State cautions when to use funding formula for teacher raises

MAY 28, 2015 | JOHN FENSTERWALD

In its first statement on a critical issue facing school boards, the California Department of Education cautioned that under the state’s new funding formula, only in “some limited circumstances” can school districts use money that’s supposed to be spent on services for low-income children and English learners for across-the-board pay raises for teachers.

The “burden” to justify diverting money targeted for these “high-need” students, who also include foster youths, to pay raises is “very heavy,” since it should be spent increasing programs and services for those students, wrote Jeff Breshears, administrator for the education department’s Local Agency Systems Support Office. Breshears’ carefully
worded, four-page letter was sent April 15 to Jim Yovino, superintendent of the Fresno County Office of Education, in response to Yovino’s inquiry.

The California Teachers Association partially disagrees with the guidance, though it appears that many local unions have not challenged the state’s position in local negotiations.

The letter comes at a critical time. Districts are in the final stages of drafting their second annual Local Control and Accountability Plans, or LCAPs, in which they are required to detail goals, actions and spending on eight priority areas the Legislature mandated in passing the Local Control Funding Formula. At the same time, school boards and employee unions are negotiating what in many districts will be the first pay increases in a half-dozen years.

Next year, districts are projected to receive an average of about $1,000 per student in additional money under the funding formula. That is projected to be the biggest one-year funding increase to K-12 schools since the creation of Proposition 98 in 1988. Districts will face pressure from teachers unions and children’s advocacy groups in deciding how to divvy up money between pay raises for staff and restoring and expanding programs in the classroom.

Next year, districts are projected to receive an average of about $1,000 per student in additional money under the funding formula.

Under the funding formula, all districts receive a uniform base amount of funding per student. They also receive supplemental funding for every English learner, low-income and foster youth, plus extra “concentration” dollars when those students make up at least 55 percent of a district’s students. The combined extra money produces about 40 percent funding above the base level per student – and tens of millions of dollars – for a district
like San Bernardino Unified, in which high-needs students make up nearly all of the students.

Yovino was the one who made the inquiry: Under what conditions can any of the supplemental and concentration dollars go toward raises for all teachers? But the question has come up repeatedly this year throughout the state, said Peter Birdsall, executive director of the California County Superintendents Educational Services Association, which represents the state’s 58 county superintendents.

**Narrow exceptions**

The short answer, according to Breshears, is that using supplemental and concentration dollars would not be permitted, because a general raise for all teachers is “paying more for the same level of service,” not an increase or an improvement.

“In some limited circumstances,” however, a district could assert that uncompetitive pay levels harm education for high-needs students by making it hard to attract and retain teachers, Breshears wrote. In that case, a district’s LCAP would have to include evidence comparing teacher turnover rates and pay levels with other nearby districts to show that high-needs students have been disproportionately affected by low pay, justifying using supplemental and concentration dollars to augment salaries.

That’s not all. State law and State Board of Education regulations require districts in which more than 55 percent of students are English learners and low-income students to verify in their LCAPs that a pay raise would be “an effective” strategy in improving services for high-needs students. Districts with fewer than 55 percent high-needs students would face “an extreme if not impossible” burden of arguing that a pay raise would be the “most effective” strategy in improving education for the targeted student groups, Breshears wrote.

In subsequent years, districts would have to update their LCAPs to document, through supporting data, whether the money for raises helped achieve the specific goals “within a reasonable time.” If not, then the district should stop using supplemental and concentration dollars for a pay increase and choose another use. A county
superintendent could withhold approval of the LCAP for failure to comply, Breshears wrote.

However, the funding law does allow other options involving compensation, Breshears wrote. Supplemental and concentration money could fund a longer school day or pay teachers involved in programs specifically for English learners or low-income children, but these expenses must be aligned to one of the priorities in the LCAP, such as improving student engagement or raising student achievement.

**CTA: Raises permissible**

The California Teachers Association interprets the law differently. The Local Control Funding Formula was created to give maximum flexibility to school districts, and that includes creating competitive salaries to reduce teacher turnover, said Claudia Briggs, communications assistant manager for the CTA.

