

GUIDANCE

TITLE I, PART A: SUPPLEMENT – NOT SUPPLANT PROVISIONS OF
THE EVERY STUDENT SUCCEEDS ACT (ESSA)



New York State Education Department

Office of ESSA-Funded Programs

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INTRODUCTION

This guidance reflects the requirements in Title I, Part A, section 1118 Fiscal Requirements (20 U.S.C. 6321) of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA). The examples provided should not be regarded as exhaustive or limiting, LEAs may develop alternative approaches that are consistent with the Title I statute and better align with their particular needs and circumstances.

In June 2019 the U.S. Department of Education (USDE) released final federal; ESSA Non-Regulatory Guidance on Supplement Not Supplant (SNS) provisions under Title I, Part A of the Elementary and Secondary Education Act of 1965. This document contains updated information based on that guidance and may paraphrase the guidance or be taken directly from the USDE guidance. For access to the full USDE SNS Non-Regulatory Guidance, please see <https://www2.ed.gov/policy/elsec/leg/essa/index.html>.

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OVERVIEW

Supplement not supplant (SNS) is a statutory provision across numerous federal grant programs. This provision has been part of the Elementary and Secondary Education Act (ESEA) and other federal grant programs since 1970 and is maintained in the Every Student Succeeds Act (ESSA).

The purpose of the Supplement Not Supplant provision is to ensure that the Federal investment has a meaningful impact on the students the program is designed to serve. The supplement not supplant provision requires that federal grant funds must add to (or supplement) and not replace (or supplant) other state/local funds in providing general educational services.

Since its inception, the rule has generally remained the same with variations in the how the requirement was tested. However, the Every Student Succeeds Act (ESSA) changed the way in which a district demonstrates compliance with SNS for Title I. The change in demonstrating compliance was intended to simplify the test and to move away from the expenditure-by-expenditure analysis (specific cost test) at the school level.

As part of ESSA, LEAs are now responsible for developing a methodology to distribute state and local funds to schools. LEAs must be able to demonstrate that the methodology they use to allocate state and local funds to schools provides each Title I school with all of the state and local money it would receive if it did not participate in the Title I program. In other words, an LEA's methodology must be "Title I neutral" in that it allocates State and local funds to schools without regard for Title I status. Districts must distribute state and local funds to all schools as if no Title I funds were available to any schools in the district. The funding methodology that a district uses must also provide sufficient state and local funds to provide an adequate general education program in all schools.

Developing a Methodology for Distributing Funds to Schools

To demonstrate compliance with the Title I, Part A supplement not supplant provision for school-level expenditures, districts must annually provide the methodology used to allocate state and local funds to each Title I school. This ensures that each Title I school receives all of the state and local funds it would otherwise receive if it were not a Title I school.

Specific funding methodologies to distribute state and local funds are not mandated by federal legislation or by the state education agency. However, districts must annually demonstrate that a funding methodology has been adopted and utilized to distribute state and local funds to all schools as a prerequisite for receiving Title I funds.

IMPORTANT NOTE:

LEAs have broad flexibility when developing the methodology for the equitable distribution of State and Local funds to schools.

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Some options could include, but are not limited to:

- A weighted student funding formula that provides additional resources based on student characteristics or demographics and ensures that each Title I school receives all of the actual funds to which it is entitled under that system;
- A formula that allocates resources, including staff positions and non-personnel resources, directly to schools and that ensures each Title I school gets all of the funding it is entitled to, as measured by the sum of: 1) the number of personnel in the school multiplied by the district’s average salaries for each staff category; and 2) the number of students in the school multiplied by the district’s average per-pupil expenditures of non-personnel resources;

Once the supplement not supplant provision is met through the funding methodology and evidence is provided that each Title I school received its “fair share” based on the district’s funding methodology, items supported by Title I in a targeted or school-wide program are deemed to be supplemental. Complying with supplement not supplant for Title I schools becomes a funding test, not an expenditure-by-expenditure test. School-level expenditures are allowable – provided they are reasonable, allocable, necessary, and appropriately documented – once the district has provided a “Title I neutral” funding methodology for schools.

Examples of Allowable Methodologies

Example 1: Distribution of non-Federal resources based on characteristics of students (This form of equitable distribution is generally referred to as a “weighted per pupil funding formula.”)

