



Alexander to DOE: Get off my law

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As governor, senator, secretary of Education and long-shot presidential candidate, Tennessee Republican Lamar Alexander has always exuded a sense of optimism.

Which is good, because he is going to need it as he wrestles with the Department of Education over regulations for the Every Student Succeeds Act, the latest rewrite of the federal law governing elementary and secondary education.

“I’m hopeful that in the next 30 to 40 days, we can work with the administration to make sure that the regulations that the U.S. Department of Education is writing are consistent with the law that Congress passed,” Alexander told Watchdog.org.

The source of Alexander’s optimism might be hard to find in the record of the Senate’s dealings with the Obama administration, but the chairman of the Health, Education, Labor, and Pensions Committee and one of the chief architects of ESSA is maintaining his sunny East Tennessee disposition — for now at least.

The supplement-not-supplant provision in the law is designed to ensure federal funding intended for students from low-income areas doesn’t end up being used for programs that should be paid for by local and state funding.

But a separate provision requires comparable spending between schools with many students from low-income families — known as Title I schools — and non-Title I schools.

In trying to serve both those masters, Alexander says DOE is straying from the intent of the law.

DOE proposed a supplement-not-supplant rule that says districts can use various options to show how federal funds are supplementing state and local funding, so long as per-pupil spending in Title I districts is at least equal to the average per-pupil spending in non-Title I schools.

Alexander contends the supplement-not-supplant provision is too prescriptive and runs counter to the whole point of ESSA, which was to dial back federal control over education policy.

“Here’s what your department did on April 1,” Alexander told Education Secretary John B. King Jr. at an April 12 oversight hearing. “You tried to do what Congress did not do last year. And you tried to do it by regulating another separate provision in the law.”

Alexander asserted that DOE has proposed “forcing districts to include teacher salaries in how they measure their state and local spending. And to require that state and local spending in Title I schools be at least equal to the average spent in non-Title schools.”

That, he insisted, was not part of the law, and “would require a complete, costly overhaul of almost all the state and local finance systems in the country.”

Then he got rolling.

“It would force teachers to transfer to new schools, something we did not pass in the law. It would require states and school districts to move back to the burdensome practice of detailing every individual cost to comply with ‘supplement not supplant,’ when the law as expressively written was to relieve some of that burden,” he lectured King. “According to the Council of Great City Schools, your proposed rule would cost \$3.9 billion dollars just for their 69 urban school districts, to eliminate the differences in spending between the schools.”

Alexander cited two specific provisions prohibiting exactly what the DOE is trying to do:

— Section 1118(b)(4): “Nothing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local educational agency uses to allocate State and local funds.”

— Section 1605: “Nothing in this title shall be construed to mandate equalized spending per pupil for a State, local educational agency, or school.”

Alexander said if DOE imposes regulations that contradict or ignore the law, he would urge states to request a hearing with the department. And if nothing came of a hearing, he would encourage states to sue.

‘Somewhat ambiguous’

King fervently defends the proposed rules and insists his department has not overstepped its authority. The goal, he says, is simply to ensure equitable funding.

Sen. Elizabeth Warren, (D-Mass) said the promise of a strong regulatory framework is part of the reason she supported ESSA.

Neal McCluskey, director of the Center for Educational Freedom at the Cato Institute, says none of the regulation-writing turmoil should come as a surprise to anyone who has been paying attention.

“Why has that been a contentious mess? For the reasons many people warned about: The law is somewhat ambiguous about how much power the U.S. Department of Education is given, and the Education Department is writing the regulations in ways that seem to be giving itself too much power,” McCluskey said.

The utter predictability of the disagreement doesn't lessen the irony any, though.

“The regulations to implement a law that was supposed to greatly reduce federal micromanagement may not end up reducing it very much,” McCluskey said.

But none of the jousting has turned Alexander into a sourpuss.

“Public school classrooms are back in the hands of those closest to the children thanks to the new education law that repeals the federal Common Core mandate, reverses the trend toward a national school board and restores local control of public schools to states and 14,000 local school districts,” Alexander told Watchdog.org.