**ANALYSIS OF SIXTY-FIVE PERCENT RULE IN SCHOOL SPENDING**

Requiring school districts to spend at least 65% of their operating budget on "instruction" as defined by the federal government would not enhance student achievement, would have unintended negative consequences, and would move Texas back to measuring process rather than performance.

THE EXECUTIVE ORDER

On August 22, the Governor issued an executive order requiring that "65 percent of school district funds be expended for instructional purposes as defined by the National Center for Education Statistics." (NCES, <http://nces.ed.gov>, is the data collection and analysis office of the U.S. Department of Education, <http://www.ed.gov>) A similar mandate had appeared in versions of HB 2, the school finance bills debated during the special sessions this summer. (For instance, sec. 2C.20 of the House engrossed version of HB 2, 1st Called Session, <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=1&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=00002&VERSION=3&TYPE=B>.) Education Commissioner Shirley Neeley has appointed a task force of superintendents and education service center directors to develop a detailed standard (<http://www.tea.state.tx.us/press/65percentrelease.html>).

THE RULEMAKING PROCESS

Texas does not have cabinet-style government, and the governor has no authority to order the commissioner of education to adopt a particular rule. The governor appoints the commissioner to a term, subject to approval by the Senate. The commissioner must then discharge her duties pursuant to law. Part of her authority includes rulemaking, but she must follow the process set out in the Administrative Procedure Act, and any rule must come within her authority under the Education Code.

The Administrative Procedure Act requires public notice of any proposed rule along with public opportunity to comment on the proposed rule. When the commissioner releases a final rule, she must have a

written, reasoned justification for the rule that takes into consideration the public comments she received.

In this final rule, the commissioner must state under what authority she is making the rule. With regard to the proposed 65% rule, the commissioner's authority to make any rule is very much in doubt. Although the Education Code gives the commissioner the power to create a financial accountability system, it is not clear that she has any authority to make or enforce a 65% rule. Indeed, the Education Code expressly places budget decisions in the hands of locally elected school boards.

We outline the rulemaking process to make two points. First, every interested person has the opportunity to tell the commissioner during the rulemaking process their thoughts on both the legality and wisdom of any proposed rule. Second, if the commissioner acts without a reasoned justification or exceeds her authority, school districts can challenge the rule in state court.

While the commissioner has wisely appointed a working group to assist her in drafting a rule for consideration, at some point, she will have to publish a proposed rule in the Texas Register for public scrutiny and comment. The balance of this policy page will address whether a 65% rule is good public policy.

DEFINING INSTRUCTION

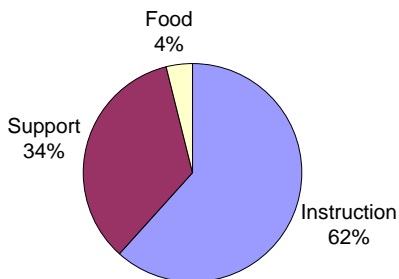
NCES defines instructional costs to include salaries and benefits for teachers and instructional aides, and general instructional supplies. NCES appropriately includes as instructional the costs of athletics, as well as field trips, music, and art.

Among the costs considered support services and not instructional are money spent on nurses and counselors, libraries, teacher training, curriculum development, and food services. The salaries and benefits of superintendents and principals, as well as the costs of operating buildings, maintaining grounds and equipment, running school buses, and security are also considered support services.

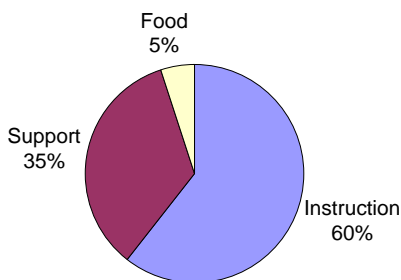
TEXAS SCHOOLS ARE NOT OUT OF LINE

These pie charts show that spending in Texas schools is very similar to spending in schools across the country.

