

112TH CONGRESS
1ST SESSION

S. 701

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 SENATE OF THE UNITED STATES

MARCH 31, 2011

Mr. BENNET (for himself and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 “Fiscal Fairness Act”.

5 **SEC. 2. PURPOSES.**

6 The purposes of this Act are as follows:

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

1 (2) To reinforce the supplementary intent of
2 funds made available under title I of the Elementary
3 and Secondary Education Act of 1965 (20 U.S.C.
4 6301 et seq.), ensuring that these funds serve their
5 original purpose of subsidizing the increased costs
6 associated with educating students in concentrated
7 poverty.

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

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

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

19 **SEC. 3. COMPARABILITY OF EXPENDITURES.**

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

23 “(c) COMPARABILITY OF EXPENDITURES.—

24 “(1) IN GENERAL.—

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

12 “(B) COMPARABLE FUNDING AMONG
13 TITLE I SCHOOLS.—In any case where all of the
14 schools served by a local educational agency re-
15 ceive support under this part, such agency may
16 receive funds under this part for a fiscal year
17 only if, for the preceding fiscal year, the aver-
18 age expenditure per pupil of State and local
19 funds in each higher poverty school is at least
20 97 percent of the average expenditure per pupil
21 of State and local funds across all lower poverty
22 schools.

23 “(2) EQUIVALENCE.—A local educational agen-
24 cy shall be considered to have met the requirements

1 of paragraph (1), and to be eligible to continue to
2 receive funds under this part, if—

3 “(A) such agency has filed with the State
4 educational agency a current school-by-school
5 listing of per-pupil expenditures of State and
6 local funds for each school served by the agency
7 for the preceding fiscal year; and

8 “(B) the listing described in subparagraph
9 (A) demonstrates comparability across schools,
10 as required by subparagraph (A) or (B) of
11 paragraph (1).

12 “(3) BASIS.—A local educational agency may
13 meet the requirements of paragraph (1) across all
14 schools or among schools serving a particular grade
15 span, if the local educational agency compares
16 schools within not more than three grade spans.

17 “(4) MONITORING.—

18 “(A) REGULATIONS BY SECRETARY.—Not
19 later than 120 days after the date of enactment
20 of the Fiscal Fairness Act, the Secretary shall
21 issue regulations concerning State educational
22 agencies’ and local educational agencies’ re-
23 sponsibilities for meeting the requirements of
24 this subsection.

1 “(B) REGULATIONS BY STATES.—Not
2 later than 6 months after the date on which the
3 regulations required under subparagraph (A)
4 are issued, each State educational agency re-
5 ceiving funds under this part shall create and
6 distribute to local educational agencies, and
7 make available to the public, regulations on the
8 responsibilities of local educational agencies for
9 meeting the requirements of this subsection.

10 “(C) PLAN BY LOCAL EDUCATIONAL AGEN-
11 CIES.—Not later than 14 months after the date
12 on which regulations required under subpara-
13 graph (B) are distributed, each local edu-
14 cational agency receiving funds under this part
15 shall develop and submit to the State edu-
16 cational agency a plan, including a timeline and
17 annual benchmarks, that will ensure com-
18 parability as described in paragraph (1) not
19 later than 3 years after the date on which such
20 regulations are distributed. The plan shall be
21 made available to the public.

22 “(D) AUDIT.—In each of the fourth and
23 fifth years after the date of enactment of the
24 Fiscal Fairness Act, the Inspector General of
25 the Department shall audit 5 States and 10

1 local educational agencies to determine progress
2 in meeting the requirements of this subsection.

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

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

9 “(A) shall exclude State and local funds
10 expended for the excess costs of providing
11 English language instruction for limited
12 English proficient students as determined by
13 the local educational agency;

14 “(B) shall exclude State and local funds
15 expended for the excess costs of providing serv-
16 ices to children with disabilities as determined
17 by the local educational agency; and

18 “(C) may exclude supplemental State or
19 local funds expended in any school attendance
20 area or school for programs that meet the in-
21 tent and purpose of this part.

