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To: Federal Program Directors

From: Marcus E. Cheeks, Bureau Director *MEC*

Date: April 11, 2014

Subject: Serving Schools out of Rank Order

The United States Department of Education requires all State Education Agencies to ensure compliance with federal law. In an effort to provide support to LEAs serving schools with a poverty rate of 75% or higher, the Office of Federal Programs is providing the following guidance.

An LEA must determine schools eligibility in accordance with Section 1113 of the ESEA (Elementary Secondary Education Act of 1965). In doing so, LEAs must annually rank, without regard to grade spans, eligible school attendance areas in which the concentration of children from low-income families exceeds 75 percent. Schools must be ranked and served from highest to lowest according to the percentage of children from low-income families. Once schools that have a percentage of poverty of 75 percent or more have been served, the LEA shall rank the remaining eligible schools from highest to lowest either, by grade span or based on poverty for the entire LEA. Remaining schools shall be served in rank order either within each grade-span grouping or within the local educational agency as a whole.

Section 1113(b)(1)(C)(i) of ESEA provides that a LEA may elect not to serve, or "skip," an eligible school attendance area or eligible school that has a higher percentage of children from low-income families if:

- (1) The school meets the comparability requirements of section 1120A of the Title I statute;
- (2) The school is receiving supplemental funds from other State or local sources that are spent according to the requirements of section 1114 or 1115 of Title I. -- Schools that receive supplemental funds from other State or local sources that are spent according to the requirements of either Section 1114 (schoolwide programs) or Section 1115 (targeted assistance schools) of Title I.

Section 200.63(c) of the Title I regulations provides that a supplemental State or local program meets the requirements of Section 1114 if it—

- Is implemented in a school that meets the Title I schoolwide poverty threshold;

- Is designed to upgrade the entire educational program in the school to enable all children to meet the State's challenging student performance standards;
- Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's student performance standards; and
- Uses the State's system of assessment to review the effectiveness of the program.

A State or local program meets the requirements of Section 1115 if it—

- Serves only children who are failing, or most at risk of failing, to meet the State's student performance standards;
- Provides supplementary services designed to meet the special educational needs of children who are participating in the program to enable those children to meet the State's student performance standards; and
- Uses the State's system of assessment to review the effectiveness of the program; and

(3) the funds expended from such other sources equal or exceed the amount that would otherwise be provided under Title I.

The underlying purpose of Section 1113(b)(1)(C)(i)(ii)(iii) of Title I and §200.63(c) of the Title I regulations are to ensure that if a higher-ranked Title I area or school(s) is skipped, it is receiving supplemental services from State or local funds that would meet the needs of children who would benefit from Title I services.

cc: Kim S. Benton, Ed.D
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