

Supplement Not Supplant (SNS) Proposed Regulations Overview

Background:

- Consistent with prior versions of the Elementary Secondary Education Act, State Education Agencies (SEAs) and Local Education Agencies (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.
- To demonstrate compliance . . . an LEA 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] (Section 1118(b)(2)).

Proposals:

- LEAs must annually:
 - Publish their methodology for allocating state and local funds in a format and language parents and the public can understand, and
 - Demonstrate, at such time and in such form as the SEA may reasonably require, that the methodology it uses gives each Title I school all of the state and local funds it would otherwise receive if it were not a Title I school.
- LEAs have four options for demonstrating compliance with SNS:
 1. Distribute to schools “almost all of the state and local funds available to the LEA” through a per-pupil formula in which students with educational disadvantage students generate more money for their schools. (Educational disadvantage includes, but is not limited to, low-income students, English Learner, students with disabilities).
 2. Distribute to schools “almost all of the state and local funds available to the LEA” through a consistent “resource formula” in which each Title I school receives at least (1) 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 (2) the average districtwide expenditure for non-personnel resources multiplied by the number of students in the school.
 3. An alternative, funds-based test applied consistently districtwide developed by the state and approved by a panel of U.S. Department of Education expert peer reviewers that is as rigorous as the above two options.
 4. A methodology selected by the district that ensures the per-pupil funding in each Title I school is at least as much as the average per-pupil funding in non-Title I schools within the district.
 - a. Spending in Title I schools can vary up to 5 percent of average spending in non-Title I schools in a given year.
 - b. An LEA can exclude any school with fewer than 100 students.
 - c. 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.

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 serves only a single school or in any grade span in which it serves only 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.
- 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 equal 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 administrative services, programs like summer school or preschool, and services like curriculum development or data analysis.

Timelines:

- By December 10, 2017, each LEA must:
 - Demonstrate to its SEA it has a methodology for meeting supplement not supplant provisions it will use no later than the 2018-19 school year, or
 - Submit a plan to its SEA for how it will fully implement a methodology for meeting SNS no later than the 2019-20 school year.
- Before 2018-19 or 2019-20, LEAs can demonstrate compliance by using one of the new options or No Child Left Behind rules

A few compliance questions:

- Formulas:
 - What does it mean to distribute “almost all” of an LEA’s state/local money to schools?
 - With Option 2, what if the allocated full-time equivalency 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?
 - What is considered to be a non-personnel resource?
 - In Option 4, what costs will be included/excluded in the per-pupil calculations? What does “high proportion” mean (for exception)?
- 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 state and local funds available to an LEA for current expenditures?
- 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?
- 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: (NOTE: While the rule does not require forced or involuntary transfer, it does not prohibit it.)
 - If the only way to comply with the requirement conflicts with collective bargaining agreements, what does that mean for compliance?
- 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.

For more information and to provide comments:

- U.S. Department of Education factsheet is available at <http://www.ed.gov/news/press-releases/fact-sheet-supplement-not-supplant-under-title-i-every-student-succeeds-act>.
- Full text of the regulations is available at <https://www.gpo.gov/fdsys/pkg/FR-2016-09-06/pdf/2016-20989.pdf>.
- Comments must be received on or before November 7, 2016, via www.regulations.gov.