

November 7, 2016

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

Re: Notice of Proposed Rulemaking (Docket ID ED-2016-OESE-0056)

Dear Secretary King:

On behalf of the nineteen school districts comprising the Large Countywide and Suburban District Consortium\* (the Consortium), we are writing in response to the U.S. Department of Education's September 6, 2016 notice of proposed rulemaking regarding the "supplement, not supplant" (SNS) requirement established under Title I of the Every Student Succeeds Act (ESSA).

Our members joined the Consortium because they all share a deep commitment to advancing systemic education improvement and innovation in policy and practice to benefit *all* students as they prepare for success in college, career, and civic engagement. We believe ESSA's less prescriptive approach must both advance *excellence* in student outcomes and increase *equity* across our educational systems, particularly for those student sub-groups for whom persistent achievement gaps remain. To that end, we support the Department's efforts to establish sufficient federal "guardrails" to ensure states and districts exercise their authority under ESSA in ways that protect and advance equity considerations.

In each of our prior responses to the Department's proposed ESSA regulations (and requests for input on guidance), we have offered advice and suggestions informed by our day-to-day experiences leading some of the nation's largest, most diverse, and highest-achieving school districts. When appropriate, we have identified instances in which the Department's proposed guardrails would go too far in limiting flexibility, when ambiguous language could create paralyzing uncertainty at the local level, and where proposed regulations would have unintended negative consequences for students.

Unfortunately, the Department's proposed SNS regulations would likely result in all three of these concerns. We applaud the Department's desire to close state and local funding gaps and ensure that all schools have the resources their students need, especially their low-income students. However, we do not believe the proposed SNS rule is the best way to achieve that worthy goal. Indeed, as drafted, it may in some instances unintentionally cause more harm to the very students the Department intends the rule to benefit.

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\* Established in 2012, the Large Countywide and Suburban District Consortium is an invitational, self-funded network of some of the nation's most highly-regarded districts and leaders, all of whom are committed to advancing systemic education improvement and innovation in policy and practice to benefit *all* students as they prepare for success in college, career, and civic engagement. Our 19 districts span 13 states from Washington to Florida, include 8 of the largest 25 school districts in the nation, enroll an average of 90,000 students, and educate a total of 1.8 million students. Our growing and increasingly diverse student bodies reflect communities across America: 58% are students of color and 43% qualify for free or reduced-cost lunch.

Members include: Arlington Public Schools (VA), Baltimore County Public Schools (MD), Beaverton School District (OR), Bellevue School District (WA), Charlotte-Mecklenburg Schools (NC), Cobb County School District (GA), Fairfax County Public Schools (VA), Fulton County Schools (GA), Garland Independent School District (TX), Greenville County Schools (SC), Gwinnett County Public Schools (GA), Knox County Schools (TN), Mesa Public Schools (AZ), Montgomery County Public Schools (MD), Poway Unified School District (CA), School District U-46 (IL), The School District of Palm Beach County (FL), Virginia Beach City Public Schools (VA), Wake County Public School System (NC).

Other organizations representing state and local leaders have raised various legal and policy concerns with the proposed rule. In this letter, we focus our comments on sharing our on-the-ground perspective about the likely negative consequences of the proposed rule. We then conclude with some alternative approaches for SNS and strategies for addressing funding disparities that we believe will be more effective.

**First, the proposed rule would hamstring local decision making.** The Department focuses in its proposed rule on the *actual* state and local funds received by Title I schools rather than the *methodology* districts use to allocate those funds. In many instances, this well-intended approach may result in districts centralizing many key decisions that better rest with school leaders.

- Perhaps most likely—and most problematically—districts may override or simply take over hiring decisions given the primary role personnel costs play in any school's budget.
- Other talent management initiatives, such as performance-based compensation, may similarly be jeopardized under the proposed rule.
- Similarly, the need to maintain compliance with the proposed rule might discourage creative solutions to local challenges. For example, under the SNS rule, district that assign specialized staff to work with multiple schools might have to abandon such a practice or base these staff members' division of time on schools' budgets rather than their students' needs.

We fear that the proposed rule would, in many instances, make it more difficult and riskier to embrace a theory of action that empowers individual principals while holding them accountable for results. Under the Department's SNS rule, districts may well have to (or at least may be incentivized to) instead adopt a "command and control" theory of action that applies a "one size fits all" approach to school-level design and decision making.

**Second, the proposed rule leaves open key questions that would interfere with day-to-day operations.**

We appreciate the Department's attempt to respond to concerns raised during the negotiated rulemaking process by adding additional options for demonstrating compliance with the Department's interpretation of ESSA's SNS requirement. However, the complex rule leaves a wide range of questions unanswered, which not only makes compliance difficult but also will require dedicating significant resources at the district level for monitoring. The following is an illustrative sample:

- What does it mean to distribute "almost all" of an LEA's state and local funding?
- How would compliance be impacted if some positions go unfilled for part of the school year?
- How would long-term substitutes be included in calculations? Would districts have to reallocate resources midyear if a higher-paid teacher is replaced by a long-term substitute or lower-paid teacher?
- How would benefits be treated in the calculations? Would hiring decisions need to turn in part on whether a candidate needs health insurance from the district?
- How would districts account for any staff paid by the district but who work in school buildings (e.g., cafeteria workers, building engineers, security guards)?
- If transportation costs are greater at non-Title I schools due to geographical or population density variations within a district, would any resulting funding differences impact compliance? Similar questions would arise for other variable costs that are not necessarily correlated with a school's Title I status (e.g., facilities maintenance).

