Supplement, Not Supplant Handbook

A Guide for Grants Administered by the Texas Education Agency

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Introduction

Supplement, not supplant is an integral provision of most federal statutes that authorize education grant programs. This handbook discusses supplement, not supplant in general and as it applies to the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB), which is representative of the way the supplement, not supplant provision works in all programs.

For the 2016-2017 school year, this handbook will continue to address supplement, not supplant as it applies under NCLB. Beginning with the 2017-2018 school year, a new version of this handbook will update the supplement, not supplant provisions as appropriate under the new Every Student Succeeds Act (ESSA), which was signed into law on December 10, 2015.

Definition of Supplement, Not Supplant

The term "supplement, not supplant" is a provision common to many federal statutes authorizing education grant programs. There is no single supplement, not supplant provision. Rather, the wording of the provision varies depending on the statute that contains it.

Although the definition may change from statute to statute, supplement, not supplant provisions basically require that grantees use state or local funds for all services required by state law, State Board of Education (SBOE) rule, or local policy and prohibit those funds from being diverted for other purposes when federal funds are available. Federal funds must supplement—add to, enhance, expand, increase, extend—the programs and services offered with state and local funds. Federal funds cannot be used to supplant—take the place of, replace—the state and local funds used to offer those programs and services.

Enhancing, Expanding, or Extending Required Activities

If federal funds are used to enhance or expand a state mandate, SBOE rule, or local board policy, then the federal supplementary activities must be separately identified and clearly distinguishable from those activities identified as necessary for implementing the state mandate, SBOE rule, or local board policy as outlined in the implementation plan.

Although separate plans are not necessary, the local educational agency (LEA) must be able to document a clear plan for meeting the mandated requirement and another plan for providing supplementary activities from federal funds in addition to the mandated requirement.

Purpose of the Provision

The purpose of a supplement, not supplant provision is to help ensure that federal grant funds are expended to benefit the intended population defined in the authorizing statute, rather than being diverted to cover expenses that the LEA would have paid out of other funds in the event the federal funds were not available. In this way, the federal government can ensure that the level of state and local support for a program remains at least constant and is not replaced by federal funds.

Background of the Provision

Of the major federal education programs, ESEA is the oldest. Passed in 1965 as part of President Lyndon B. Johnson's War on Poverty, ESEA was primarily aimed at increasing the educational services provided to disadvantaged school children. After ESEA was initially passed into law, reports showed that LEAs were spending Title I dollars on general expenses that they would normally have covered with other funds, rather than using those federal funds to provide support and services to the intended beneficiaries of the program. As a result, supplement, not supplant provisions were added to ESEA. Following ESEA, both

IDEA and Perkins were developed with supplement, not supplant provisions as integral parts of the statutes.

Presumptions of Supplanting

Other than with the use of Title I, Part A funds on schoolwide campuses, there are three scenarios in which the US Department of Education (USDE) will presume that a supplant (i.e., a case in which federal dollars have been diverted) has occurred. In all these three cases, once the presumption of supplanting has been made, it is the LEA's responsibility to rebut the presumption. While this is technically possible, it can be extremely difficult for LEAs to meet the burden of proof. Preferably, the LEA would budget and expend federal dollars so as to avoid any of the following three presumptions entirely.

1. **Providing Services Required Under State or Local Law**

   Any services that an LEA is required to provide under state law, SBOE rule, commissioner's rule, or local policy must be provided using *state or local funds.* If federal funds are used to provide those services, the USDE will presume that a supplant has occurred. Even if the LEA has maintained documentation demonstrating that it would not have been able to meet the state mandates without the use of federal funds, it is extremely difficult to rebut this presumption of supplanting because USDE reviews how all state and local funds within the LEA are expended.

2. **Providing Same Services as Those Provided in Prior School Year with State or Local Funds**

   If state or local funds were used in the prior school year to provide services, and those services are provided again in the current school year, the USDE will presume a supplant has occurred if the state or local funds are replaced by federal funds. LEAs are not permitted to use federal funds to replace state or local funds. Even in cases where a budget shortfall is anticipated, the LEA *may not plan to use federal funds* to cover a shortage of state or local funds.

   It is possible to document that services from the prior year would not have been continued as a result of a lack of state or local funds. The documentation must demonstrate that the original source of funding is no longer available and, as a result, that the services would not be provided in the coming year. This situation must be documented at the time the decision is made to discontinue services; it cannot be documented after the fact.

   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. This would be considered supplanting because the LEA is replacing state and local resources with Title I resources to pay for the same position. The LEA may be able to rebut the assumption of supplanting if it can document that the position was eliminated because of state budget cuts, and then the decision was made to fund it using federal funds. The LEA would need records to confirm the following:

   - There was in fact a reduced amount or lack of state funds available to pay for the position.
   - The LEA made the decision to eliminate the position without taking into consideration the availability of federal funding.
   - The reasons for the decision to eliminate the position.

