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April 28, 2016

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

Dear Secretary King,

On behalf of The Leadership Conference on Civil and Human Rights and the 29 undersigned organizations, we urge the Department of Education (the "Department") to issue strong regulations clarifying the means by which school districts must demonstrate their compliance with the "supplement, not supplant" requirement in Title I of the Every Student Succeeds Act (ESSA),¹ the most recent reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965. This requirement, present in the law since 1970, ensures that districts serving high percentages of low-income students are able to 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. Without robust clarity in regulations for the oversight of this provision of the law, the integrity of federal Title I dollars will be undermined and low-income students will be deprived of the supports and services they need and deserve. We believe that the Department has both the authority and the responsibility to ensure that this provision is properly implemented and we urge regulatory language that will help states to effectuate the purpose of this provision of the law.

Historically, Title I funds have been awarded to school districts solely on the condition that they be used to provide *additional* supports and services for educationally disadvantaged students. That purpose was clarified in a statutory requirement added after 1965, in direct response to reports of the misuse of funds by school districts in the law's first years.² For example, in the 1968-1969 school year the Sumter County #2 school district in South Carolina, used Title I funds to provide libraries for Black schools which were comparable to those provided in White schools. Where White students benefitted from state and local funds, Black students benefitted only from federal funds. In fact, South Carolina's ESEA director at the time admitted that much of the state's Title I money was spent to patch funding inequities to make schools for Black children comparable to those for White schools. Similarly in Mississippi, the Title I allotment was used to build and equip cafeterias and libraries, to hire teachers, and to provide instructional materials and books to Black students that had long been available to White students.

¹ Section 1118(b)(1) requires that, "A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from State and local sources for the education of students participating in programs assisted under this part, and not to supplant such funds."

² *Title I of ESEA: Is it Helping Poor Children?*. 1969. Washington Research Project and NAACP Legal Defense and Educational Fund, Inc., available at: <http://eric.ed.gov/?q=ED036600&id=ED036600>.



While the recently-enacted ESSA does amend the provision by prohibiting the use of the previous “individual services” compliance test, it does continue to insist that federal funds be supplemental. We urge the Department to measure compliance by examining actual school level expenditures, which builds upon the law’s new reporting requirements.³ In order for federal funds to be considered supplemental, each Title I school must receive from state and local sources at least as much per-pupil funding as the average of non-Title I schools in the district. Unless Title I schools are receiving an equitable base of funds from non-federal sources to ensure that the federal funds are truly supplemental, then Title I funds are being used to supplant by filling in gaps of funds the schools should be receiving. This is a violation of the law. A comparison of spending between each Title I and the average of non-Title I schools allows for considerable variability among both Title I and non-Title I schools in state and local expenditures, therefore not running afoul of the law’s prohibition against requiring the equalization of spending.⁴

Compliance with an “actual expenditures test” also recognizes the reality that equitable means fair, not equal—underscoring the law’s aim to ensure that students impacted by concentrated poverty have the unique supports and services that will address their needs. This also preserves flexibility for districts to use weighted student funding, formulas for staffing and materials, or any other methodology for allocating state and local funds to schools. Although there has been some confusion on this point, the law’s prohibition on requiring a methodology applies to the method by which state and local funds are allocated, not the method by which districts demonstrate compliance.⁵

During the negotiated rulemaking process, concerns were raised about the potential “disruption” that compliance with this provision may cause. While we appreciate that administrative challenges may arise in the implementation process, we know that **the process of moving from inequity to equity or from injustice to justice has never been without disruption.** While we recognize the need to make reasonable accommodations for changes in policy, the federal government must no longer be expected to subsidize the inequitable funding of public schools serving high numbers of low-income students who are disproportionately likely to be students of color and English Learners. The integrity of Title I funds must be preserved to fully realize the aim of ensuring equity and equal access to quality educational opportunities.

We appreciate your consideration of the aforementioned concerns as the Department moves towards finalizing the regulations for this elemental provision of ESEA. Should you have any questions about the issues raised herein, please contact Liz King, Leadership Conference Director of Education Policy, at king@civilrights.org or Janel George, NAACP Legal Defense and Educational Fund, Inc., Senior Education Policy Counsel, at jgeorge@naacpldf.org.

Sincerely,

³ Districts should demonstrate that their school-by-school actual expenditures as reported under section 1111(h)(2)(x) show that each Title I school receives at least as much state and local funding per-pupil as the average of non-Title I schools.

⁴ Section 1605. Rule of Construction on Equalized Spending. Nothing in this title shall be construed to mandate equalized spending per pupil for a State, local educational agency, or school.

⁵ Section 1118(b)(4) PROHIBITION.—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.

The Leadership Conference on Civil and Human Rights
NAACP Legal Defense and Educational Fund, Inc.
Alliance for Excellent Education
American Civil Liberties Union
American-Arab Anti-Discrimination Committee
American Association of University Women (AAUW)
Association of University Centers on Disabilities
Judge David L. Bazelon Center for Mental Health Law
Children's Defense Fund
Council of Parent Attorneys and Advocates
Democrats for Education Reform
Disability Rights Education & Defense Fund
Easter Seals
The Education Trust
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens
NAACP
National Association of Councils on Developmental Disabilities
National Council of La Raza
National Disability Rights Network
National Down Syndrome Congress
National Indian Education Association
National Urban League
National Women's Law Center
New Leaders
PolicyLink
Southeast Asia Resource Action Center
Teach Plus
TNTP (The New Teacher Project)
UNCF