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November 7, 2016

The Honorable John King  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202-280

**RE: Comments on Title I—Improving the Academic Achievement of the Disadvantaged—Supplement Not Supplant, Docket ID ED-2016-OESE-0056**

Dear Secretary King:

The Dignity in Schools Campaign (DSC) submits this letter in response to the U.S. Department of Education’s (the Department) request for comments on the proposed regulations for implementing the supplement not supplant requirement under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as recently revised by the Every Student Succeeds Act of 2015 (ESSA).<sup>1</sup> DSC is a coalition of over 100 grassroots and education advocacy organizations in 27 states. Since its inception in 2006, DSC members have worked to dismantle the school-to-prison pipeline by advocating for educational environments that keep students in school and learning. We have challenged the systemic use of exclusionary discipline practices that disproportionately impact students of color, students with disabilities, and students who identify as Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ), which the Department’s most recent civil rights data verifies.<sup>2</sup>

DSC opposed the passage of ESSA because we were deeply concerned about provisions in it that restricted the Department’s oversight authority and its ability to assist states and local school districts with improving educational outcomes for students in failing schools. The Department’s authority to issue regulations, however, remains—offering an opportunity to help states and school districts ensure that all students have a “significant opportunity to receive a fair, equitable, and high-quality

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<sup>1</sup> Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act- Title I--Improving the Academic Achievement of the Disadvantaged--Supplement Not Supplant, 81 Fed. Reg. 61148 (September 6, 2016), (hereinafter, Supplement Not Supplant Proposed Regulations).

<sup>2</sup> U.S. Dep’t of Education, 2013-2014 Civil Rights Data Collection: A First Look (June 7, 2016), <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

education, and to close educational achievement gaps,” as required by ESSA.<sup>3</sup>

We applaud the Department for issuing regulations clarifying the means by which school districts must demonstrate their compliance with the “supplement, not supplant” requirement in Title I, of ESSA. This requirement has been included in the law since 1970 and is intended to ensure that federal funds provide low-income students with the additional programs and services they need to succeed, instead of supplanting state and local funds. However, the Department had not previously offered guidance to states and districts regarding how they must comply with this requirement. Consequently, a number of districts have underfunded schools that serve low-income and disadvantaged students. According to data provided by the Department, Title I schools receive a total of about \$2 billion less in state and local funds than non-Title I schools.<sup>4</sup>

We believe the proposed rule, which offers districts options for how to demonstrate compliance with the supplement not supplant requirement, is a step in the right direction.<sup>5</sup> Districts that allocate funds based on the “special rule” would, at minimum, approach true equity in funding between high-poverty schools and schools in more affluent neighborhoods.<sup>6</sup> We urge the final rule to 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 funding as do the average of all non-Title I schools.

In order to strengthen the regulations further, we also respectfully urge the Department to:

- Encourage meaningful stakeholder engagement in the decision-making process regarding which option states will select to demonstrate compliance and require districts to keep stakeholders informed of funding decisions.
- Provide additional suggestions on how states and districts may comply with the supplement not supplant requirement by increasing funds to high-poverty schools, and clarify that school districts must comply with pending desegregation court orders.
- Remind states of their obligation to fully fund education as required by their state constitutions.

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<sup>3</sup> Every Student Succeeds Act, Public Law No. 114.95, S. 1177, 114th Cong. §1001 (Dec. 10, 2015).

<sup>4</sup> U.S. Dep’t of Education, Fact Sheet: Supplement-no-Supplant under Title I of the Every Student Succeeds Act (Aug. 31, 2016), <http://www.ed.gov/news/press-releases/fact-sheet-supplement-not-supplant-under-title-i-every-student-succeeds-act>.

<sup>5</sup> Supplement Not Supplant Regulations, *supra* note 1.

<sup>6</sup> *Id.* at §200.72(b)(1)(iii). (“Under the ‘special rule’ option, the LEA simply would demonstrate, regardless of the methodology it uses to allocate State and local funds to title I schools, that it spends an amount of State and local funds on a per-pupil basis in each title I school that is equal to or greater than the average per-pupil amount spent in non-title I schools...”)

**I. Encourage meaningful stakeholder engagement in the decision-making process regarding which option districts will select to demonstrate compliance and require districts to keep stakeholders informed of funding decisions. *Proposed regulation §200.72(b)(1)(i)(A)***

Proposed regulation §200.72(b)(1)(i)(A) would require each local education agency (LEA) to annually publish its methodology for allocating state and local funds in a format that parents and the public can understand.<sup>7</sup> Districts should be required to solicit input from parents, teachers, school leaders, and other community stakeholders in advance of deciding which methodology they will choose and to take this feedback into consideration. Districts should also be required to ensure transparency throughout the process of allocating state and local funds.

Those most directly impacted by the district's funding choices are often in the best position to understand the implications of these decisions and how they will play out at the district and school levels. Therefore, such stakeholders should be meaningfully engaged in this decision-making process. We further recommend that the Department include examples of how districts may collect feedback (e.g. exit surveys following town hall meetings and listening sessions and written comments posted online or submitted through electronic mail) and encourage districts to utilize multiple methods for engaging stakeholders in the final regulations. Districts should also make a concerted effort to engage traditionally underrepresented populations, including low-income communities or color, by providing opportunities for feedback in geographically diverse locations and at times that accommodate working families' schedules.

