



October 13, 2016

The Honorable John King
Secretary
U.S. Department of Education
400 Maryland Avenue, NW
Washington, D.C. 20009

RE: Title I-Improving the Academic Achievement of the Disadvantaged-Supplement Not Supplant
ED-2016-OESE-0056-0001

Dear Secretary King:

I am writing on behalf of the over eleven hundred school district leaders who are members of the Washington Association of School Administrators (WASA). Those members strongly oppose the Department of Education's (USED) proposed regulations related to the "Supplement, not Supplant" (SNS) provisions of Title I in the Every Student Succeeds Act (ESSA). Those proposed regulations represent new, far-reaching federal mandates dictating how local school districts spend their state and local funds. They are in conflict with the spirit and intent of the underlying statute, which is premised on state and local control. The SNS provisions are one of three tests designed to ensure the integrity of federal Title I funds, with SNS in particular, designed to ensure Title I dollars are in addition to—not in place of—state and local resources. SNS looks at the construct or methodology by which a district allocates state and local resources and ensures the methodology is blind to whether or not a given school qualifies for Title I dollars.

ESSA's reform of SNS should not be an opportunity for USED to exert unprecedented influence over the more than 90 percent of K–12 funding generated by state and local districts. It must be an opportunity for the flexible, but high expectations for equity in ESSA to drive improvement in our nation's schools.

The SNS regulations, as drafted, gloss over the realities of school finance, the reality of how and when funds are allocated, the extent to which districts do or do not have complete flexibility, the patterns of teacher sorting and hiring, and the likelihood that many students would experience the rule in a way that undermines true efforts aimed at increasing education equity. The draft rule will restrict—rather than support—the ways in which state and local resources can be used to most effectively and equitably support at-risk students.

Because compliance with the proposed regulation would be based on spending thresholds, districts would have to centrally manage all decisions that affect costs. The proposal would force school personnel to make the difficult decision of compliance over meeting the needs of the students they serve. The proposed rule's negative consequences could also include (but are not limited to):

- Last minute shuffling of staff or other resources to meet federal compliance requirements, because schools often cannot reliably predict enrollment, programming, or staffing levels in advance. It could also impact fundamental contract and collective bargaining rights.
- A “one-size fits all” approach to programming in schools, because uniformity makes compliance with the federal spending benchmarks easier to meet. This could negatively affect *specialized schools* such as Career/Technical education, International Baccalaureate, magnet schools, as well as CTE, IB, dual-immersion, magnet, or performing arts schools, and *specialized programs* within schools where costs may vary from traditional programs.
- Cutting programs or initiatives that increase student choice and/or have inherent cost variability, because their lack of predictability makes compliance with the proposed rule difficult. This could include student course choice and dual enrollment programs, performance pay programs for teachers, or programs that reimburse students for certain costs.
- Undermining support for future levies or bonds. Because the rule mandates how funds must be allocated to schools, it may erode support for local levies or bond initiatives which are an important source of revenue in many districts.

From a technical perspective, the proposed regulations are an overreach. They exceed the legal authority of the department and ignore explicit statutory prohibitions. Specific prohibitions in the "supplement not supplant" provisions include subdivision 1118(b)(4), which says, "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 to each school receiving assistance under this part." In addition, section 1605 says, "Nothing in this title shall be construed to mandate equalized spending per pupil for a state, local education agency, or school."

The underlying statute, as drafted, can already enforce the SNS provision without this regulation; it includes language that provides a test auditors can use to evaluate compliance. I am concerned that this prolonged regulatory process, and any legal battles that follow, would be a setback to state and local planning for ESSA implementation. It is critically important that USED review and revise its proposed regulation, so the final rule ensures compliance with SNS without being overly focused on spending comparisons.

Thank you for considering this feedback, and I look forward to reading a revised final rule.

Sincerely,



Dr. Bill Keim
Executive Director