

U.S. Department of Education Proposed Supplement not Supplant Regulation

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Supplement not Supplant (SNS) Under ESSA

- Consistent with prior versions of ESEA, SEAs and LEAs must use Title I, Part A funds to supplement (add to) and not supplant (replace) the state and local education funds LEAs would otherwise spend on Title I schools
- Administrative interpretation of old SNS rule tested each Title I cost individually for compliance – this led to unintended educational consequences
- ESSA statute adds new language describing how LEAs demonstrate compliance with SNS that prohibits testing by individual cost

Language of New Compliance Test ESSA Section 1118(b)(2)

(2) COMPLIANCE.— To demonstrate compliance . . . a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under [Title I, Part A] ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under [Title I, Part A]

Notice of Proposed Rulemaking

- Text available at:
<https://www.federalregister.gov/articles/2016/09/06/2016-20989/title-i-improving-the-academic-achievement-of-the-disadvantaged-supplement-not-supplant>
- Comments must be received on or before November 7, 2016
- **Proposed rule governs state and local funds, not federal funds**

Overview of Proposed Regulation

- LEAs must annually:
 - Publish their methodology for allocating state and local funds in a format and language parents and the public can understand, and
- LEAs have 4 options for demonstrating compliance with SNS

Option 1: Weighted Per-Pupil

- Distribute to schools “almost all of the state and local funds available to the LEA” through a per-pupil formula where students with educational disadvantage generate more money for their schools
- Educational disadvantage includes (but is not limited to):
 - Poverty
 - English learner
 - Student with disability

Option 1 Example*

(*example not from proposed regulation; based on interpretation of regulatory language)

- LEA allocates to each school:
 - \$7,000 per student
 - An extra \$250 per low-income student
 - An extra \$500 per English learner
 - An extra \$1,500 per student with disability
- If a Title I school has:
 - 450 students total (x \$7,000 = \$3,150,000)
 - 200 low-income students (x \$250 = \$50,000)
 - 100 English learners (x \$500 = \$50,000)
 - 50 students with disabilities (x \$1,500 = \$75,000)
- The school must receive \$3,325,000 to satisfy SNS

Unanswered Questions About Option 1

- What does it mean to distribute “almost all” of an LEA’s state/local money to schools?
- What about weights that are not based on educational disadvantage, such as preschool, gifted and talented, CTE, or magnet programs?

Option 2: Average Personnel and Non Personnel Costs

- Distribute to schools “almost all of the state and local funds available to the LEA” through a consistent “resource formula” where each Title I school receives at least:
 - The average districtwide salary for each category of school personnel, multiplied by the number of school personnel in each category assigned to the school under the formula, plus
 - The average districtwide expenditure for non-personnel resources multiplied by the number of students in the school

Option 2 Example*

(*example not from proposed regulation; based on interpretation of regulatory language)

- An LEA allocates to each school:
 - 1 teacher per 22 students
 - The average teacher salary in the district is \$65,000
 - 1 principal per school
 - The average principal salary in the district is \$120,000
- Under the formula, a Title I school of 450 students generates:
 - 21 teachers (x \$65,000 = 1,365,000)
 - 1 principal (x \$120,000 = \$120,000)
- The school must receive \$1,485,000+required amount for non-personnel resources
 - If actual spending in the school falls below this target, the LEA would have to spend additional money in that school

Unanswered Questions About Option 2

- As with Option 1, what does it mean to distribute “almost all” of an LEA’s state/local money to schools?
- What does “consistent” formula mean? What if resource allocations vary based on program differences (e.g. additional FTEs for younger grades, low-income schools, special education, IB, dual-immersion programs, magnet programs, etc.)?
- What if the allocated FTE position cannot be filled (e.g. special education teacher shortage)?
- Are benefits included in the salary calculation?
- Are pay-for-performance or other performance based compensation approaches included in salary?

