**TITLE I, PART A – SUPPLEMENT NOT SUPPLANT GUIDANCE**

*Guidance for Local Educational Agencies (LEAs): Understanding Supplement, Not Supplant (SNS) Under Title I, Part A of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) of 2015.*

**BACKGROUND**

In 2015, Congress reauthorized the ESEA, also known as ESSA, including Title I, Part A and its fiscal requirements.

ESSA states that an LEA receiving Title I, Part A funds must continue to use its Title I, Part A funds only to supplement, and not supplant, the funds that would be made available from State and local sources in the absence of such Federal funds. This general supplement not supplant requirement is largely unchanged from No Child Left Behind (NCLB).

However, the manner in which an LEA demonstrates compliance with supplement not supplant is now different. Under ESSA, an LEA’s allocation of State and local funds to schools is examined as a whole to ensure that Title I, Part A funds supplement, and do not supplant, State and local funds. An LEA is no longer required to identify that any individual cost or service supported with Title I, Part A funds is supplemental.

Therefore, an LEA must show that its methodology to allocate State and local funds to schools results in each Title I school receiving all of the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds.

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. This demonstrates an LEA did not reduce the State and local funds made available to a Title I school because such a school is also receiving Title I, Part A funds. This is consistent with the purpose of the supplement not supplant requirement.

The purpose of this change is to provide more flexibility for schools to utilize Title I funds to implement comprehensive and innovative programs. LEAs will be able to demonstrate SNS compliance in a much less burdensome and restrictive way, while still making clear that Federal dollars are supplemental to State and local dollars and not used to replace them.

Important to note is that the SNS provision language was changed to “State and local funds,” previously stated as “non-federal funds.” This means that other non-Federal funds, such as private contributions, fundraising, and parent fees, need not be part of determining compliance with the Title I, Part A supplement not supplant requirement.

**TITLE I, PART A SUPPLEMENT NOT SUPPLANT IN GENERAL**

ESEA requires a Local Educational Agency (LEA) to use Federal funds received under [Title I, Part A] only to **supplement** the funds that would, in the absence of such Federal funds, be made available from State and local sources for the education of students participating in programs assisted under [Title I, Part A], and not to supplant such funds. *(ESEA section 1118(b)(1))*

**SPECIAL RULE**

No local educational agency shall be required to—

1. Identify that an individual cost or service supported under [Title I, Part A] is supplemental; or
2. Provide services under [Title I, Part A] through a particular instructional method or in a particular instructional setting in order to demonstrate such agency’s compliance with [the supplement not supplant requirement]. *(ESEA section 1118(b)(3))*

**SCHOOLWIDE AND TARGETED ASSISTANCE PROGRAMS**

*Schoolwide Programs*

In schoolwide programs, Title I funds may be used to upgrade the entire educational program in the school and benefit all students, provided the cost is consistent with the school’s comprehensive needs assessment and included in the school’s comprehensive schoolwide plan. (ESEA section 1114(a)(1)).

*Targeted Assistance Programs and Funds for District-level Activities*

In targeted assistance programs, the ESEA requires Title I, Part A funds to be used only to serve students who are failing, or most at risk of failing, to meet the State’s challenging academic standards. (ESEA section 1115(a)).

**LEA LEVEL ACTIVITIES**

An LEA will likely retain some State and local funds at the district level for use on personnel and non-personnel services that benefit multiple schools or all schools.

The general supplement not supplant requirement in the ESEA requires an LEA to use Title I funds to supplement all State and local funds. *(ESEA Section 1118(b)(1))*

Therefore, an LEA must use State or local funds that it does not allocate through its methodology in a manner that does not take into account a school’s Title I status. For example, instead of allocating State and local funds to schools to support a social worker, an LEA assigns a social worker to different schools throughout the school year based on needs. To meet the supplement not supplant requirement the LEA does not take into account a school’s Title I status (i.e., acts in a Title I neutral manner) in determining to which schools it deploys the social worker.

**OTHER EXCEPTIONS**

An LEA does not have to demonstrate compliance under ESEA section 1118(b)(2) if it has:

* only one school;
* all Title I schools; or
* a grade span with a single school or all Title schools (i.e., no methodology is required for grade spans with either a single school or all Title I schools).

