward Academy, which operated as the de facto school system, enrolling K-12 students at a number of facilities throughout the county [through state-funded “tuition grants”]. Many black students were forced to move in with relatives in other Counties, attend makeshift schools in church basements, or move to northern states to live with host families through a program of the Society of Friends.
This was merely the most florid example of Virginia’s official, state-sponsored “Massive Resistance” campaign against school integration (a campaign that was pursued in more or less subtle ways elsewhere, of course). As a result, when a reform-minded Congress convened to enact the ESEA in 1965, it had recently witnessed the deliberate defunding of public education just across the Potomac—which spurred policymakers to include a MOE provision of the most rigorous kind: Any cut in state and local funding would be met by complete revocation of aid.

But in practice, this bare-bones mandate was unsustainable. What about communities facing genuine financial hardship? To cope with this problem, the U.S. Department of Education adopted a two-pronged approach: First, it gave everyone a “bye” of 5 percent; that is, a district could reduce its per-pupil state and local spending to 95 percent of the previous year’s level without losing eligibility for ESEA funds. Second, districts could receive waivers if a disaster or other unexpected event made even the 95 percent target unobtainable.

Congress acted to tighten things up in 1978, restoring the 100 percent requirement while retaining waivers and easing compliance in some other respects. But this Carter-era spasm of re-regulation was completely reversed when Ronald Reagan won the presidency in 1980. As part of his sweeping deregulatory program, his 1981 Education Consolidation and Improvement Act ratcheted MOE back to 90 percent. Significantly, even if a district failed to hit its 90 percent target, it was not disqualified for a grant—it simply forfeited a share of its ESEA funds proportionate to the shortfall. And that penalty could be waived in the event of exceptional or uncontrollable circumstances, such as a natural disaster, or if the school district faced a “precipitous decline” in its resources.

That is essentially where MOE is today, and it was fatal to any prospect that the federal government could force states and local educational agencies to genuinely maintain their nonfederal spending at a consistent level.

The futility

As it currently exists, the MOE provision is structurally incapable of protecting public education from state and local disinvestment, unless someone tries to reenact the all-or-nothing Prince Edward County scenario. Any school district that really wants to abandon its public obligation to adequately fund education can do so without risking its federal grant. All it has to do is be patient and cut no more than 10 percent per year. In three years, for example, it could cut its funding by 28 percent, and MOE has nothing to say about it.

So there you have it: The ESEA MOE protects only against a highly unlikely, deliberate repudiation of public education but provides little protection against more gradual decay in public investment. In the meantime, hundreds of school districts are constrained to go through the MOE waiver process to deal with the simple effects of a shrinking economy.
The exception

Of course, there is the other MOE elephant in the room: the 100 percent state and local MOE requirement under the Individuals with Disabilities Education Act (IDEA). As recently as 2012, this led to a $36 million dollar penalty against the state of South Carolina. (See a Fordham backgrounder on the IDEA provision here.)

But there many differences between the two MOE requirements; most notably, IDEA was enacted in 1975 with the expectation (some would say “promise”) that the federal government would ultimately provide 40 percent of the cost of funding services for students with disabilities. In light of this (though-as-yet-unfulfilled) quid pro quo, the IDEA 100 percent hold-harmless (which does provide exceptions for things like reduced case-load) arguably has continued salience; it certainly has more teeth. And even Kline—whose ESEA bill would slash authorization caps for ESEA programs—has argued for increased funding for IDEA, against the inclinations of his fellow party members on the House Appropriations Committee.

On the ESEA front, it appears that “equity” advocates are saving their ammunition to beef up Title I comparability, which requires that Title I schools receive state and local resources “comparable” to those received by non-Title I schools in the district. With respect to IDEA, however, any attempt to cut MOE would meet an advocates’ buzz saw.

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