Unanswered Questions About Option 2 (cont'd)

- Are long-term substitutes included in salary calculations?
- How should staff members that work in multiple buildings be accounted for? What if their time in buildings is based on need, so not allocable in advance?
- How do LEAs account for staff paid for at the central-level that work in school buildings (e.g., building services, maintenance, grounds keeping, cafeteria, safety, etc.)?
- What is considered to be a non-personnel resource?

Option 3: State-Established Compliance Test

- Distribute to schools “almost all of the state and local funds available to the LEA” in a manner chosen by the LEA that:
 - Is applied consistently districtwide, and
 - Meets a funds-based compliance test established by the SEA that:
 - Is as rigorous as Options 1 & 2 (meaning it results in substantially similar amounts of state and local funds for Title I schools as would Options 1 & 2), and
 - Has been approved through a federal peer review process
- SEAs are not required to establish a test, and if they do, LEAs are not required to use it

Option 4: Special Rule

- An LEA can use any methodology to distribute state and local funds as long as it results in the LEA spending at least as much per pupil in Title I schools as the average amount spent per pupil in non-Title I schools as reported under Section 1111(h)(1)(C)(x)
 - Spending in Title I schools can vary up to 5% of average spending in non-Title I schools in a given year
 - An LEA can exclude any school with less than 100 students
 - An LEA can demonstrate compliance if it demonstrates that one or more non-Title I school gets extra money to serve a high proportion of students with disabilities, English learners, or students from low income families, which disproportionately affects the average spending in non-Title I schools

Option 4 Example*

(*example not from proposed regulation; based on interpretation of regulatory language)

- An LEA has 5 elementary schools
 - School 1 is non-Title I and spends \$7,200 per student
 - School 2 is non-Title I and spends \$7,500 per student
 - School 3 is non-Title I and spend \$7,000 per student
- The average spending in these schools is \$7,233 per student, so spending in Schools 4 & 5 (both Title I schools) must equal or exceed \$7,233 per student
 - Unless an exception applies (5% variance, small school, or extra spending in a non-Title I school to support educationally disadvantaged students)

Unanswered Questions About Option 4

- What costs will be included/excluded in the per-pupil calculations?
 - Option 4 references the per-pupil reporting requirements of Section 1111(h)(1)(C)(x)
 - In ED's proposed accountability regulations the per-pupil spending report would:
 - Include expenditures for administration, instruction, instructional support, student support services, pupil transportation services, operation and maintenance of plant, fixed charges, and preschool, and net expenditures to cover deficits for food services and student body activities, and
 - Exclude expenditures for community services, capital outlay, and debt service
- What does “high proportion” mean (for exception)?
- What if more high-cost special education students are in non-Title I schools? (Where a few high-cost students could impact the average per-pupil calculation.)

Flexibilities that Apply to All Options

- LEAs can demonstrate compliance under any of the options on a districtwide or grade-span basis
- An LEA is not required to demonstrate compliance if it has a single school, or in any grade span with a single school
- An LEA can exclude supplemental state or local funds spent for programs that meet the intents and purposes of Title I, Part A

Flexibilities that Apply to All Options (cont.)

- An LEA can exclude funds spent for “districtwide activities” if:
 - Each Title I school receives a share of those activities equal to or greater than the share it would otherwise receive were it not a Title I school, and
 - The LEA distributes “almost all of the state and local funds available to it for current expenditures”
 - Current expenditures = administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities
- Districtwide activities can be administration, programs like summer school or preschool, and services like curriculum development or data analysis

Unanswered Questions About Flexibilities

- What is considered to be “supplemental” state and local spending for programs that meet the intents and purposes of Title I, Part A?
- What does it mean to distribute to schools almost all of the almost all of the state and local funds available to an LEA for current expenditures?