**EXCLUSIONS AND FLEXIBILITIES**

Under ESEA section 1118(d), the LEA may exclude from a supplanting determination the *supplemental* State and local funds for programs that meet the intent and purposes of Title I, Part A. Therefore, at the LEA’s discretion, a school’s Title I status may be taken into account when expending *supplemental* State and local funds as permitted by the exclusion. In other words, it is not required that the allocation or use of *supplemental* State and local funds be Title I-neutral.

A program meets the intent and purposes of Title I, Part A if the program either—

1. Is implemented in a school in which the percentage of children from low-income families is at least 40 percent and is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State’s challenging academic achievement standards that all students are expected to meet; **and**
2. Is designed to meet the educational needs of all students in the school, particularly those who are failing, or most at risk of failing, to meet the State’s challenging academic achievement standards; **and**
3. Uses the State’s assessment system to review the effectiveness of the program;

**OR**

1. It serves only students who are failing, or most at risk of failing, to meet the State’s challenging academic achievement standards; **and**
2. Provides supplementary services designed to meet the special educational needs of participating students to support their achievement toward meeting the State’s student academic achievement standards; **and**
3. Uses the State’s assessment system to review the effectiveness of the program. *(34 C.F.R. § 200.79(b))*

Thus, a program meets the intent and purposes of Title I, Part A if it would be an allowable use of Title I, Part A funds were it implemented in a Title I schoolwide program or targeted assistance school.

For an LEA that elects to use the exclusion, it must identify whether State and local funds expended on a particular program are supplemental, and whether the program meets the intent and purposes of Title I, Part A pursuant to 34 C.F.R. § 200.79(b).

A program meets the intent and purposes of Title I if it would be an allowable use of Title I funds were it implemented in a Title I schoolwide program or targeted assistance school. *(34 C.F.R. § 200.79(b))*

**Example 1**

Assume:

1. Through its methodology, an LEA allocates to only non-Title I schools State and local funding to support after-school tutoring for any student who scores below proficient on the State’s mathematics assessment.
2. In its Title I schools, the LEA uses Title I, Part A funds to support after-school tutoring for any student who scores below proficient on the State’s mathematics assessment.

This example would not violate the supplement not supplant requirement.

Although the LEA is taking into account Title I status when allocating State and local funds through its methodology by only allocating to its non-Title I schools the State and local funds for the tutoring program, tutoring is a supplemental program and it benefits students who, by virtue of being non-proficient in mathematics, are failing to meet the State’s mathematics standards.

Therefore, the State and local funds supporting tutoring qualify for the exclusion because the program is supplemental and meets the intent and purposes of Title I, Part A pursuant to 34 C.F.R. § 200.79(b).

**Example 2**

Assume:

1. A State law requires all third-grade students to meet the State’s proficient achievement standard in reading/language arts in order to be promoted to fourth grade. The State does not provide funds to meet this mandate.
2. The State law requires that any student who is not proficient at the start of third grade must be provided 90 minutes of supplemental services designed to improve his/her reading proficiency.
3. An LEA uses Title I, Part A funds to provide the requisite reading services in a Title I school and, through its methodology, allocates supplemental local funds only to non-Title I schools to provide the requisite reading services.

This example would not violate the supplement not supplant requirement.

Although the LEA is taking into account Title I status when allocating local funds through its methodology by only allocating to non-Title I schools the local funds to provide supplemental reading services to meet State law, the supplemental reading services are designed to meet the needs of third-grade students who are failing, or most at risk of failing, to meet State academic achievement standards in reading.

Therefore, the local funds supporting reading services qualify for the exclusion because the program is supplemental and meets the intent and purposes of Title I, Part A pursuant to 34 C.F.R. § 200.79(b), even though the services are required by State law.

As a result, an LEA may allocate supplemental State or local funds that meet the intent and purposes of Title I in a manner that is not Title I neutral.

For example, although the LEA considers Title I status when allocating supplemental State and local funds through its methodology by only allocating to its non-Title I schools the State and local funds for the tutoring program, tutoring is a supplemental program and it benefits students who, by virtue of being non-proficient in mathematics, are failing to meet the State’s mathematics standards. Therefore, the State and local funds supporting tutoring qualify for the exclusion because the program is supplemental and meets the intent and purposes of Title I.

**LEA REQUIREMENT FOR DEMONSTRATION OF COMPLIANCE**

Annually, LEAs receiving a Title I allocation must demonstrate the methodology they used to allocate their State and local funds to each school. Note that some LEAs may be exempt from this requirement; see other exceptions in this guidance for further details.