"We believe the law is clear: The money can be used to attract and retain quality teachers in the classroom, to lower class sizes and to restore programs that were cut," said Briggs. And she said the CTA disagrees with the education department's position that districts cannot use supplemental dollars for across-the-board raises if fewer than 55 percent of the students are English learners and low-income children.

"All control dollars are sent with no strings attached to suit the best needs of students. So if the percentage is below 55 percent, districts can absolutely still use those funds" for pay raises, she said.

But two nonprofit organizations that had argued to the state board that it should adopt tight restrictions on the use of supplemental and concentration dollars said Breshears got it right in his interpretation.

This guidance follows what the Legislature and state board intended in writing the Local Control Funding Formula law and regulations, and provides counties "direction as they engage in the review and approval process," wrote Samantha Tran, senior managing director of education policy for Children Now, in an email.
“The letter tracks closely our analysis of how to analyze supplemental and concentration spending,” said John Affeldt, managing attorney of Public Advocates, a legal advocacy firm that is heavily involved in state education policy.

So far, not a point of contention

Two lawyers whose firms together handle contract negotiations for hundreds of school districts said that for the most part local teachers unions have not pressed to use supplemental and concentration money for across-the-board raises. Louis Lozano, principal of the firm Lozano Smith, said he had expected unions to be more aggressive on the issue. He said he was aware of no districts that were deadlocked because of disagreements on the use of supplemental and concentration dollars.

Gregory Dannis, president of the San Francisco law firm Dannis Woliver Kelley, said, “In the majority of districts, unions are not taking issue, at least outwardly,” with the position that base dollars are what is available for pay raises. In contracts he has negotiated, supplemental dollars have paid for stipends for teachers to work extra time in schools with targeted students, more professional development days, reduced class sizes beyond the required 24-to-1 student-teacher ratio for K-3 grades and additional counselors to serve high-needs students. One district, which he declined to name, is at an impasse because the teachers union wants across-the-board raises without increased or improved services, he said.

Breshears’ letter has not been widely circulated, although it was discussed at length last month at a workshop of administrators from county offices of education, said Kathryn Catania, deputy superintendent of the Fresno County Office of Education. County offices are responsible for approving districts’ LCAPs and are creating uniform approaches for reviewing them, Catania said.

Birdsall cautioned that Breshears’ letter provides general advice; the circumstances for using supplemental and concentration dollars will vary among districts. Noting that most of Fresno County’s districts are poor and rural, a couple of districts have asked whether they could include the cost of gasoline in their salary schedules using supplemental dollars, to compete with urban districts that pay more, Catania said.
GOING DEEPER

- Letter from Jeff Breshears on using supplemental and concentration dollars for teacher raises, April 2015
- Local Control Funding Formula regulations and LCAP template adopted by State Board of Education, November 2014
- Public Advocates/ACLU checklist of questions for school districts regarding use of supplemental and concentration dollars, 2015

Several studies of first-year LCAPs found that many districts failed to document how much supplemental and concentration funding they received. They also didn’t detail how they planned to spend the money and didn’t distinguish between ongoing programs and improved and expanded services. County offices of education eventually approved every LCAP, granting leeway for districts that were creating new plans in a compressed time frame. The State Board of Education has since then revised the LCAP template and regulations, making it easier to read and document how supplemental and concentration funds will be used.

Districts are required to state in their LCAPs how much additional supplemental and concentration funding they are getting and how high-needs students will benefit from it. If districts use that money for pay raises and don’t report that in the LCAP, Affeldt said county offices and the public will be able to spot the discrepancy because the numbers won’t add up.

Both Affeldt and Luzano predicted that the focus of pay negotiations with teachers in the coming year will be on the $4 billion in discretionary dollars, outside of funding for the Local Control Funding Formula, that Gov. Jerry Brown is proposing for K-12 schools next year. Brown is encouraging districts to use the money to further implement the Common Core and new science standards. But districts can use the money – technically repayment for past state-mandated costs – however they want. Because it is one-time funding, vulnerable to cuts if state revenue drops, Affeldt and Luzano cautioned against using it to make multi-year salary commitments.