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November 7, 2016

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

RE: Docket ID ED-2016-OESE-0056

Dear Secretary King,

On behalf of The Leadership Conference on Civil and Human Rights and the 25 undersigned organizations, we write in response to the Notice of Proposed Rulemaking (NPRM) published in the Federal Register on September 6, 2016 regarding Title I - Improving the Academic Achievement of the Disadvantaged—Supplement Not Supplant. Resource equity and the responsible use of Title I funds, the two issues considered in the “supplement, not supplant” provision, are both longstanding priorities of the civil and human rights community and we appreciate the opportunity to offer our perspective as advocates for students and families who are low-income, of color, have a disability, or speak English as a second language. The robust enforcement of the law’s requirement is critical to a fair, equitable and high-quality education, closing educational achievement gaps and the successful implementation of the Every Student Succeeds Act (ESSA).

The “supplement, not supplant” requirement, present in the law since 1970, ensures that districts serving high percentages of low-income students are able to provide supplemental programs and services to help mitigate the effects of concentrated poverty and truly help all students succeed with the aid of federal funds. Without clarity in regulations for the oversight of this provision of the law, the integrity of federal Title I dollars will be undermined and low-income students will be deprived of the supports and services they need and deserve. The Department has both the authority and the responsibility to ensure that this provision is properly implemented and we urge a final rule that will help states to effectuate the purpose of this provision of the law.

While the recently-enacted ESSA does amend the provision to require the Department of Education to change its measure of compliance, there is no change to the underlying requirement that federal funds be supplemental. The Department’s final rule must be consistent with the principle that federal funds are only supplemental if the underlying base of funding is equitable. In the event that a Title I school is receiving less funding than non-Title I schools, then federal dollars are being used to compensate for the state or local funds that that school should be receiving – they are supplanting. While we believe the NPRM is a step in the right direction and an improvement over the status quo, the rule provides multiple



options for compliance that would not necessarily ensure that each Title I school receives at least as much in actual funding as the average of non-Title I schools. In addition, the draft rule's allowance for an "SEA-established compliance test" does not sufficiently ensure that that method of compliance would result in equitable funding for Title I schools from state and local sources. 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.

We appreciate your consideration of our perspective as the Department moves toward finalizing the regulations for this elemental provision of ESEA. The test of regulations, guidance, technical assistance and other implementation activities must be whether or not they advance educational equity and serve the interests of all students. Low-income students, students of color, students with disabilities, English learners, and Native students deserve no less than robust and thorough regulation by this Department to close opportunity and achievement gaps. If you have any questions about these comments, please contact Liz King, Leadership Conference Director of Education Policy, at king@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
Alliance for Excellent Education
American Association of University Women (AAUW)
American-Arab Anti-Discrimination Committee
Association of University Centers on Disabilities
Children's Defense Fund
Democrats for Education Reform
Disability Rights Education & Defense Fund
Education Law Center - PA
The Education Trust
Judge David L. Bazelon Center for Mental Health Law
MALDEF
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Council of La Raza
National Disability Rights Network
National Down Syndrome Congress
National Indian Education Association
National Urban League
Southeast Asia Resource Action Center
Southern Poverty Law Center
Teach Plus
TNTP (formerly The New Teacher Project)
UNCF