To demonstrate compliance with the Title I supplement not supplant requirement, an LEA must document the methodology used to allocate State and local funds to its schools ensures that each Title I school receives all of the State and local funds it would otherwise receive if it were not receiving Title I funds. *(ESEA section 1118(b)(2))* **A LEA’s adherence to the Title I, Part A supplement not supplant requirement is subject to review upon request by RIDE of the LEAs documented evidence of their compliance.**

This represents a substantial change in determining whether Title I funds are supplemental. The LEA is no longer required to identify individual costs or services supported by Title I as supplemental. The focus is on allocation (budgeting) of State and local funds, rather than on an activity funded by Title I; and differs from supplement not supplant requirements of other ESEA programs in which the focus remains on whether an activity is supplemental.

What has not changed is ESEA still requires an LEA to use Title I funds only for allowable costs, even if the LEA complies with the supplement not supplant requirement. The type of Title I program (schoolwide or targeted assistance) determines whether a cost is allowable.

**DEMONSTRATION OF COMPLIANCE**

An LEA has significant flexibility in adopting a methodology or using its existing methodology to meet the new supplement not supplant requirement. The methodology must:

* allocate State and local funds to schools in the LEA; and
* provide each Title I school the State and local funds it would receive were it not a Title I school—i.e., treat Title I schools neutrally.

An LEA may have a single methodology or multiple methodologies (e.g., a different methodology for each grade span). Examples of methodologies for allocating State and local funds based on:

* student characteristics (weighted student funding),
* staff salaries and supplies, and
* staff positions.

**METHODOLOGY EXAMPLES**

RIDE does not require that LEAs implement a specific methodology to allocate State and local funds to its schools. To meet SNS compliance under ESEA Title I, LEAs must ensure Title I schools are not deprived of state and local resources based on the: (1) status as a Title I school; or (2) the schools’ amount of Title I funding received. LEAs must allocate state and local funds to Title I schools in a manner that is either Title I-neutral or provides Title I schools with additional state and local funds.

LEAs have flexibility to determine their own methodology for distributing funds to schools, including but not limited to the following:

**Example 1**

Varying per-pupil allocations based on the characteristics of students in each school in a manner that ensures that students who may benefit from additional support, such as economically disadvantaged students, English learners, and students with disabilities, receive additional local funding.   
  
For example, the LEA is able to demonstrate that it provides local funding to all schools using a base rate for all students, and then allocating an additional, specified per-pupil amount based on need (e.g., if an additional weight is added for students with disabilities and English learners, funding for a dually identified student would include both weights).   
  
Assume:

a. Base allocation per student = $7,000

b. Additional allocation per student from a low-income family = $250

c. Additional allocation per English learner = $500

d. Additional allocation per student with a disability = $1,500

e. Additional allocation per preschool student = $8,500

This example allocates State and local funds to schools based on a standard formula through which an LEA allocates dollar amounts based on objective student characteristics. Under this example, in a school of 400 students, including 200 students from low-income families, 100 English learners, 50 children with disabilities, and 20 preschool students, the LEA would allocate to the school $3,145,000 in State and local funds based on the following calculations:

|  |  |  |  |
| --- | --- | --- | --- |
| **Category** | **Calculation** |  | **Result** |
| Allocation per student | 400 students x $7,000 |  | $2,800,000 |
| Allocation per student from low- income family | 200 students from low-income families x $250 |  | $50,000 |
| Allocation per English learner | 100 English learners x $500 |  | $50,000 |
| Allocation per student with a disability | 50 children with a disability x $1,500 |  | $75,000 |
| Allocation per preschool students | 20 preschool students x $8,500 |  | $170,000 |
| **Total** |  |  | **$3,145,000** |

**Example 2**

A distribution based on personnel or non-personnel costs.

For example, the average LEA-wide salary for each category of school personnel (e.g., teachers, principals, librarians, school counselors) is multiplied by the number of school personnel in each category assigned by the LEA-wide formula to the school; and the average LEA-wide per-pupil expenditure for non-personnel resources is multiplied by the number of students in the school.

