MARYLAND STATE DEPARTMENT OF EDUCATION
PREPARING WORLD CLASS STUDENTS

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

Docket ID ED-2016-OESE-0056

Dear Mr. Butler:

I am writing to provide the comments of the Maryland State Department of Education (MSDE) on the U.S. Department of Education's (ED) proposed regulations for the "supplement, not supplant" requirement under Title I of the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA).

In Maryland, our goal is to ensure that all students—regardless of background—are prepared for success in college, careers, and life. This goal can only be accomplished by creating equitable educational opportunities for every child, no matter their race, ethnicity, income level or zip code. Maryland understands that funding is a critical part of ensuring an equitable education for every child and we have a long history of funding our local school systems in a manner that proves our commitment to educational equity. It is the reason Maryland passed landmark legislation in 2002, *the Bridge to Excellence in Public Schools Act*, which allocates state funding to local school systems taking into consideration the wealth of each school system and their populations of "at-risk" students. It is also the reason the state hired consultants in 2014 to conduct a two-year Adequacy Study to re-examine the State's education finance system and why a recently appointed State Commission will review the consultant's recommendations and revisit the state's education funding allocation formula to ensure Maryland continues to provide adequate and equitable funding to its local school systems.

ESSA seems to strike an appropriate balance of federal, state and local control by setting a high bar to ensure all students receive an equitable education while making sure those closest to students have the flexibility they need to make critical decisions on how to reach this goal. For example, the law sets clear guardrails for accountability systems, but gives states the ability to use multiple measures that best meet the needs of students in their state. Similarly, through the supplement, not supplant provision in Title I, the law seeks to ensure that Title I schools receive the funding they would have received absent Title I, but it does not prescribe a specific funding formula for state and local funds. Further, it prohibits the Department from prescribing such a formula through regulation. The proposed regulation seems to be an overreach of the authority provided to the Department under ESSA. Additionally, it prescribes several formulas from which local education agencies (LEAs) may choose, which has the effect of prescribing a formula, in direct conflict with the prohibition to do so.

We find it troubling that the proposed regulations do not seem to recognize the realities of school finance, including how and when funds are allocated, the extent to which LEAs do or do not have complete flexibility, and the patterns of teacher hiring and placement. Because compliance with the proposed regulation would be based on spending thresholds, school systems would have to centrally manage all decisions that affect costs. The proposal would force school personnel to make the difficult decision of compliance over meeting the needs of the students they serve and has the potential to restrict, rather than support, the ways in which state and local resources can be used to most effectively and equitably support at-risk students.

Should the regulation move forward similar in substance to the current proposed version, we have some specific concerns we would like to see addressed. They are:

1. There needs to be further clarity for some of the terminology used in the regulations. For example, the proposed regulations require LEAs to allocate to schools "almost all state and local funds available to the LEA," however the regulation does not define what is meant by "almost all." We believe the failure to provide a more precise definition will cause confusion and result in uneven implementation.

   Similarly, under the special rule option, §200.72 (b)(1)(iii)(C)(1), there is an exception for schools in the LEA that "receive additional funding to serve a high proportion of students with disabilities, English learners, or students from low-income families..." The regulation does not define what is meant by "high proportion."

   Without a clearer definition of what is meant by terms such as "almost all" and "high proportion," it will be up to individual auditors and oversight officials to set a definition. The lack of clarity will lead to over-enforcement, under-enforcement, and at the very least, variable enforcement across LEAs and states and year-to-year.

2. The proposed regulations do not address how to handle costs that are typically paid for centrally that, in theory, could be allocated to schools, but have little to do with student services. For example, employee benefit costs often vary from school-to-school for reasons that have nothing to do with staff experience or quality. For instance, a teacher teaching in a Title I school could participate in a spouse's health care plan at no cost to the LEA, while a teacher in a non-Title I school might have his or her whole family on the LEA's health care plan at substantial cost to the LEA. Similarly, transportation costs might be higher in some schools than others because residential density varies from attendance zone to attendance zone. We are concerned that allocating these costs to schools could artificially distort school-to-school spending by incorporating costs that have little bearing on the amount or quality of services students receive.

   While the proposed regulations seem to make some allowance for certain "districtwide expenses" in section 200.72(b)(2)(iv), the exception is vague and still requires LEAs to distribute "almost all" of their "current expenditures" to schools, which does not instruct LEAs how to differentiate between an exemptible "districtwide expense" versus a non-exemptible "current expenditure."

3. The proposed regulation ignores the effect of spending on projects or purchases that take more than one year to implement across a school system. Under the proposed regulation, LEAs are required to demonstrate compliance annually, but school-to-school spending may vary from year-to-year, particularly in school systems as large as some of those in Maryland, and still equalize over a longer term. For example, an LEA might enter into an agreement to purchase technology for all its schools, but buy that technology in phases, rolling it out to a few schools each year. As a result, it might look like the LEA is spending more on some schools than others in a given year, even though all schools will eventually receive an equitable share of the technology.

   Similar variations in spending could happen as a result of capital improvements, which are typically scheduled through a long-term capital improvement plan, or maintenance projects, which might be carried out through a schedule or on an as-needed basis. It is not clear whether this kind of spending would be treated as "non-personnel resources," or whether these costs would have to be allocated to schools to meet the "almost all" standard described above. If these types of costs must be allocated to schools, an LEA could be out of compliance if its non-Title I schools have higher maintenance costs in a given year or if the LEA builds a scheduled addition for a non-Title I school under its capital improvement plan.

The Maryland State Department of Education appreciates the opportunity to comment on the draft Title I Supplement, Not Supplant regulations.

Best Regards

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