



USDE's Proposed Rulemaking on Title I Supplement Not Supplant

**Presented by Jason Harmon
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What is Supplement Not Supplant (SNS)?

- **Statutory requirement designed to ensure that Federal funds provide additional resources that students and teachers in high-poverty schools need to succeed.**
- **Ensures that Title I funds do not take the place of state and local funds in low-income schools.**
- **The supplement not supplant provision was added to Title I statute in 1970 after documentation of egregious misuses of Title I funds.**



How Is SNS Currently Implemented?

In accordance with USDE's Non-Regulatory Guidance, NYSED generally uses a set of three presumptions to make SNS determinations. Specifically, NYSED presumes that supplanting has occurred when an Local Educational Agency (LEA) uses Title I funds to:

- Provide services that the LEA was required to make available under Federal, State, or local law;**
- Provide services that the LEA provided with non-Federal funds in the prior year(s); and/or**
- Provide services for children participating in a Title I program that the LEA provided with non-Federal funds to children not participating in Title I.**





How Is SNS Currently Implemented?

- **These presumptions are rebuttable if the LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal Title I funds not been available.**
- **In the case of a rebuttal, the LEA would need to ensure that it had contemporaneous records to confirm:**

How Is SNS Currently Implemented?

For example:

- **An LEA paid for a reading specialist in a Title I school in the previous year from State and local resources but decides to use Title I funds to pay for that teaching position in the current year.**
- **The presumption of supplanting could be rebutted by providing documents showing that the position was scheduled to be eliminated in the upcoming school year because of State Aid cuts (e.g. year-to-year comparisons of state aid figures and school board meeting minutes).**





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Key Provisions of ESSA Statute

- **Section 1118(b) of the new ESSA legislation is the first time that the supplement not supplant provision contains statutory language requiring that an LEA demonstrate that the methodology ensures compliance with the requirement.**
- **“PROHIBITION.—Nothing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local educational agency uses to allocate State and local funds to each school receiving assistance under this part.”**



Key Provisions of Draft Rulemaking

- **§200.72(a) of the draft rulemaking states that an LEA is not required to:**
 - **Identify that an individual cost or service supported with Title I, Part A funds is supplemental; or**
 - **Provide services with Title I, Part A funds through a particular instructional method or in a particular instructional setting.**
- **§200.72(b) of the draft rulemaking states that an LEA is required to annually:**
 - **Publish its methodology for allocating State and local funds; and**
 - **Demonstrate to the SEA, at such a time and in such a form as the SEA requires, that the methodology ensures that**

Key Provisions of Draft Rulemaking

- **APPROACH #1 – Student Characteristics:**
 - **Use a weighted student-funding formula. A formula in compliance with the proposal would put a priority on certain demographics associated with educational disadvantage, such as students from low-income backgrounds, English-language learners, and students with disabilities. It would also have to ensure that Title I schools receive all the actual funds they're entitled to under the formula.**



Key Provisions of Draft Rulemaking

- **APPROACH #2 – Personnel/Non-Personnel Resources:**
 - **Distribute money using a formula based on a districtwide average of personnel and non-personnel expenditures. For personnel expenditures, districts would calculate the number of personnel at a school and multiply that figure by the district's average salary for each respective staff category. For non-personnel expenditures, the district would multiply the number of students in a school by the district's average per-pupil expenditures for non-personnel resources. Then those personnel and non-personnel figures would be added together to determine the distribution of state and local money to schools.**



Key Provisions of Draft Rulemaking

- **APPROACH #3 – SEA-Established Test:**
 - **Use a state-developed compliance test. These tests would have to lead to a distribution state and local aid to schools that would be as rigorous as the first two options listed above. Such state compliance tests would be peer-reviewed at the federal level.**



Key Provisions of Draft Rulemaking

- **APPROACH #4 – Special Rule:**
 - **Choose a methodology that results in their state and local per-pupil spending in Title I schools being at least equal to the average of such spending in non-Title I schools. There's a little flexibility built in here, because districts would still be considered in compliance if per-pupil spending for each Title I school were up to 5 percent less than the average spending figure in non-Title I schools.**



Flexibilities in the Draft Rulemaking



Concerns About Draft Rulemaking

- The updated rulemaking seems to conflate Supplement not Supplant with Comparability in a manner that is unclear and potentially contradictory.
- Does USDE intend for the new SNS regulations to focus only on the allocation of State and local funds while Comparability regulations focus on the expenditure of State and local funds?



Concerns About Draft Rulemaking

- **The updated regulations allow for weighted formulas**

Concerns About Draft Rulemaking

- **The lack of attention to district level spending in demonstrating SNS may increase the likelihood of reflecting some costs at the central level in order to comply with requirements. This could result in:**
 - **A significant loss of control for building principals to allocate resources based on the identified needs of students, parents, and teachers at the school level.**
 - **Arbitrary decisions about whether to assign high-cost resources (e.g., instructional coaches, vendor services for teacher professional development) to a particular school or identify them as a district-level expense and/or**

Concerns About Draft Rulemaking

- **The proposed regulations may discourage districts' use of State and local funds to support school improvement efforts in identified schools, potentially hindering long-term sustainability of critical improvement efforts.**
- **Although forced teacher transfers would not be legally required through the proposal, they are not explicitly prohibited and could increase in order to ensure compliance with the requirements.**



Implications for New York State

If the draft rulemaking is finalized in its current form, the New York State Education Department:

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Implications for New York State

**If the draft rulemaking is finalized in its current form,
Local Educational Agencies (LEAs):**

- **May use one of the four methodologies to demonstrate compliance with supplement no supplant requirements.**
- **Must submit a plan demonstrating how they will comply with the spending rule to NYSED by December 2017.**
- **Must demonstrate compliance with the supplemental-**

Next Steps

- Submit comments and feedback to NYSED via email to accountinfo@nysed.gov no later than the close of business on Friday, October 28, 2016.
- Submit official comments through the Federal Register notice available at the following link by November 7, 2016 at:

<https://www.federalregister.gov/documents/2016/09/06/2016-20989/title-i-improving-the-academic-achievement-of-the-disadvantaged-supplement-not-supplant/open-comment>