Assume:

a. 1 principal/school ($120,000)

b. 1 librarian/school ($65,000)

c. 2 guidance counselors/school ($65,000/guidance counselor)

d. 1 teacher per 20 students ($65,000/teacher)

e. $825/student for instructional materials and supplies (including technology)

This example allocates State and local funds to schools based on estimated average costs. In a school of 400 students, the LEA would allocate to the school $1,945,000 in State and local funds based on the following calculations:

|  |  |  |  |
| --- | --- | --- | --- |
| **Category** | **Calculation** |  | **Result** |
| 1 principal | 1 principal x $120,000 |  | $120,000 |
| 1 librarian | 1 librarian x $65,000 |  | $65,000 |
| 2 guidance counselors | 2 guidance counselors x $65,000 |  | $130,000 |
| 20 teachers | 20 teachers x $65,000 |  | $1,300,000 |
| Materials and Supplies | 400 students x $825 |  | $330,000 |
| **Total** |  |  | **$1,945,000** |

**Example 3**

Allocations based on the grade level of the student (e.g., high school students receive more funding per pupil than elementary school students).   
  
For example, all elementary schools receive $50 per student, middle schools receive $65 per student and high schools receive $80 per student.

**Example 4**

Allocation of resources based on defined parameters.   
  
For example, the LEA uses its local funding to ensure that each school has enough funds to pay for one teacher for every 30 students up to 20 teachers total, and $5 per student for supplies, up to $5,000 total.

**Example 5**

Any combination of the above examples or other methodology that results in the LEA spending an amount of local funds per pupil in each Title I school that is equal to or greater than the average amount of local funds spent per pupil in non-Title I schools.   
  
Note that an LEA that uses one of the methodologies above to allocate a portion of its funding could violate SNS requirements if other local funding is distributed to schools in a way that violates SNS.

As an example of noncompliance, an LEA might use the following methodology noted above as “allocation of resources based on defined parameters”:

The LEA uses its local funds to ensure that each of the ten schools in the district have enough funds to pay for one teacher for every 30 students up to 20 teacher’s total. The LEA provides local funding in each of its six non-Title I schools to pay for 20 teachers. In the remaining four schools, the LEA provides local funds to pay for only 15 teachers because they are already using Title I funds to pay for five teachers, so they do not need the local funds to cover those additional teachers. This methodology would not meet the SNS standard because the Title I status of a school is affecting the amount of local funding that the schools are receiving.

**SNS VS COMPARABILITY**

While comparability and supplement, not supplant requirements both examine how the LEA distributes State and local funds and/or resources to schools, they are separate tests and are intended to measure different aspects of the supplemental nature of Title I, Part A funds. As such, the demonstration requirements for comparability may not be used to meet the demonstration requirements for supplement, not supplant, or conversely. The following examples provide scenarios where LEAs may satisfy the requirements of one while violating the requirements of the other.

**Example 1: Supplement, Not Supplant compliance is met, but Comparability is violated.**

The LEA demonstrates compliance with supplement, not supplant because it can demonstrate that it did not consider the Title I status of schools when distributing State and local funds to schools, however the LEA does not satisfy comparability requirements because the LEA’s non-Title I schools have lower student/instructional staff ratios than its Title I schools.

**Example 2: Comparability compliance is met, but Supplement, Not Supplant is violated.**

The LEA demonstrates compliance with comparability through student/instructional staff ratios, however the LEA does not satisfy supplement, not supplant requirements. This is because additional State/local funding is provided to non-Title I schools for technology purchases but not to Title I schools because the LEA expects the Title I school to pay for those technology purchases with Title I, Part A funds.

**THREE FISCAL TESTS UNDER TITLE I, PART A**

The revised SNS test continues be one of three separate fiscal tests in Title I, Part A:

1. *Maintenance of effort* requires LEAs to maintain a consistent floor of state and local funding for free public education from year-to-year.
2. *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.
3. *Supplement not supplant* requires LEAs to distribute state and local funds to schools without taking into account a school’s participation in the Title I program.

**SUPPLEMENT, NOT SUPPLANT REQUIREMENTS FOR OTHER ESSA FUNDS**

ESSA also includes SNS requirements for other programs, including Title II-A (Supporting Effective Instruction), Title III-A (English Language Acquisition), and Title IV-A (Student Support and Academic Enrichment, SSAE). ESSA did not change the SNS requirements for Title II-A or Title III-A funds. Although the Title IV-A SSAE program is new under ESSA, the program’s SNS requirements are very similar to those for Title II-A.