- How would the compliance tests treat the impact of specific legal obligations districts often must comply with, such as those stemming from collective bargaining agreements, pension systems, lease agreements, utility costs, legal judgments, transportation fleet costs, long-term capital improvement plans, terms of levies or bonds, and other federal, state, or local legal obligations such as court orders or health and safety requirements?

One of the most commonly cited concerns with the No Child Left Behind Act version of this SNS rule was that it was unclear and difficult to implement and monitor. Unfortunately, as drafted, the Department's new SNS rule would similarly leave local leaders uncertain about what would or would not be allowed. This instability could seriously interfere with superintendents' ability to responsibly manage their districts' financial and human resources. Given how difficult the rule would be to administer, compliance would likely also create a significant drain on limited district resources—resources that could otherwise help close the very funding disparities the rule is targeting.

**Third, the proposed rule would likely exacerbate inequities in key instances.** The unintended consequences of the proposed rule will vary according to local contexts, but the following are some likely scenarios that raise serious concerns with the proposed rule.

- Because a teacher's effectiveness is the single greatest in-school driver of student achievement, our members and many other districts are working on multiple fronts to define, measure, improve, and reward educator effectiveness. Many of those efforts might be undermined by the Department's rule because **local decision making would sometimes depend on a teacher's cost rather than on his or her ability to help students learn.** This shift is a concern even for our members that have over a long period of time shifted to a weighted student funding formula and as a result likely already comply with the Department's proposed rule.
- Besides effectiveness, some districts are—in alignment with the President's My Brother's Keeper initiative—actively seeking to diversify their teaching force with a particular focus on hiring more educators of color in schools with large populations of students of color. In many jurisdictions, though, the more experienced (and thus higher-paid) teachers are disproportionately white. Under the proposed rule, **some schools may thus have to abandon their efforts to diversify their faculty in order to hire more expensive teachers.** By focusing the rule so significantly on the costs of each school's faculty, the Department risks elevating SNS compliance as a driver of personnel decisions while reducing the relative weight of other critical goals such as effectiveness or diversity.
- Similarly, **financial rather than pedagogical reasons could drive many decisions about instructional programming and resource allocation.** Districts may decide to cut programs (e.g., magnets, dual language, career and technical education, early childhood) or reallocate them to schools in ways that balance the actual funds but do not necessarily align with a school's needs, context, or existing academic model. For example, some of our districts purposefully place dual language programs at Title I schools with large English learner populations. But because it is often hard to find experienced (and thus higher-paid) second language teachers, districts may find it harder to continue these effective programs if the more junior staff's salaries bring the school out of compliance with the proposed SNS rule. Further, new initiatives or textbook/technology adoptions may be rolled out according to the funding levels at particular schools rather than by their readiness to implement a new intervention or resource with fidelity.
- The Department's commentary discounts the likelihood that districts would need to reassign teachers based on their salaries to comply with the proposed rule. The Department instead suggests additional state and local resources could be raised to close any funding gaps at Title I

schools. Although we agree additional resources are in many instances needed, we know from long experience that we cannot count on new funds suddenly materializing in time to comply with the proposed rule. **Without new funding sources, we worry that many districts will make decisions that help pass federal muster but do not in the end serve students' interests, which must always be our primary focus.** Whether it is forced teacher transfers or changing which Title I eligible schools actually receive Title I funds, the unintended consequences of the rule could be significant and in some instances run counter to the rule's equity rationale.

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In enacting ESSA, Congress created several other ways to address funding disparities that do not carry the risks and negative consequences described above, including:

- **ESSA for the first time requires states to publically report each school's funding, broken down by federal, state, and local funding sources.** This new requirement will shine a very bright light on funding disparities and their relationship to schools' Title I status, poverty levels, diversity, and of course student achievement. We believe this increased transparency will lead to action by any districts that have not already taken all reasonable steps to reduce state and local funding gaps. It may well also lead many districts to begin transitioning over time to weighted funding formulas that would directly address this challenge.
- **ESSA also separately requires states and districts to report on and work to address the main driver of funding disparities: the inequitable distribution of experienced teachers.** Focusing attention, resources, and technical assistance on how districts can address teacher equity issues while maintaining a focus on educator effectiveness holds greater promise for reducing funding disparities in a responsible and narrowly tailored way.
- **ESSA also introduces a new pilot program to support up to 50 districts in adopting innovative student funding formulas.** This pilot may not even begin—much less conclude and disseminate lessons learned—before all districts would have to comply with the proposed rule.

Given all these levers (and others available at the state and local level) and in light of our many concerns with the proposed rule, we strongly urge the Department to revise its interpretation of the SNS requirement. **We urge the Department to instead adopt a rule that hews to the plain language of ESSA's SNS provision,** under which a district must demonstrate that its methodology for allocating state and local funds ensures that a school receiving Title I funds receives all the state and local funds it would otherwise receive if it were not receiving the Title I funds. Such an approach would provide an appropriate federal guardrail that prevents any districts from penalizing a Title I school; increase clarity for federal, state, and local officials while reducing administrative burdens; and, most importantly, keep students at the center of all local decision making.

We appreciate the opportunity to provide our input and local perspective to the Department. We would be happy to provide the Department any further information or additional assistance as appropriate.

Sincerely,



Justin (Tim) Mills, Chair  
Bellevue School District, WA



Aaron Spence, Vice-Chair  
Virginia Beach City Public Schools, VA



S. Dallas Dance, Past Chair  
Baltimore County Public Schools, MD