

Congress of the United States
Washington, DC 20510

November 4, 2016

The Honorable Dr. John King
Secretary of Education
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, DC 20202

Attn: James Butler

Re: Notice of Proposed Rulemaking: Title I-Improving the Academic Achievement of the Disadvantaged-Supplement Not Supplant – Docket ID ED-2016-OESE-0056

Dear Secretary King:

For more than forty years, the Elementary and Secondary Education Act (ESEA) has included a provision known as “supplement not supplant” (SNS) within Title I of the law. This provision is designed to ensure that schools that receive federal Title I dollars also receive all of the state and local funding they would receive if they were not receiving Title I. In the years following ESEA’s passage in 1965, some states and districts used federal Title I funds, which were designated to provide supplemental resources for states and school districts to educate low-income students, to replace state and local funding, undermining ESEA’s intent. In 1969, Congress amended ESEA to make clear that states and school districts should ensure that federal resources truly supplement state and local resources, rather than replace them. As Congress recognized years ago and still recognizes today, when Title I funds are used to replace state and local dollars, the federal investment is not supplemental.

While SNS helped to ensure that federal dollars supplemented state and local dollars, it also created operational challenges that often prevented school districts from spending limited federal funds on effective interventions best for students. Too often, SNS was used as an excuse for unwise classroom purchases or “pull out” instruction for low-income and underperforming children. The Every Student Succeeds Act (ESSA) sought to address these issues by amending SNS to no longer require compliance tests dictated by individual service costs, but rather to provide school districts with the flexibility to comply with SNS through an enforceable compliance standard based on the school district's methodology of allocating their state and local funds. Recognizing this statutory change, we fought to preserve the Department of Education (Department’s) ability to promulgate regulations on SNS by, for the first time, requiring the provision to

go through the negotiated rulemaking process, which includes authority for the Department to regulate SNS, even when no consensus is reached.

We applaud the Department's efforts to clarify the SNS requirement in ESSA, and believe that a clear and final regulation is necessary to empower states and districts to implement this important fiscal provision with fidelity. We were pleased to see that the Department listened to feedback from stakeholders and amended its original proposal to introduce more flexibility in the draft regulation through inclusion of a state-determined compliance test. Since publication of the proposed regulation, we have heard from school district leaders and practitioners in states about potential operational challenges with this draft proposal. While we believe the proposal is a step in the right direction, we hope that the Department will continue to work to address such challenges to produce a final regulation that sets a clear and enforceable standard that is operationally manageable for local school districts. Such a standard will improve equity in education for all our nation's students by ensuring federal Title I dollars are truly supplemental to state and local investment.

In particular, we are concerned that the Department's requirement that a local educational agency (LEA) distribute "almost all State and local funds available to the LEA" (proposed § 200.72(b)(1)(ii)) to schools, without regulatory clarity on the meaning of "almost all" and which initiatives and cost categories would constitute acceptable districtwide expenditures to exempt from school-level allocation, such as transportation and maintenance costs. This lack of clarity is confusing for states and LEAs and could prevent an LEA from using funds for districtwide initiatives such as preschool and transportation. In addition, we have heard concerns that the proposed rule may inadvertently incentivize decreased district support for specialized programs, such as magnet schools, bilingual programs, or career and technical education, due to analysis that more standardization resource allocation across a district would arguably ease compliance with the proposed rule. Finally, we are concerned that this rule lacks clarity on how to account for the allocation of funding sources such as bonds and mill levies, which are an important source of revenue in many school districts. We urge you to engage with all stakeholders to promulgate a final regulation that ensures Title I schools receive the state and local funding they deserve, while taking into account the fiscal and accountability practices of school districts. In finalizing this rule, we also strongly encourage the Department to commit to robust and ongoing technical assistance for states and school districts in an effort to ease implementation.

Achieving true educational equity is not an easy task. For too long, States and school districts have allocated public funds to support public education in a way that has lacked transparency, often resulting in underfunding the highest needs schools. We applaud the Department for using its full regulatory authority to tackle this important challenge to ensure that schools in every community are equipped with the resources necessary to graduate all students ready to succeed. Thank you for your attention to this matter and

we look forward to continued partnership to implement ESSA in a way that honors Congressional intent and the civil rights legacy of the ESEA.

Sincerely,



PATTY MURRAY
Ranking Member
U.S. Senate Committee on Health, Education,
Labor and Pensions



ROBERT C. "BOBBY" SCOTT
Ranking Member
U.S. House of Representatives
Committee on Education and the
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