**FREQUENTLY ASKED QUESTIONS (FROM U.S. DEPARTMENT OF EDUCATION’S TITLE I SNS GUIDANCE DOCUMENT)**

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

**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.

1. **What does it mean for an LEA’s allocation methodology to be “Title I neutral”?**

An allocation methodology that is “Title I neutral” is shorthand to describe an allocation methodology that allocates State and local funds to schools without regard for a school’s Title I status (i.e., neutrally). A Title I neutral methodology ensures that State and local funds to a Title I school are not reduced based on the school receiving Title I, Part A funds because the methodology for allocating State and local funds to schools does not consider Title I status.

1. **May an LEA be required to apply the three presumptions to determine whether supplanting has occurred?**

**No.** ESEA section 1118(b)(3)(A) states that no LEA shall be required to identify that an individual cost or service is supplemental. This provision rules out requiring an LEA to use the three presumptions to comply with the supplement not supplant requirement, which were based on an analysis of individual costs.

1. **What State and local funds are subject to the Title I supplement not supplant requirement?**

ESEA section 1118(b)(1) requires that Title I, Part A funds supplement the funds that would, in the absence of the Title I, Part A funds, be made available from State and local sources for the education of students participating in Title I programs. Accordingly, the supplement not supplant requirement applies to *all* State and local funds that an LEA uses for the education of students. Please note, however, that the new compliance demonstration in ESEA section 1118(b)(2) focuses only on the State and local funds each school is allocated from its LEA. Because many LEAs do not allocate all State and local funds to schools, there may naturally be some State and local funds that are not subject to the compliance demonstration.   
  
For State and local funds that an LEA does *not* allocate to schools, ESEA section 1118(b)(1) requires that the LEA conduct activities supported by such funds in a manner that does not take into account a school’s Title I status.

1. **Does an LEA have discretion as to which State and local funds it allocates to schools?**

**Yes.** An LEA retains the discretion to determine which State and local funds it allocates to schools and which it does not. An LEA does not normally allocate *all* of its State and local funds to schools. Rather, an LEA by both necessity and choice retains some State and local funds at the district level.

1. **May a school’s Title I status ever be taken into account in the methodology to allocate State and local funds to schools?**

**Yes.** There are two instances in which a school’s Title I status may be considered in the methodology to allocate State and local funds to schools.   
  
a) An LEA could, at its choosing, allocate*more* State and local funds to a Title I school on the basis of its being a Title I school. An LEA’s methodology for allocating State and local funds must ensure a Title I school is allocated “all of the State and local funds it would otherwise receive were it not receiving [Title I, Part A funds].” This scenario presumes the LEA allocates to a Title I school all the State and local funds it would otherwise receive were it not a Title I school (based on its Title I neutral allocation methodology) and then allocates *more* State and local funds based on a school’s Title I status. Because there is no reduction in State and local funding based on a school’s Title I status (in fact the Title I school is receiving more State and local funding based on its Title I status), this is consistent with the supplement not supplant requirement.   
  
b) An LEA may exclude from a supplanting determination the supplemental State and local funds for programs that meet the intent and purposes of Title I, Part A, pursuant to ESEA section 1118(d). This allows an LEA to take a school’s Title I status into account if allocating to schools supplemental State and local funds for programs that meet the intent and purposes of Title I, Part A, as permitted by the exclusion.

1. **May an LEA use a combination of methodologies for allocating State and local funds to schools?**

**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.

1. **Does an LEA have flexibility when developing its methodology for allocating State and local funds to schools?**   
   **Yes.** Although many LEAs are likely to use an existing allocation methodology for purposes of demonstrating 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:
2. Whether to use a single districtwide methodology or a variable methodology/multiple methodologies based on grade band or school type;
3. How the methodology may vary or scale based on student enrollment size; or
4. 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.
5. **May the Department prescribe the specific methodology an LEA must use to allocate State and local funds to each Title I school?**

**No.** ESEA section 1118(b)(4) prohibits the Department from prescribing the specific methodology an LEA uses to allocate State and local funds to Title I schools.

1. **Must an LEA’s methodology result in equal per-pupil spending between Title I schools and non-Title I schools?**

**No.** ESEA section 1605 prohibits the Department from mandating equalized spending per pupil for a State, LEA, or school. This prohibition accounts for the many different factors that affect the allocation of resources to schools, including schools enrolling higher concentrations of students with disabilities, schools with smaller student enrollment, and schools offering specialized programming, any or all of which may result in higher per-pupil spending.

