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February 24, 2019



The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

The Honorable Frank Brogan  
Assistant Secretary  
Office of Elementary and Secondary Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

*RE: Comment on the January 2019 Draft Non-Regulatory Informational Document on Supplement not Supplant under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act*

Dear Secretary DeVos and Assistant Secretary Brogan,

On behalf of The Leadership Conference Education Fund, a national organization that builds public will for federal policies that promote and protect the civil and human rights of all persons in the United States, and the 9 undersigned organizations, **we write in response to the January 2019 Draft Non-Regulatory Informational Document on Supplement not Supplant under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act.** The Education Fund was founded in 1969 as the education and research arm of The Leadership Conference, a coalition of more than 200 national organizations working to build an America that's as good as its ideals.

Throughout the reauthorization of the Elementary and Secondary Education Act (ESEA) and the implementation of the Every Student Succeeds Act (ESSA), the civil rights community has sought to protect and defend the authority – and responsibility – of the Department of Education (the Department) to issue clarifying regulations and non-regulatory guidance and to meaningfully oversee and enforce the law. The federal government serves as a vital backstop and protector of marginalized people whose rights and interests have too long been violated and dismissed by officials at the state and local level. The Department regularly provide guidance to states and districts to ensure faithful implementation and compliance with the law.

Since its inception, the intent of ESEA has been to raise achievement for low-income and otherwise disadvantaged children by providing additional, targeted, equitable funding to meet their educational needs. The civil rights community has long recognized equal educational opportunity as central to our struggle to achieve equality for all Americans. Without a robust

and thoughtful implementation of ESSA, students will continue to be denied the full resources and protections they need and are entitled to under federal law.

Resource equity and the responsible use of Title I funds, the two issues considered in the “supplement, not supplant” (SNS) provision, present in the law since 1970, are both longstanding priorities of the civil and human rights community and we appreciate the opportunity to offer our perspective as advocates for students and families who are low-income, of color, have a disability, or speak English as a second language. The SNS requirement aims to ensure that districts serving high percentages of low-income students provide supplemental programs and services to help mitigate the effects of concentrated poverty and truly help all students succeed with the aid of federal funds. The robust enforcement of the SNS requirement is critical to providing all students a fair, equitable and high-quality education, closing educational achievement gaps, and successfully implementing ESSA.

We urge the Department to provide guidance that includes stronger, clearer and more rigorous guidelines for how LEAs must demonstrate their compliance with the SNS requirement. Without further clarity in the Department’s January 2019 draft guidance for the oversight of this provision of the law, federal Title I dollars may not be used as intended under ESSA, and low-income students, students of color, students with disabilities, English language learners and other marginalized groups will be deprived of the supports and services they need and deserve.

The proposed guidance’s allowance for an “LEA-established compliance test” does not sufficiently ensure that that method of compliance would result in equitable funding for Title I schools from state and local sources. The proposed guidance asserts that as long as an LEA’s allocation methodology is “Title I neutral” they are in compliance with the SNS requirement. This interpretation of the law allows a district to be in compliance with the requirement while allocating fewer state and local dollars to Title I schools in the district and using federal Title I funds to supplant state and local funds, as long as the district gives any reason for doing so without explicitly mentioning Title I. This is not a meaningful or equitable standard of compliance. Furthermore, the Department should modify FAQ #11 to state that a district should be permitted to use a compliance test based on actual per-pupil expenditures of state and local funds if it so chooses, because it is a reliable method for showing SNS compliance. The final guidance must clearly state that, no matter the method for distributing state and local funds to schools, the result is such that Title I schools have at least as much actual state and local funding and resources as do the average of all non-Title I schools in the same district.

The Department has both the authority and the responsibility to ensure that the SNS provision is properly implemented, and we urge the final guidance to explicitly clarify how the Department will help states to effectuate the purpose of this provision of the law and encourage states to include active engagement from stakeholders. The proposed guidance does not require LEAs to make public its methodology for allocating state and local funds. The final guidance should modify FAQ #17 to emphasize the importance of engaging parents and community members in all steps and LEAs should demonstrate their intention to continue engaging parents and communities, especially for marginalized students. There must be transparency on how LEAs engage with the public and use their input. Without transparency on how state and local funds are being allocated, parents and community advocates will not know whether schools that



serve a high number of low-income students receive equitable access to resources within and across districts. The Department must clarify that states have an obligation to comply with the requirement in ESSA of robust and transparent parent and community engagement.

We appreciate your consideration of our recommendation as the Department moves toward finalizing the guidance for this elemental provision of ESEA. The guidance and other implementation activities must advance educational equity and serve the interests of all students. Low-income students, students of color, students with disabilities, English learners, and Native students deserve no less than robust and thorough efforts by this Department to close opportunity and achievement gaps. The “supplement not supplant” provision must be enforced and schools with greater need should get the resources and funding they need to provide equitable learning environments for all students.

If you have any questions about these comments, please contact Leadership Conference Education Fund K12 Program Analyst Anum Malik at [malik@civilrights.org](mailto:malik@civilrights.org) or 202.548.7171.

Sincerely,

The Leadership Conference Education Fund  
Alliance for Excellent Education  
Disability Rights Education and Defense Fund  
NAACP  
NAACP Legal Defense & Educational Fund  
National Center for Learning Disabilities  
National Down Syndrome Congress  
National Urban League  
The Education Trust  
The Opportunity Institute