



NATIONAL ASSOCIATION OF ESEA
STATE PROGRAM ADMINISTRATORS
Ensuring Student Equity & Access

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20024
via e-mail to: OESE.feedback@ed.gov

February 27, 2019

Dear Secretary DeVos,

We appreciate the opportunity to comment on the draft guidance published by your agency regarding the requirement that federal funds supplement, not supplant, state and local funds. Guidance on this topic is sorely needed by the field and we believe it will provide clarity regarding the changes to supplement, not supplant compliance under Section 1118 of the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act (ESSA). That said, we believe there are several areas where the guidance could offer additional detail or clarity to better inform States and local educational agencies (LEAs) of their obligations.

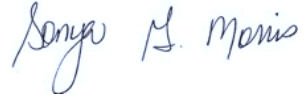
First, while the guidance highlights the flexible nature of the new methodology requirement, some of our member States believe it should also explicitly state that expenditures must meet other federal fiscal and grants management requirements – primarily that they must be necessary, reasonable, and allocable to the grant. There is some concern among our membership that districts might believe that the flexible supplement, not supplant requirement supersedes all other fiscal requirements; this added clarity would help States enforce those existing requirements.

Second, we believe there is a conflict between the draft guidance and the statute with respect to the applicability of the new supplement, not supplant requirement to Title I, Parts C and D. The statutory language of Title I, Part C references supplement, not supplant as measured by the new test in Section 1118(b). However, the guidance indicates that Part C is not subject to the new methodology test. This seems to be inconsistent, since Part C has no other supplant test and has always depended upon the Title I, Part A provision. Title I, Part D references Section 1118(b) but also has its own supplement, not supplant section, leaving it unclear as to which requirement should be followed, or if the LEA has the option to use either test. An updated version of the guidance should clarify the applicable requirement and the LEA's obligation.

Finally, it is not clear from the draft guidance whether or how a State may enforce the requirements. If an LEA failed to provide its methodology when asked to show compliance, or if the State determined that the provided methodology was not compliant with the requirement, how should such a conflict be resolved? It would be helpful to clarify a State's ability to enforce the provision, including through withholding funds, recovery of disallowed costs, and other enforcement actions.

We appreciate your consideration of these recommendations. Should you have questions or concerns about them, please contact Bob Harmon, NAESPA CEO, at bob.harmon@eseanetwork.org or 800-256-6452.

Sincerely,

A handwritten signature in blue ink that reads "Sonya G. Morris". The signature is written in a cursive style with a large initial 'S'.

Sonya G. Morris, President

National Association of ESEA State Program Administrators (NAESPA)