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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

Via email only: OESE.feedback@ed.gov

**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,

The Dignity in Schools Campaign (“DSC”) writes to provide comment on the U.S. Department of Education’s 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. We urge you to update the guidance to provide stronger, more rigorous guidelines for how LEAs must demonstrate their compliance with the “supplement, not supplant” (SNS) requirement of Title I, Part A, to increase public transparency and input, and to improve school climate.

DSC is a coalition of over 100 grassroots and education advocacy organizations in 28 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 of Education’s (ED’s) most recent civil rights data and other national research verifies.<sup>1</sup> Our recent national advocacy efforts have

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<sup>1</sup>U.S. Dep’t of Education, 2015-2016 Civil Rights Data Collection: School Climate and Safety (April 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>. *See also*, Hilary Burdge, Adela C. Licona & Zemi T. Hyemingway, LGBTQ Youth of Color: Discipline Disparities, School Push-out, and the School-to-Prison Pipeline 2, [https://gsanetwork.org/files/aboutus/LGBTQ\\_brief\\_FINAL-web.pdf](https://gsanetwork.org/files/aboutus/LGBTQ_brief_FINAL-web.pdf) (“Research shows that LGBTQ youth of color in particular face persistent and frequent

included developing resources,<sup>2</sup> conducting trainings for, and provided technical assistance to DSC members on ESSA so that parents, youth, and advocates can use to increase their knowledge of ESSA and engage with state and local education officials to encourage them to include effective strategies for improving positive school climates in state and local plans. We are well-versed in both the letter and the spirit of the law and see robust guidance on SNS as essential to ensuring that school districts do not underfund the schools most attended by students of color.

As ED provided, as of 2016, “approximately 5,750 Title I schools nationwide received substantially less state and local funding than their non-Title I peers *within the same district*.”<sup>3</sup> In these schools, Title I funds are being used to make up for inadequate state and local funding instead of providing the additional resources that the students need. It is therefore imperative that ED provide strong guidelines for LEAs to ensure that they are equitably distributing resources and providing all students with fair access to educational opportunities.

We specifically have three requests for updates to the SNS guidance:

- 1. Emphasize that LEAs should demonstrate compliance by showing that Title I schools receive as much in state and local funds as the average of such funds received by non-Title I schools**

Given a long history of states and LEAs underfunding schools that serve students of color and low-income students, federal guidance needs to provide strong, clear, rigorous steps to ensure that these disparities do not continue. However, the proposed informational document only states that a broad range of methodologies could be used to comply with the SNS requirement and provides a few examples. This latitude could allow LEAs to continue to underfund the neediest schools. The main body of the guidance should be updated to emphasize that LEAs should demonstrate compliance by showing that each Title I school receives as much actual state and local funding as the average of non-Title I schools in the same LEA. This would help ED ensure that Title I schools are receiving at least as much as the average non-Title I school.

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harassment and bias-based bullying from peers and school staff as well as increased surveillance and policing, relatively greater incidents of harsh school discipline, and consistent blame for their own victimization.”).

<sup>2</sup> Dignity in Schools, Engage for Equity: A Toolkit for School Communities on the Every Student Succeeds Act, <http://dignityinschools.org/resources/engageforequity>.

<sup>3</sup> FACT SHEET: Supplement-not-Supplant under Title I of the Every Student Succeeds Act (archived information), Aug. 31, 2016, <https://www.ed.gov/news/press-releases/fact-sheet-supplement-not-supplant-under-title-i-every-student-succeeds-act> (emphasis in the original) (numbers based on an ED analysis of the 2013-2014 Civil Rights Data Collection. Please see Title I-Improving the Academic Achievement of the Disadvantaged-Supplement Not Supplant, 81 Fed. Reg. 61148 (proposed Sep. 6, 2016; withdrawn Jul. 17, 2018), <https://www.federalregister.gov/documents/2016/09/06/2016-20989/title-i-improving-the-academic-achievement-of-the-disadvantaged-supplement-not-supplant>).