**II. Provide additional suggestions on how states and districts may comply with the supplement not supplant requirement by increasing funds to high-poverty schools, and clarify that school districts must comply with pending desegregation court orders. *Proposed §200.72(b)(4)***

The regulations include several rules of construction. Proposed §200.72(b)(4) would clarify that nothing in the regulations shall be construed to require the forced or involuntary transfer of school personnel.<sup>8</sup> But, the rule does not take into account the existence of school desegregation court orders that may require school districts to reassign school personnel. Therefore, the regulation must be revised to include an exception for school districts with pending desegregation court orders.

Additionally, in the executive summary of the proposed regulations, in reference to proposed §200.72(b)(4), the Department encourages districts to comply with the supplement not supplant requirement by increasing funding to high-poverty schools

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<sup>7</sup> *Id.* at §200.72(b)(1)(i)(A).

<sup>8</sup> *Id.* at §200.72(b)(4).

and to consider options, such as improving working conditions in these schools to attract and retain the best teachers and increasing wrap-around services and other resources (e.g. school counselors and school-based health providers).<sup>9</sup> We recommend the Department provide more guidance to districts by including additional examples of effective strategies for attracting and retaining high-quality teachers and to increase resources in low-income schools, including by implementing strategies to promote positive school climates, such as through restorative justice practices and school-wide positive behavioral interventions and supports (SPBIS).

Implementing strategies known to improve school climate can assist districts in closing achievement gaps. It goes without saying that students simply cannot learn if they are not in school. Recent civil rights data released from the Department indicate that during the 2013-14 school year, 2.8 million public school students received at least one out-of-school suspension.<sup>10</sup> These data and other national research have shown that exclusionary and punitive disciplinary practices disproportionately impact students of color, students with disabilities, low-income students, and those who identify as LGBTQ.<sup>11</sup> Research also suggests that such practices significantly increase the risk of poor academic performance.<sup>12</sup>

School climate is also a key factor for districts to consider when attempting to address teacher shortages in high-poverty, hard to staff schools. Working conditions, including school safety, is a consistent and strong predictor of whether teachers will choose to work and stay in a given school.<sup>13</sup> Schools are safe when personnel utilize preventive and positive approaches to discipline, such as responding to student misbehavior in constructive ways, which could improve students' academic performance as well as teacher satisfaction.<sup>14</sup>

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<sup>9</sup> *Id.* at 61154 discussing §200.72(b)(4).

<sup>10</sup> U.S. Dep't of Education, *supra* note 2, at 3.

<sup>11</sup> See *id.* at 3-4. See also, Russell Skiba and Natasha Williams, *Are Black Kids Worse? Myths and Facts About Racial Differences in Behavior: A Summary of the Literature*, 2, (March 2014)(stating that low-income students and black students are disciplined more frequently), [http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior\\_031214.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf); Hilary Burdge, Adela C. Licona & Zemi T. Hyemingway, *LGBTQ Youth of Color: Discipline Disparities, School Push-out, and the School-to-Prison Pipeline*, 2, (2014)(stating research shows that LGBTQ youth of color face increased surveillance and policing and greater incidents of harsh school discipline), [https://gsanetwork.org/files/aboutus/LGBTQ\\_brief\\_FINAL-web.pdf](https://gsanetwork.org/files/aboutus/LGBTQ_brief_FINAL-web.pdf).

<sup>12</sup> See, Anne Gregory, et al., *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, *American Educational Research Association*, 60, (February 2010) (stating "[r]esearch shows that frequent suspensions appear to significantly increase the risk of academic underperformance ), <http://www.indiana.edu/~atlantic/wp-content/uploads/2011/11/Gregory-et-al.-The-Achievement-Gap-and-the-Discipline-Gap-Two-Sides-of-the-Same-Coin.pdf>.

<sup>13</sup> Ann Podolsky, et al., *Solving the Teacher Shortage: How to Attract and Retain Excellent Educators*, 6, (Sept. 2016)(stating that teaching conditions, including school safety and adequate support personnel, can positively affect teacher retention rates), [https://learningpolicyinstitute.org/sites/default/files/product-files/Solving\\_Teacher\\_Shortage\\_Attract\\_Retain\\_Educators\\_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Solving_Teacher_Shortage_Attract_Retain_Educators_REPORT.pdf).

<sup>14</sup> The Dignity in Schools Campaign, *A Model Code on Education and Dignity*, Revised October 2013, at 18, [http://www.dignityinschools.org/files/Model\\_Code\\_2013.pdf](http://www.dignityinschools.org/files/Model_Code_2013.pdf).

### **III. Remind states of their obligation to fully fund education as required by their state constitutions**

Regardless of which funding methodology states and districts choose, states must provide an adequate base of funding that provides for a quality education in order for Title I funds to be truly supplemental. In light of the number of state-based court cases challenging the constitutionality of state funding formulas, the regulations should include language reminding states of their obligation to fully fund education as required by their state constitutions.

Thank you for your consideration of these comments. We look forward to continuing to work with the Department and state and local educational agencies to ensure that ESSA is implemented in a manner that allows all students to succeed. If you have any questions or concerns, please do not hesitate to contact Natalie Chap at [natalie@dignityinschools.org](mailto:natalie@dignityinschools.org).

Sincerely,  
The Dignity in Schools Campaign  
([www.dignityinschools.org](http://www.dignityinschools.org))