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November 7, 2016

Mr. James Butler  
U.S. Department of Education  
Room 3W246  
400 Maryland Ave. SW  
Washington, DC 20202

Dear Mr. Butler,

Thank you for the opportunity to comment on the U.S. Department of Education's September 6, 2016, Notice of Proposed Rulemaking regarding the supplement not supplant provisions of Title I of the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA). As states and districts undertake the complex task of implementing the new law, it is crucial to ensure that they have the clearest guidance to meet both the spirit and letter of ESSA. Outlined below are ASCD's comments on the proposed regulation.

ASCD has been historically supportive of ESEA's long-standing requirement that federal Title I-A funds supplement state and local funds and not supplant them as an essential equity component of the law. ESSA changed the way districts may comply with the requirement by no longer necessitating that they identify an individual cost or service supported with Title I-A funds as supplemental. This change alleviates the administrative burden on districts that have struggled with the complexity of demonstrating compliance. ESSA requires only that districts "demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving" Title I-A funds. The new law does not impose or suggest specific methodologies that districts must use to demonstrate compliance.

The proposed regulations would require districts to select among four methodologies to allocate all state and local funds: a weighted student formula; a formula based on a districtwide average of personnel and non-personnel spending; a state-developed and

federally peer-reviewed method; or a "safe harbor" option under which a district could decide to create greater equity for per-pupil spending between rich and poor schools. We appreciate the need to ensure that districts are in compliance with the law and are only spending Title I-A funds on supplemental services, and we offer several comments on some of the specific requirements in the proposed regulations.

1. The four proposed options districts may use to demonstrate compliance are potentially more complicated than the previous requirements under the No Child Left Behind Act, which ESSA's authors intended to simplify. Whatever the details of the final regulations, they need to be clear so that the already complicated supplement not supplant requirements can help and not hinder states and districts as they serve the students and schools that Title I is intended to serve.

2. The statutory language in ESSA does not require or suggest that the Department limit the methodologies that districts may use to demonstrate that schools have received all of the state and local funds they would have otherwise received absent Title I funding. Thus, while requiring districts to choose one of four prescribed methodologies may be seen as helpful to districts in complying with the law, it could also be perceived as being too prescriptive and beyond the scope of the law. We suggest that the Department clarify that districts may use any methodology as long as they comply with the statutory requirements of ESSA.

3. The regulations require districts to distribute "almost all" of their federal funds to schools, but do not provide a definition of "almost all." Districts often must retain some funds to pay for health costs, transportation, and other districtwide expenses, and we recommend that further clarification be provided in the final regulations to better define what amount (not necessarily a specific figure or percentage) would satisfy the "almost all" requirement.

4. The methodology based on districtwide averages of personnel does not take into account the program differences that necessitate variations in spending on personnel based on whether they are early learning educators, special education instructors, or any of the other myriad of personnel that work in a district's schools. Averaging these expenditures could cause inequitable spending across the district, exacerbating the disparities in spending that the regulations are trying to remedy. We recommend that the final regulations define non-personnel resources, which would

allow districts to have greater confidence in their calculations. For example, the regulations should specify whether this includes just textbooks and supplies or whether more expensive components like maintenance and transportation are to be part of the formula.

5. The regulations, particularly the fourth prescribed option, could be interpreted as requiring equalized spending, which would appear to conflict with the statutory language that prohibits equalized spending. Indeed, the statute says that “Nothing in this title shall be construed to mandate equalized spending per pupil for a State, local educational agency, or school” (codified at P.L. 114-95, §1012). We hope the Department is mindful of this constraint during the formulation of the final regulations.

6. The regulations make a general assumption that funding is the sole measure of equity, but there are numerous other indicators of equity, including access to effective educators and a well-rounded education. Although we recognize the proposed regulations focus on the accounting aspects of the issue, it would be helpful to include an acknowledgement in the final regulations of the importance of additional school elements—besides funding—that help constitute and ensure truly equitable education systems for all students.

Aside from the proposed regulations on the supplement not supplant provisions, it is important and appropriate to note that federal funding for Title I-A also remains seriously underfunded, having seen no significant increases for the last 10 years for a number of reasons. Despite a growing student population, and with a majority of U.S. public school students coming from low-income families, the centerpiece of federal K–12 programs to support economically disadvantaged students remains underfunded. Until funding adequacy is achieved, we strongly encourage the U.S. Department of Education to continue work with Congress to actualize a robust increase in the final FY17 appropriations level for Title I.

Thank you again for the opportunity to submit comments on the proposed ESSA regulations on the supplement not supplant requirements. We appreciate your careful consideration of our comments and look forward to continuing to work with the Department on effective implementation of ESSA. Please contact ASCD Government Relations Manager Megan Wolfe at 703-575-5616 or

megan.wolfe@ascd.org if you have any questions or need further clarification on our position.

Cordially,

A handwritten signature in black ink that reads "David Griffith". The signature is written in a cursive style with a large initial "D" and "G".

David Griffith  
Senior Director of Government Relations