ED must also update its answer to Frequently Asked Question #11 in the draft Informational Document to further clarify that LEAs can and should use actual per-pupil expenditure data to demonstrate SNS compliance. The document currently states that an LEA may not use its actual per-pupil expenditures to demonstrate compliance because “since actual per-pupil expenditure data is not a methodology by which State and local funds are allocated to schools, it therefore cannot be a methodology for an LEA to demonstrate compliance with supplement not supplant.” Although the law does prohibit ED from telling LEAs that they must use a specific methodology to allocate state and local funds, it does not prohibit ED from recommending or requiring a specific method by which LEAs demonstrate their compliance with SNS. Contrary to ED’s assertion in the draft document, the law does not link how LEAs demonstrate compliance with the methodologies they use to allocate funds. LEAs could use weighted student funding, formulas for staffing and materials, or other methodologies to decide how to allocate funds to individual schools, but when reporting to ED on compliance with SNS, LEAs can and should report whether, under whichever allocation methodology they chose, the state and local funding provided for any Title I school was at least as much as the average for non-Title I schools. This will allow ED to directly and easily assess whether Title I funds are being used to supplant state and local funds.

**2. Recommend that LEAs act publicly and transparently and include stakeholders in the decision-making process regarding which methodologies they use in allocating funds and demonstrating compliance.**

ED should emphasize in its guidance document the importance of including and engaging stakeholders, including teachers, parents, students, and education advocates, in the decision-making process for how LEA’s allocate state and local funding, and for how they demonstrate compliance with SNS. DSC has developed resources, conducted trainings, and otherwise facilitated community engagement in the implementation of ESSA, and it is essential that that engagement continues throughout every aspect of the law. ED should encourage LEAs to act openly and transparently, keeping the public and engaged stakeholders informed of their actions. However, the current informational document, instead of encouraging transparency, actually does the opposite. In the FAQ section, question 17, it currently provides that there is no federal requirement for LEAs to post their methodology for allocating state and local funds on their websites. As the only reference to how the methodology can or should be released publicly, this answer sends the message that ED does not care about public transparency. The document should be updated to encourage transparency and stakeholder engagement.

**3. Provide additional suggestions for compliance with the SNS requirement by clarifying that school districts should consider increasing funding to improve school climate.**

ED should encourage districts to comply with the SNS requirement by considering all available options, such as improving working conditions at high-poverty, hard to staff schools to attract and retain the best teachers, and increasing other resources, such as wrap-around services, school counselors and school-based health providers. We recommend that ED provide more guidance to districts by including additional examples of effective strategies for increasing resources to high-poverty schools, such as implementing strategies to promote positive school climates. These include having additional school counselors, social workers, and access to evidence-based and promising programs like Restorative Practices, Positive Behavior Interventions & Supports<sup>4</sup> and trauma-informed care.<sup>5</sup> These measures get to the root of problems students are facing and proactively create more equitable environments conducive to learning for everyone in the school community.

Thank you for considering this letter. 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))

cc: Frank Brogan, Assistant Secretary, Elementary and Secondary Education

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<sup>4</sup> See Jenni Owen, et al., *Instead of Suspension: Alternative Strategies for Effective School Discipline*, Duke Center for Child and Family and Policy, 2015, available at [https://law.duke.edu/childedlaw/schooldiscipline/downloads/instead\\_of\\_suspension.pdf](https://law.duke.edu/childedlaw/schooldiscipline/downloads/instead_of_suspension.pdf).

<sup>5</sup> See Katy O'Grady, *Transforming Schools with Trauma-Informed Care*, ASCA SCHOOL COUNSELOR, Jan. 2017, available at <https://www.schoolcounselor.org/asca/media/asca/ASCAU/Trauma-Crisis-Management-Specialist/TransformingSchools.pdf>.