Assume:

- Allocation/student = \$7,000
- Additional allocation/student from a low-income family = \$250
- Additional allocation/English Language Learner = \$500
- Additional allocation/student with a disability = \$1,500
- Additional allocation/preschool student = \$8,500

In a school of 450 students, including 200 students from low-income families, 100 English Learners, 50 students with disabilities, and 20 preschool students, the school would be expected to receive \$3,495,000 in non-Federal resources based on the following calculations:

Category	Calculation	Amount
Allocation/student	450 x \$7,000	\$3,150,000
Allocation/student from low-income family	200 x \$250	\$50,000
Allocation/English Language Learner	100 x \$500	\$50,000
Allocation/student with a disability	50 x \$1,500	\$75,000
Allocation/preschool student	20 x \$8,500	\$170,000
		\$3,495,000

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To meet the supplemental funds test, an LEA would need to distribute non-Federal funds according to the assumptions above to all of its schools, regardless of whether a school receives Title I funds.

Example 2: Distribution of non-Federal resources based on staffing and supplies

Assume:

- 1 principal/school (\$120,000)
- 1 librarian/school (\$65,000)
- 2 guidance counselors/school (\$65,000/guidance counselor)
- 1 teacher per 22 students (\$65,000/teacher)
- \$825/student for instructional materials and supplies (including technology)

In a school of 450 students, the school would be expected to receive \$2,051,250 in non-Federal resources based on the following calculation:

Category	Calculation	Amount
1 principal	1 x \$120,000	\$120,000
1 librarian	1 x \$65,000	\$65,000
2 guidance counselors	2 x \$65,000	\$130,000
21 teachers	21 x \$65,000	\$1,365,000
Materials and supplies	450 x \$825	\$371,250
		\$2,051,250

To meet the supplemental funds test, an LEA would need to distribute non-Federal resources according to the assumptions above to all of its schools, regardless of whether a school receives Title I funds. This example does not, however, suggest that non-Federal funds must be used to support the activities in the table above; rather, Title I funds may be used to support any activity identified by the comprehensive needs assessment and articulated in the comprehensive Title I plan.

Note: The methodology does not mean that each school will necessarily receive the same staff level or amounts per student. Instead, the annual Comparability survey is the fiscal test used to ensure that services provided from state and local funds, taken as a whole, are comparable between Title I and non-Title I schools. The key for the SNS analysis is that the LEA can document and explain that Title I, Part A was not a factor in how state and local resources were distributed.

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QUESTIONS AND ANSWERS

Q1: Must an LEA develop a new methodology for allocating State and local funds to schools to comply with supplement not supplant?

A1: No. There is no expectation that an LEA must develop a new or necessarily different methodology, as long as any existing methodology is neutral with respect to a school's Title I status.

Q2: How does a "Title I neutral" methodology ensure that a Title I school receives all the State and local resources it would otherwise receive were it not a Title I school?

A2: Title I neutral methodology, or an allocation methodology that does not consider Title I status, by definition does not reduce the State and local funds to a Title I school because it does not use Title I status when allocating State and local funds. When using such a methodology, it follows that a Title I school received all the State and local funds it would otherwise receive were it not a Title I school, as nothing in the allocation methodology for State and local funds accounts for Title status. Likewise, a Title I neutral methodology does not use a proxy for Title I status such as a school's number or percentage of students in poverty or vague terms such as "educational need" that would result in a Title I school's receiving fewer State or local funds than it would receive if it were a non-Title I school.

Q3: May an LEA use a combination of methodologies for allocating State and local funds to schools?

A3: Yes. An LEA may use a combination of methodologies to allocate State and local funds to schools. For example, an LEA might use a different methodology for allocating State and local funds to high schools than it uses to allocate such funds to elementary schools.

Q4: Does an LEA have flexibility when developing its methodology for allocating State and local funds to schools?

A4: Yes, although many LEAs are likely to use an existing allocation methodology to demonstrate compliance (as long as its existing methodology is neutral with regard to a school's Title I status).

However, when developing a methodology (or methodologies), an LEA does have significant flexibility in its design, as long as the methodology is neutral with regard a school's Title I status. In developing a methodology, LEAs may (but are not required to) consider:

- Whether to use a single districtwide methodology or a variable methodology/multiple methodologies based on grade band or school type;
- How the methodology may vary or scale based on student enrollment size; or

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- How the methodology may account for schools in need of additional funds to serve high concentrations of children with disabilities, English learners, or other such groups of students the LEA determines require additional support.