How U.S. Schools Spend Money

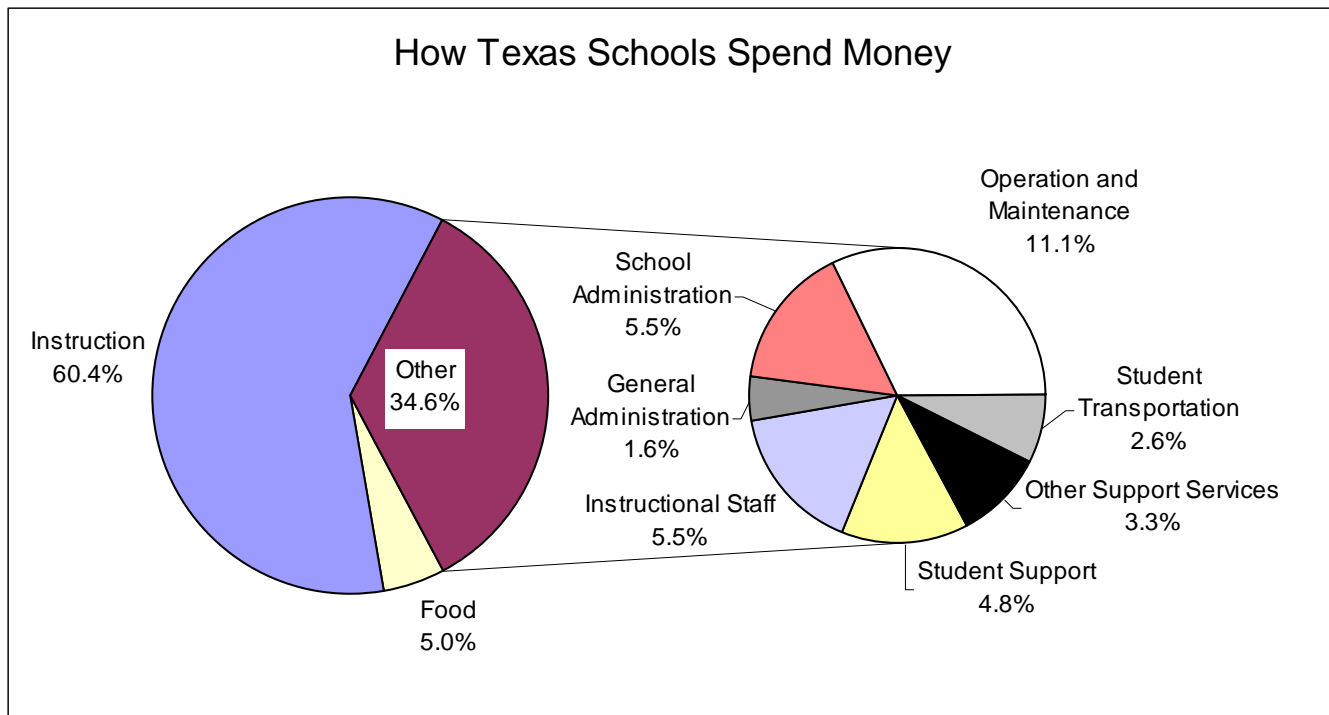


How Texas Schools Spend Money



The 35% of current expenditures that goes to support services in Texas is broken down like this:

- Student support includes guidance, health, psychological services, speech pathology, audiology, guidance, and attendance.
- Instructional staff includes library, audiovisual, and teacher training.
- General administration is the cost of the school board and other executive administration.
- School administration covers the principal, full-time department chairpersons, and graduation expenses.
- Operation and maintenance includes heating and air conditioning, lighting, security, repair, upkeep of grounds and equipment.
- Student transportation is the cost of vehicle operation and maintenance, including fuel.