Unanswered Questions: Typical LEA-Level Costs

- In light of the “almost all” language, how are certain types of costs that are typically accounted for at the LEA-level to be handled under the rule, including:
 - Health care and other employee benefits
 - Transportation costs, including fleet costs
 - Debt service
 - Pension obligations
 - Maintenance and/or emergency repair costs
 - Substitute teacher costs
 - Lease agreements
 - Utility costs
 - Food service costs
 - Judgments against the LEA

Unanswered Questions: Typical LEA-Level Costs (compliance scenarios)

- How does compliance work for:
 - Health care and other benefits (How should these costs be allocated to schools? If a teacher is “more expensive” because he or she participates in a family health insurance plan, rather than an individual insurance plan, how should compliance be determined?)
 - Transportation costs, including fleet costs (How should these costs be allocated to schools? What if transportation costs are higher in non-Title I schools because of the geographic makeup of the district?)
 - Building new/major additions to non-Title I schools (New schools or major additions are typically based on long-range planning reflected in a capital improvement plan. How would spending on these costs in non-Title I schools impact compliance?)
 - Repair or maintenance for non-Title I buildings (If physical plants for non-Title I schools are bigger or older, and/or if something needs to be remediated/repared (lead pipes, asbestos, roofing, etc.) in one or more non-Title I schools what does this mean for compliance if it results in higher costs in non-Title I schools?)
 - Procurement for items where purchases for schools are phased in over years (such as technology) and not all schools receive an item at the same time

Unanswered Questions: Common LEA-Level Legal Obligations (compliance scenarios)

- How does compliance work in light of :
 - Local obligations under levies or bonds (Revenue raised via levy or bond typically must be spent in strict accordance with levy or bond terms – what does this mean in terms of compliance with the rule?)
 - Collective bargaining agreements (If the only way to comply with the requirement conflicts with collective bargaining agreements, what does that mean for compliance?)
 - NOTE: While the rule does not require forced or involuntary transfer, it does not prohibit it.
 - Other state or local legal obligations (Court orders, state or local laws, health and safety requirements, etc.)

Timelines

- By December 10, 2017 each LEA must:
 - Demonstrate to its SEA it has a methodology for meeting SNS it will use no later than the 2018-2019 school year, or
 - Submit a plan to its SEA for how it will fully implement a methodology for meeting SNS no later than the 2019-2020 school year
- Before 2018-2019 or 2019-2020 LEAs can demonstrate compliance using one of the new options or NCLB rules

Possible Compliance Implications

- Overriding of school-level decisions by central-level staff. If a school's hiring or programming choices put a school's numbers out of balance, the LEA might have to override school-based decisions in order to comply with the federal spending benchmarks.
- Last minute movement of staff or other resources to meet federal compliance requirements, because schools often cannot reliably predict enrollment, programming, or staffing levels in advance.
- A "one-size fits all" approach to programming in schools because uniformity makes compliance with the federal spending benchmarks easier to meet. This could negatively affect *specialized schools* such as CTE, IB, dual-immersion, magnet, or performing arts schools, as well as *specialized programs* within schools where costs may vary from traditional programs.

Possible Compliance Implications (cont'd)

- Cutting programs or initiatives that increase student choice and/or have inherent cost variability because their lack of predictability makes compliance with the proposed rule difficult. This could include student course choice and dual enrollment programs, certain technology initiatives, performance pay programs for teachers, or programs that reimburse students for certain costs.
- Curtailing other approaches to equity that do not meet federal spending benchmarks such as implementing racial or economic integration programs, redrawing boundaries, or putting additional staff or programming in schools.
- Undermining local support for future levies or bonds. Because the rule mandates how funds must be allocated to schools, it may erode support for local levies or bond initiatives, which are an important source of revenue in many districts.

Possible Compliance Implications (cont.)

- Restrict or expand the number of schools served by Title I to balance spending in Title I vs. non-Title I schools. While districts must serve schools in rank order of poverty, they have discretion to concentrate Title I funds in the highest poverty schools or to distribute funds more broadly. This decision should be based on school needs, but will likely to be influenced by SNS compliance.

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