Q5: Has NYSED prescribed a standard methodology to demonstrate compliance with the supplement not supplant requirement?

A5: In order to allow LEAs maximum flexibility in developing a methodology that accommodates the unique characteristics of the LEA, NYSED has not prescribed a standard methodology.

Q6: Must we maintain documentation to demonstrate that we have allocated our State and Local funds to all our schools in a Title I neutral manner and in accordance with our allocation methodology?

A6: Yes. Under ESEA section 8306(a)(6)(B) and 34 C.F.R. §§ 76.730-76.731, an LEA must keep records to show compliance with program requirements and facilitate an effective audit. Accordingly, an LEA must maintain documentation necessary to demonstrate that its methodology results in each Title I school in the LEA receiving all of the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds and provide this information upon request to NYSED, auditors, and other authorized individuals. Examples of documentation include the LEA's methodology and calculations the LEA performed to implement its methodology.

Q7: I'm a Federal Program Administrator – who should I talk to in my district to find the methodology for allocating State and local funds?

A7: LEA Federal Program Administrators may not have specific knowledge related to the allocation of State and local funds and should connect with the LEA's Business Official and/or Finance Director, or similarly situated person(s), for more information. Districts can also contact the New York State Education Department (NYSED or "the Department") for assistance in developing a methodology by calling (518)-473-0295.

Q8: Must an LEA allocate State and local funds for activities required by Federal, State, or local law to Title I schools?

A8: Yes. Where State or local law requires that all schools comply, and to the extent that an LEA allocates State and local funds for activities required by Federal, State, or local law through its allocation methodology to schools, then a Title I school must be allocated State and local funds for the activity required by State or local law, similar to any non-Title I school.

Q9. Does this change to Supplement Not Supplant mean that all costs are now allowable if they meet supplement not supplant?

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A9. No, Title I costs must still be allowable under the Title I program. At a minimum this means:

- Costs must still be necessary and reasonable.
- Costs must be permissible under Title I and ESSA generally. Context matters. For example, a school operating a schoolwide program should be able to demonstrate that a Title I cost is consistent with the school's needs assessment and schoolwide plan.
- Costs still must only benefit eligible students (eligible students = all students in a schoolwide program and identified students in a targeted assistance program).

Q10: Are Supplement Not Supplant requirements the same as Comparability requirements?

A10: No. While both Comparability and Supplement – Not Supplant look at how LEAs distribute State and local funds and/or resources to schools, they are separate tests that measure different things. Comparability requires that State and local funds are used to provide services that, taken-as-a-whole, are comparable between Title I and non-Title I schools. Supplement Not Supplant requires LEAs to distribute State and local funds to schools without taking in to account a school's participation in the Title I program. Though the source of funds for both fiscal tests are similar, situations may occur where the LEA satisfies the requirements within one while failing those of the other.

Q11: Does meeting the comparability requirement satisfy an LEA's responsibility to have a methodology to demonstrate compliance with the supplement not supplant requirement?

A11: Not necessarily. Whether meeting comparability would suffice to demonstrate compliance with the supplement not supplant requirement under ESEA section 1118(b)(2) depends on how an LEA calculates comparability. For example, if an LEA uses a pupil-teacher ratio to calculate comparability, that approach would likely not be sufficient to comply with the supplement not supplant requirement under section 1118(b)(2). A pupil-teacher ratio used for purposes of comparability is unlikely to represent all of the State and local funds that an LEA allocates to its schools; therefore, it is insufficient to satisfy the supplement not supplant requirement, which contemplates a test of all State and local resources allocated to schools through its methodology.

However, if an LEA demonstrates comparability on the basis of a weighted-student-funding system through which it allocates State and local funds through a formula to each school—Title I and non-Title I—based on characteristics of students, the LEA's comparability approach would likely also meet the requirements of section 1118(b)(2).

Q12. If an LEA meets supplement not supplant does it still need to meet Maintenance of Effort?

A12. Yes, an LEA must also comply with Title I's Maintenance of Effort as well as the Comparability requirements. Together, these requirements ensure Title I serves as a

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supplemental resource for Title I program schools.

Q13: Can we use our actual per-pupil expenditures State and Local fiscal data to demonstrate compliance with supplement not supplant?