22 “(7) NO FORCED TRANSFERS.—Nothing in this
23 subsection shall be construed to require the forced or
24 involuntary transfer of any school personnel in order

1 to comply with subparagraph (A) or (B) of para-
2 graph (1).

3 “(8) COMPARABILITY AS MINIMUM STAND-
4 ARD.—

5 “(A) IN GENERAL.—Nothing in this sub-
6 section shall be construed to limit or discourage
7 the allocation of State or local funds to schools
8 served under this part in excess of 100 percent
9 of the average per-pupil expenditure for schools
10 not served under this part.

11 “(B) EXCEPTION.—In the case of a local
12 educational agency subject to the requirements
13 of paragraph (1)(B), nothing shall be construed
14 to discourage the allocation of State and local
15 funds to any higher poverty schools served by
16 the local educational agency in excess of 100
17 percent of the average per-pupil expenditure in
18 lower poverty schools served by the agency.

19 “(9) PUBLIC REPORTING.—

20 “(A) SCHOOL REPORT CARDS.—Beginning
21 with the first academic year that begins after
22 the date of enactment of the Fiscal Fairness
23 Act, and for each academic year thereafter,
24 each local educational agency shall include on

1 the school report cards required under section
2 1111(h)(2) the following:

3 “(i) The average per-pupil expendi-
4 tures of State and local funds for the
5 school.

6 “(ii) The average per-pupil expendi-
7 tures of State and local funds for schools
8 in the local educational agency not served
9 under this part or, in the case where all
10 schools in a local educational agency are
11 served under this part, for lower poverty
12 schools.

13 “(iii) The mean of average per-pupil
14 expenditures of State and local funds for
15 all schools in the State.

16 “(B) CURRENT SCHOOL-BY-SCHOOL LIST-
17 ING.—Beginning with the first academic year
18 that begins after the date of enactment of the
19 Fiscal Fairness Act and for each academic year
20 thereafter, the State educational agency shall
21 make publicly available the most current school-
22 by-school listings of per-pupil expenditures of
23 State and local funds submitted by each local
24 educational agency, as required under para-
25 graph (2)(A)(i).

1 “(10) DEFINITIONS.—For purposes of this sub-
2 section:

3 “(A) EXPENDITURES.—

4 “(i) IN GENERAL.—The term ‘expen-
5 ditures’ means—

6 “(I) salary expenditures for class-
7 room teachers, including not only base
8 salaries but also incentive pay, bo-
9 nuses, and supplemental stipends for
10 mentoring or other additional roles;

11 “(II) salary expenditures for in-
12 structional and instructional support
13 staff who are not classroom teachers
14 (such as principals, librarians, para-
15 professionals, academic coaches, and
16 curriculum specialists), including not
17 only base salaries but also incentive
18 pay, bonuses, and supplemental sti-
19 pends for mentoring or other addi-
20 tional roles;

21 “(III) salary expenditures for
22 noninstructional staff, including stu-
23 dent support staff; and

24 “(IV) nonpersonnel expenditures
25 such as—

1 “(aa) professional develop-
2 ment for teachers and other
3 staff;

4 “(bb) instructional materials
5 and supplies;

6 “(cc) computers, software,
7 and other technology;

8 “(dd) contracted services
9 such as distance learning, art,
10 athletics, and technology services;

11 “(ee) library books and
12 media center materials; and

13 “(ff) such other expendi-
14 tures as the Secretary may re-
15 quire.

16 “(ii) DETERMINATIONS.—For pur-
17 poses of subclauses (I) and (II) of clause
18 (i), in the determination of salary expendi-
19 tures, salary differentials for years of em-
20 ployment shall be included.

21 “(B) HIGHER POVERTY SCHOOL.—The
22 term ‘higher poverty school’ means a school
23 that is in the highest 3 quartiles of schools
24 served by a local educational agency, based on

1 the percentage of enrolled students from low-in-
2 come families.

3 “(C) LOWER POVERTY SCHOOL.—The
4 term ‘lower poverty school’ means a school that
5 is in the lowest quartile of schools served by a
6 local educational agency, based on the percent-
7 age of enrolled students from low-income fami-
8 lies.”.

○