A 65% RULE IS BAD POLICY

Support services promote student achievement

Many of the services not defined as “instructional” play an important role in promoting student achievement. For example, counselors help prevent drop-outs, nurses help reduce days lost to illness, and librarians provide educational materials. Children cannot learn if there are no buses to get them to school and no classrooms to hold them once they get there. School breakfast and lunch programs have been repeatedly linked to higher student achievement. For an example, see our analysis of the importance of addressing child hunger to improve study learning. (<http://www.cppp.org/files/3/schoolbreakfast04ppr.pdf>)

One-size-fits all ignores differences

A one-size-fits-all standard, as the governor proposes, ignores important differences among students and school districts. Smaller school districts inherently have higher administrative costs, simply because they lack the economies of scale of a larger district. Rural districts have higher transportation costs. Schools with a greater concentration of low-income students have to spend more of their budget on nutrition, health, and counseling services.

A rigid rule could lead to unnecessary spending

A rigid rule could have some unintended consequences, such as unnecessary spending. For instance, consider a district that was spending 65% on instruction as defined by the federal government, but wished to add an additional counselor. Every dollar spent on this “non-instructional” cost would have to be balanced by spending two more dollars on “instructional” costs to keep the 65/35 ratio constant. Unanticipated expenditures, such as renovating classrooms after a flood, would also have to be balanced by spending twice as many dollars spent on instruction—whether needed or not.

Similarly, if the state were to impose an unfunded mandate for new non-instructional spending, districts would have to raise an additional \$2 in property taxes for instructional spending in order to offset each dollar they had to spend to meet the new state mandate, tripling the total cost of the new mandate. Even if the state fully funded the non-instructional mandate, districts would still have to raise an additional \$2 in new revenue for instructional purposes to keep their spending ratio intact.

THE PERCENT SPENT ON INSTRUCTION IS NOT RELATED TO STUDENT ACHIEVEMENT

In education spending, what matters is spending enough money on the right things. The 65% rule mistakenly uses a percentage as a proxy for an amount, and mistakenly assumes that all support is wasteful. While the amount a district spends on instruction is important, the percentage is not. As one can quickly see, there is no correlation between percentages of spending and educational achievement.

NCES publishes total education expenditures for each state, broken down by function – instructional, administration, food services, etc. (Digest of Education Statistics, table 162, <http://nces.ed.gov/programs/digest/d03/tables/pdf/table162.pdf>). It also publishes the percentage of 8th graders in each state who attain at least a proficient level in mathematics on the National Assessment of Educational Program (NAEP) (table 125) and the average NAEP reading score for 8th graders (table 115).

These data demonstrate that there is no correlation between the percentage of revenue spent on instructional costs and student achievement. Many states that spend a relatively high proportion of their funds on instruction have low levels of achievement. For instance, Rhode Island devoted 65% of its current expenditures to instruction – the proposed guideline for Texas schools – but its students ranked 36th among the 50 states in math and 34th in reading. Tennessee spent 64% on instruction and ranked 41st in math and 40th in reading.

In contrast, Colorado spent 57% on instruction, but ranked 10th in math and 7th in reading. New Jersey, with a very different student population, spent 59% on instruction, but ranked 13th in math and 11th in reading.

According to NCES, in 2000-01 (the most recent data available), Texas allocated 60.4% of current expenditures to instruction – the 30th highest percentage among the states. Texas students ranked 34th in NAEP math scores and 36th in NEAP reading proficiency.

MONITOR PERFORMANCE, NOT PROCESS

Since 1995, Texas has relied on its extensive accountability system, including the TAKS test and dropout reporting, to ensure that local schools are achieving the state's goals for student learning. The Legislature explicitly decided to stop monitoring inputs – such as the amount of time or money spent on specific activities – and to measure only outcomes – student achievement and graduation rates. The state allows locally elected school boards to determine for themselves how to best spend their money, as long as the resulting performance meets state standards.

The proposed mandate on instructional spending would be a step away from local control and a return to top-down central planning, without any link to better learning. Instead, Texas should strengthen its current accountability system by increasing the accuracy of dropout counts and directly measuring the performance gap between students from low-income families and all other students. To determine better the appropriate amount of instructional costs, the Legislature should fund independent research efforts to determine the costs of achieving the desired level of student achievement in different types of districts with different types of students.

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