A13: No. Although the two concepts—the methodology to allocate State and local funds to schools and the reporting of actual per-pupil expenditures for each school—are related, they are distinguishable and serve different purposes. Actual per pupil expenditures data represents a retrospective analysis of how much was *spent* by each school. The compliance demonstration for the supplement not supplant requirement is based on the methodology by which State and local funds are allocated to schools. It is designed to ensure Federal funds are not supplanting State and local funds at the point in which State and local funds are allocated to schools. Since actual per-pupil expenditure data is not a methodology by which State and local funds are allocated to schools, it therefore cannot be a methodology for an LEA to demonstrate compliance with supplement not supplant.

Q14. Are there LEAs that, in whole or in part, do not need to have a methodology to comply with ESEA section 1118(b)(2)?

A14 Yes. An LEA need not have a methodology to comply with ESEA section 1118(b)(2) if it has—

- One school;
- Only Title I schools; or
- A grade span that contains only: (1) a single school, (2) non-Title I schools, or (3) Title I schools (i.e., no methodology is required for this grade span).

Although such an LEA need not have a methodology to comply with ESEA section 1118(b)(2), it does not relieve the LEA of its requirement under ESEA section 1118(b)(1) and elsewhere to operate consistent with all Federal, State and local requirements and to provide free public education, including for schools and grade spans meeting the conditions described above.

Q15: Do the supplement not supplant requirements described in this document apply to other ESEA programs with a supplement not supplant requirement?

A15: No. Other ESEA programs that have a supplement not supplant requirement are not affected by the new language in ESEA section 1118(b). Those programs include:

- Title I, Part C (section 1304(c)(2));
- Title I, Part D (section 1415(b));
- Title II, Part A (section 2301);
- Title II, Part B, Subpart 1 (section 2212(g));
- Title III, Part A (section 3115(g));

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- Title IV, Part A, Subpart 1 (section 4110);
- Title IV, Part B (section 4204(a)(2)(B));
- Title IV, Part C (section 4304(k)(3)(C));
- Title IV, Part F, Subpart 2 (section 4625(i));
- Title IV, Part F, Subpart 4 (section 4642(b)(2));
- Title V, Part B (section 5232);
- Title VI, Part A, Subpart 1 (section 6114(c)(1));
- Title VI, Part A, Subpart 3 (section 6132(f)); and
- Title VII, Subsection (b) (section 7007(b)(5)(A)(iii)).

Q16: What requirements apply to State and local funds reserved for district-level activities that are not allocated to schools through the written methodology?

A16: A districtwide activity may provide benefits to all schools within an LEA, either directly or indirectly. For example, such activities may include districtwide academic programs, such as summer school or after-school programs; and specialized personnel providing districtwide services, such as instructional coaches and speech therapists. Similarly, a districtwide activity may include activities that benefit a set of schools, rather than a single school. For example, personnel, such as substitute teachers or social workers, may serve multiple schools, often on an as-needed basis. Given the difficulty or inability to accurately forecast or apportion such activities to the school level, an LEA may choose not to allocate to schools the State and local funds supporting these activities.

As previously noted, ESEA section 1118(b)(2) requires an LEA to demonstrate compliance with the supplement not supplant requirement by having a methodology that ensures that its allocation of State and local funds to schools is Title I neutral so that Title I, Part A funds used in Title I schools are supplemental. There is no similar compliance test for State and local funds reserved for districtwide activities. However, because the general supplement not supplant requirement in ESEA section 1118(b)(1) applies to *all* State and local funds, an LEA must conduct districtwide activities supported by such funds in a manner that does not take into account a school's Title I status (e.g., by implementing a policy of conducting districtwide activities in a Title I-neutral manner).

For example, an LEA may choose not to allocate to schools the State and local funds to support a social worker. Instead, the LEA reserves the State and local funds for a social worker at the district level. The LEA deploys the social worker to different schools throughout the school year on an as-needed basis that does not consider a school's Title I status. Although the State and local funding for such a social worker is not allocated to a school, and therefore is not subject to the compliance test, access to or assignment of the social worker must be Title I neutral in order to comply with the general supplement not supplant requirement in ESEA section 1118(b)(1), which applies to all State and local funds. As long as a school's Title I status is not considered when an LEA makes its determinations about use of, access to, or assignment of such districtwide resources, the LEA would be in compliance with ESEA section 1118(b)(1).

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In addition, to the extent that an LEA retains State and local funds to implement activities that are required by Federal, State or local law, the LEA must use those funds in a manner that does not consider a school's Title I status.