1. **May an LEA use its actual per-pupil expenditures data to demonstrate compliance with supplement not supplant?**

**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. For each school’s report card, an LEA must include the actual per-pupil expenditures of Federal, State, and local funds, disaggregated by source of funds, for the preceding fiscal year. Including this data on report cards will enhance transparency and provide valuable information to educators, parents, and others regarding the use of resources. However, 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.

1. **Must an LEA use the same methodology for charter and non-charter schools within the LEA?**

**No.** An LEA may, at its choosing, allocate State and local funds to charter schools within the LEA using a separate methodology from that through which it allocates State and local funds to non-charter schools, consistent with any/all applicable State charter school laws. For example, some LEAs allocate State and local funds to charter schools to cover facility costs but do not allocate such funds to traditional public schools, which, at the LEA’s discretion, could be reason for a different methodology for the allocation of State and local resources to charter schools. Should an LEA choose to use more than one methodology, each must be neutral with respect to Title I schools.

1. **Must an LEA adjust its allocation of State and local resources to account for changes during the school year that might result in the LEA’s non-compliance?**

**No.** ESEA section 1118(b)(2) contemplates an annual allocation of State and local funds to demonstrate compliance with the supplement not supplant requirement in section 1118(b)(1). Accordingly, an LEA makes this demonstration at only one point during the year and is not required to continuously demonstrate compliance throughout the school year.

1. **Will last-minute changes before the start of school affect compliance of an LEA’s methodology with the supplement not supplant requirement?**

**No.** As long as the methodology for allocating State and local funds is neutral with respect to Title I school status, last-minute changes in resource allocation that often occur prior to the beginning of the school year should not affect an LEA’s compliance with the supplement not supplant requirement. For example, were an employee to transfer or resign prior to the beginning of the school year, an LEA may replace that employee without risking non-compliance as long as the school’s Title I status is not a factor in the determination regarding the allocation of resources. Were an LEA to *not* allocate a resource *because* a school is a Title I school, the LEA would be out of compliance with ESEA section 1118(b)(2).

1. **Must an LEA allocate State and local funds for activities required by State or local law to Title I schools?**

**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 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.

**16. Must a Title I school receive the State and local funds necessary to provide services required by law for children with disabilities and English learners?**

**Yes.** ESEA sections 1118(b)(1)-(2) and 1114(a)(2)(B) require that a Title I school receive the State and local funds necessary to provide services required by law for children with disabilities and English learners. Examples of services required by law for children with disabilities and English learners include services in an individualized education program (IEP) necessary for a child with disabilities to receive a free appropriate public education (FAPE); services for English learners required by Lau v. Nichols 414 U.S. 563 (1974)26and the administration of a screener to determine whether a student is English proficient as required under Title VI of the Civil Rights Act of 1964.

**17. Must an LEA post on its website its methodology for allocating State and local funds to schools?**

**No.** There is no Federal requirement that an LEA post its methodology on its website.

**18. Must an LEA maintain documentation to demonstrate that the LEA allocated State and local funds to schools in accordance with its methodology?**

**Yes.** Under 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.

**19. When must an LEA demonstrate compliance with the supplement not supplant requirement?**

ESEA section 1118(b)(5) requires an LEA to meet the compliance requirement under section 1118(b)(2) not later than two years after the date of enactment of the ESSA— *i.e.*, December 10, 2017.

Because an LEA cannot reasonably allocate State and local funds under a new methodology in the middle of a school year, the Department used its transition authority under ESSA section 4(b) to delay the use of the new compliance provision until the beginning of the 2018−2019 school year.

**20. Do the supplement not supplant requirements described in this document apply to other ESEA programs with a supplement not supplant requirement?**

**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:

* 1. Title I, Part C (section 1304(c)(2));
  2. Title I, Part D (section 1415(b));

1. Title II, Part A (section 2301);
2. Title II, Part B, Subpart 1 (section 2212(g));
3. Title III, Part A (section 3115(g));
4. Title IV, Part A, Subpart 1 (section 4110);
5. Title IV, Part B (section 4204(a)(2)(B));
6. Title IV, Part C (section 4304(k)(3)(C));
7. Title IV, Part F, Subpart 2 (section 4625(i));
8. Title IV, Part F, Subpart 4 (section 4642(b)(2));
9. Title V, Part B (section 5232);
10. Title VI, Part A, Subpart 1 (section 6114(c)(1));
11. Title VI, Part A, Subpart 3 (section 6132(f)); and
12. Title VII, Subsection (b) (section 7007(b)(5)(A)(iii)).

