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November 7, 2016

James Butler
U.S. Department of Education
400 Maryland Avenue, SW, Room 3W246
Washington, DC 20202-2800

Docket ID: ED-2016-OESE-0056

Dear Mr. Butler:

The purpose of this letter is to provide the comments of the National Alliance for Public Charter Schools (National Alliance), regarding the Department's proposed regulations on Title I requirements for supplement not supplant (SNS) compliance under the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act (ESSA). The National Alliance is the leading national organization committed to advancing the charter public schools community.

The National Alliance commends the Department for working to set clear guidelines for district compliance with supplement not supplant. For too long this requirement has had a chilling effect on leveraging Title I funds for innovative uses, as state education agencies (SEAs) and local education agencies (LEAs) have placed overly strict limitations on the use of funds for fear of being out of compliance. ESSA corrects this problem by allowing a LEA to comply with supplement not supplant by demonstrating that the methodology it uses to allocate State and local funds ensures that each of its schools receiving Title I funds (including schools implementing both targeted assistance and schoolwide programs) receives all of the State and local funds that it would otherwise receive in the absence of Title I. ESSA also provides that no LEA may be required to identify any particular cost or service as supplemental or to provide Title I services through a particular instructional approach or in a particular instructional setting.

The statute prohibits the Secretary of Education from prescribing the specific methodology that a LEA may use to allocate State and local funds to its Title I schools and continues a previous prohibition on the Federal Government mandating equalized per-pupil spending for a State, LEA, or school. We support, therefore, regulations that provide school districts with as much flexibility as possible in demonstrating that the allocation of State and local funds to schools is not affected by the receipt of a school's receipt of Title I funds. In other words, the law clearly indicates that a LEA must not take a school's status as a Title I school into consideration when allocating State and local resources to schools; a LEA thus cannot increase funding only to non-Title I schools (intending that Title I will make up the difference for Title I schools, including Title I charter schools) or reduce funding only for Title I schools or even just Title I charter schools. Given that charter schools are generally not funded equitably as compared to district-run schools, we support the need for

equitable State and local funding for all schools, including charter schools: the average charter public school receives 30% less funding - $3,814 less per student, than the average traditional public school receives for each student. ESSA, however, does not mandate within-district equalization or that LEAs distribute a certain percentage of their State and local funds to individual schools.

Three key concerns of charters are as follows:

1. **Single-School LEAs should not have to demonstrate compliance with SNS**

In general, the question of whether a LEA is supplanting State and local funds with Federal Title I funds does not apply to most public charter schools. First of all, under ESSA, SNS obviously does not apply to within-district charter schools authorized by a traditional school district. (That is, the requirement governs allocations at the district level, but does not affect the operations of schools within a LEA.) So while a charter school may be impacted by its LEA's compliance (or non-compliance, as the case may be), it isn't responsible for demonstrating compliance through its own use of funds.

Second, charter schools that are their own LEA are in the same situation as other single-school LEAs; they do not distribute funds among schools so they are not affected by requirements regarding within-district allocations. **We thus strongly support the provision in the proposed regulations providing that single-school LEAs do not have to demonstrate compliance with SNS** (§ 200.72 (b)(2)(ii)(A)). This clarification will be important because, in the past, single-school LEAs that operated Title I schoolwide programs have sometimes had to demonstrate at an expenditure level that they are not supplanting.

2. **Auditors need clear guidance that SNS does not apply to single-school LEAs**

In addition to retaining proposed §200.72(a)(2(ii)(A)), we ask that the Department make it clear, in all subsequent guidance, including guidance used by auditors, that SNS does not apply to single-school LEAs so as to avoid unnecessary confusion. We also ask that the Department ensure that there is clear guidance to SEAs on compliance with SNS, so that they do not add additional compliance requirements just "to be safe" or continue to require certain costs as supplemental.

3. **Special concerns regarding certain charter governance structures**

Finally, although, as we have described above, the vast majority of charter schools will not need to demonstrate compliance with SNS, we do have a concern that the proposed regulations create potential complications for a small subset of charter schools in States such as Arizona that permit a charter management organization (CMO) to hold a single charter and operate more than one school sites (that are considered individual LEAs under state law), and in those situations where the authorizer also serves as the LEA, but, similar to an education service agency (ESA), does not operate any schools.

Unlike LEAs, charter school operators, including charter management organizations (CMOs) and education management organizations (EMOs), do not make within-district Title I allocations. Instead, the individual charter schools under their authority receive their own Title I allocations,

based on the count of their formula-eligible children. The charter holder serves only as a pass-through for Federal funds. Requiring CMOs to demonstrate SNS compliance when state law considers each of the schools to be an individual LEA using the proposed fiscal tests in 200.72(b) could severely limit their autonomy over the allocation of personnel and other resources, layering additional, compliance requirements on these organizations. **Thus, the Department should clarify that charter school operators in this situation should not be considered LEAs for the purpose of supplement, not supplant compliance because each of their schools is considered a separate LEA under state law.**

In addition, we recommend that the final regulations exempt from SNS requirements any other entities that are established by States as LEAs for the purpose of administering State and federal programs but do not directly operate any schools. For example, entities such as the Charter School Institute in Colorado, and the independent charter boards in Nevada and South Carolina should not have to demonstrate compliance with the proposed fiscal tests: they authorize charter schools, but do not operate them or otherwise have authority over the amount of their state and local funds. Such entities make Title I allocations based on student counts, as determined by the SEA. Certain charter schools may also have access to local funds based on their geographic location that would be unavailable to other schools in the same LEA, such as mill levy funds. The Department should ensure that its final regulations and guidance ensure that states have sufficient flexibility to implement SNS requirements consistent with state charter school law.

Thank you for the opportunity to comment on these very important proposed regulations. If I can provide additional information, please do not hesitate to contact me.

Sincerely,

Nina Rees

President and CEO