November 7, 2016

2016-OESE-0056

Dear Mr. Butler:

I am writing to provide the comments of the New York State Education Department (NYSED or "the Department") on the United States Department of Education's (USDE) Notice of Proposed Rulemaking: Improving the Academic Achievement of the Disadvantaged-Supplement Not Supplant under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA).

We appreciate and share USDE's commitment to ensuring that all students regardless of the school they attend – have equitable access to a high-quality, well-rounded education. We agree that Title I funds cannot serve their intended purpose if State and local funds are not appropriately allocated. We also agree that failure to comply with Supplement Not Supplant hurts those students who are most in need of additional support.

However, the provisions of the Title I Supplement Not Supplant draft rulemaking go well beyond the law. The law requires Local Education Agencies (LEAs) to demonstrate that Title I schools receive all of the State and local funds to which they are entitled each year. The law prevents USDE from prescribing a specific funding formula for state and local funds through regulation. The draft rulemaking – including the four "tests" of – imposes conditions on states and LEAs that are confusing, duplicative, burdensome, and may lead to an inappropriate focus on compliance with allocation and expenditure methodologies instead of providing programming that is in the best interest of students.

We request that the USDE give serious consideration to addressing the issues specified below:

I.   Explicit Definitions of Key Terminology

Several sections of the draft rulemaking contain terms and phrases that do not clearly con YH\ 86'(¶V H[SHFWDWLRQV RI WKH QHZ UHTXLUHPHQW terms and phrases do not provide sufficient explanation or definition to be accurately and/or completely understood by State Education Agencies (SEAs) and/or LEAs:

Section of Proposed Rulemaking	Term or Phrase Requiring More Definition
§200.72(b)(1)(ii) §200.72(b)(2)(iv)(A)	³DOPRVW DOO 6WDWH DQG ORFDO IX
§200.72(b)(1)(ii)(B)	³QRSHUVRQQHO UHVRXUFHV´
§200.72(b)(1)(ii)(C)(1)(ii)	³IXQ GDVHG FRPSOLDQFH WHVW´
§200.72(b)(1)(iii)(C)(1)	³KLJK SURSRUWLRQ´

If USDE does not clearly define these terms, NYSED is concerned that SEAs and LEAs will establish their own working definitions ±leading to significant variability in implementation, even within a state. This variability could significantly compromise efforts to monitor and enforce Supplement Not Supplant provisions.

Recommendation:

We recommend that USDE either make clear that SEAs have the flexibility to define how these terms will be applied to LEAs within a state or provide explicit