**21. May the Secretary of Education waive the Title I, Part A supplement not supplant requirement?**

**No.** ESEA section 8401(c)(4) specifically prohibits the Secretary of Education from waiving any supplement not supplant requirement.

**22. Must an SEA approve an LEA’s methodology for allocating State and local funds to schools?**

**No.** However, the ESEA requires an SEA to monitor its LEAs to ensure compliance with the requirements of the ESEA (see ESEA section 8304(a)(1), (3)(B)), which would include that an LEA has a compliant methodology for allocating State and local funds, among other requirements. Therefore, an SEA may request to review an LEA’s methodology as part of its monitoring process.

**23. How does an LEA treat Impact Aid funds and other Federal funds intended to replace local tax revenue in implementing ESEA section 1118(b)(2)?**

ESEA section 1118(b)(2) only applies to an LEA’s allocation of State and local funds to schools. Therefore, an LEA is not required to allocate Federal Impact Aid funds or other Federal funds intended to replace local tax revenue in the same manner as its State and local funds. Please note that nothing in ESEA section 1118(b)(2) affects an LEA’s receipt of Impact Aid or other such Federal funds or the statutory or regulatory requirements governing their use.

**24. If an educational service agency (ESA) receives Title I, Part A funds as an LEA to provide Title I services to a group of regular LEAs, must the ESA comply with the supplement not supplant requirement?**

**Yes.** The ESEA requires an ESA, as a recipient of Title I, Part A funds (*i.e.*, receives a Title I, Part A grant), to comply with all applicable requirements, including the supplement not supplant requirement. This may pose unique issues if the regular LEAs that an ESA services control the allocation of State and local funds to their schools. In such a case, the ESA will need to cooperate with the LEAs that it serves and that control the allocation of State and local funds to ensure that Title I schools receive all the State and local funds they would otherwise receive if they were not receiving Title I, Part A funds. If an ESA is not a recipient of Title I, Part A funds, but instead enters into an agreement with one or more LEAs to provide services, the ESA would not need to meet the supplement not supplant requirement; rather, the requirement would apply to the LEAs.

**25. Must Title I, Part A funds be used only for allowable activities given that no LEA may be required to demonstrate that individual costs are supplemental?**

**Yes.** The ESEA requires an LEA to use Title I, Part A funds only for allowable costs, even if the LEA complies with the supplement not supplant requirement. The type of Title I program determines whether a cost is allowable:

* + - In a schoolwide program, Title I funds may be used to upgrade the entire educational program in the school and benefit all students, provided the cost is consistent with the school’s comprehensive needs assessment and included in the school’s comprehensive schoolwide plan (see ESEA section 1114(a)(1)).
    - In a targeted assistance program and with respect to funds for district-level activities, the ESEA requires Title I, Part A funds to be used only to serve students who are failing, or most at risk of failing, to meet the State’s challenging academic standards (see ESEA section 1115(a)).

Although an LEA need not identify that particular costs supported with Title I, Part A funds are supplemental, it still must use its Title I, Part A funds only for allowable costs.

**26. Would a comparability report satisfy requirements for a methodology for demonstrating supplement, not supplant?**

**It Depends**. The answer depends on the kind of comparability report used. Does the comparability report show the neutral allocation of funds to Title I and non-Title I schools? Does it reflect all the state and local funds that schools receive? Some approved methodologies include those based on student characteristics or the allocation of staffing and equipment to schools.

Because it is limited in scope, a comparability report based on a student-to-teacher ratio might not provide sufficient information for a supplement, not supplant methodology, according to Supplement, Not Supplant under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act.

Comparability requires Title I schools to receive services that are at least comparable to other non-Title I schools, but a methodology for supplement, not supplant must show the neutral allocation of state and local funds to all schools in the district.

A Title I neutral methodology ensures that state and local funds to a Title I school are not reduced based on the school receiving Title I, Part A funds because the methodology for allocating state and local funds to schools does not consider Title I status.

If the comparability report is based on a weighted-student funding system for allocating funds to every school according to student characteristics, such as whether students are low-income or English learners, than the comparability approach is likely to meet the supplement, not supplant requirements of Elementary and Secondary Education Act Section 1118(b)(2) because it is Title I neutral, according to supplement, not supplant guidance from ED.