3. **Providing the Same Services in Federal and Non-Federal Programs**

   LEAs may not provide the same services to students participating in a program funded by federal dollars that they provide to non-participating students using state or local funds.

Examples

Title I, Part A

An LEA has created a board-approved goal to provide a laptop computer for every student within the next three years. The LEA is using local funds for the laptops on non-Title I, Part A schools. The LEA would like to use Title I, Part A, funds for the laptops on the campuses being served by Title I, Part A as Targeted Assistance programs.

The purchase of the laptops with Title I, Part A funds would be considered a supplant since the laptops have been approved as a district-wide goal, and the LEA is purchasing the laptops for schools not served by Title I, Part A with local funds.

IDEA-B

IDEA-B funds must be used to expand or increase the level of services for students with disabilities and not to take the place of funds from non-IDEA sources. Supplanting may occur if the LEA uses IDEA-B funds to provide services that the LEA is required to make available under other federal, state, or local laws or policy. Supplanting may also occur if the LEA uses IDEA-B funds to provide services for students with disabilities that the LEA also provides for non-disabled students. For example, if an LEA uses IDEA-B funds for a student's 504 Plan and/or the LEA's dyslexia program, this would be a violation of the IDEA-B supplement, not supplant provisions.

Title I and IDEA Funds

Supplanting is presumed if an LEA uses Title I funds to provide services required under a student's individualized education program (IEP).

IDEA-B requires that an LEA serving children with disabilities develop an IEP to ensure that a child with a disability receives a free appropriate public education. The IEP functions as a framework for the services the LEA is required to provide to each child to meet the requirements of IDEA. An LEA may not use Title I funds to provide services that must be provided under each child's IEP because, in the absence of the Title I funds, it is presumed that the LEA would use other funds or it would be in violation of IDEA.

34 CFR 300.226(e) states that if coordinated early intervening services (CEIS) funds are used to carry out activities funded by ESEA, the CEIS funds must supplement the current ESEA program. If the LEA is expending IDEA-B funds for CEIS for intervention services to students on Title I, Part A-served campuses, and the students are eligible for services under Title I, Part A, then it would be supplanting to provide the intervention services with IDEA-B CEIS funds. The student is to receive all eligible services from Title I, Part A before receiving the CEIS services funded with IDEA-B.

In a targeted assistance school, an LEA may use its Title I funds to provide additional, supplemental services to such children. In a schoolwide school, an LEA must ensure the Title I funds a school receives supplement the amount of funds that would, in the absence of the Title I funds, be made available from non-Federal sources for that school, including the amount of funds needed to provide services that are required by law for children with disabilities. More information is available in the section related to supplement, not supplant requirements specific to Title I, Part A.

Title I, Part C—Migrant

Title I, Part C—Migrant funds may be used to provide supplemental services to migrant students. In order to avoid supplanting, migrant funds should **not** be used to pay for services that are a part of the regular school program. However, migrant funds could be used to *supplement* the existing services and provide

additional or enhanced services that specifically address the special identified needs of migrant students. Title I, Part C – Migrant funds are supplemental to all other funds, including local, state and *other federal funds*. The LEA must ensure that any services provided with Title I, Part C – Migrant funds are supplemental and could not be provided with any other funds, including Title I, Part A funds.

Title II, Part A

Using Title II, Part A funds to meet any state mandate or local board policy would be considered a supplant. For example, if an LEA decides to use Title II, Part A funds to hire additional teachers to reduce class size in grade 2, the state mandate of 22:1 must be met with state and/or local funds before additional teachers may be hired with Title II, Part A funds.

Title III, Part A—Limited English Proficient (LEP)

As a part of the basic allotment to public schools, Texas provides state funding to LEAs that serve limited English proficient (LEP) students. According to state statute, these funds must be used to provide services to LEP students through bilingual education and/or English as a Second Language (ESL) programs. Title III, Part A – LEP funds cannot be used to meet the state requirements for serving LEP students. Additionally, Title III, Part A – LEP funds are supplemental to all other funds, including local, state and *other federal funds*. The LEA must ensure that any services provided with Title III, Part A – LEP funds are supplemental and could not be provided with any other funds, including Title I, Part A funds.

Carl D. Perkins Career and Technical Education Act

An LEA decided to provide wireless networking for all classrooms in the district, using state and local funds. However, the LEA soon realized that it did not have resources to completely network all classrooms. The LEA knew that Perkins funds can be used to expand technology, so the LEA proposed using Perkins funds to provide wireless networking for all career and technical education classrooms. If it followed through on this proposal, the district would be supplanting, because it would be using federal funds to provide the same service for eligible children (i.e., CTE students) that the LEA provided with state or local funds to children not eligible for services (i.e., students not enrolled in CTE courses).

Texas Title I Priority Schools (TTIPS)

The TTIPS grant program requires an LEA that receives TTIPS funds to ensure that each campus receives all of the state and local funds it would have received in the absence of the TTIPS grant funds. As a result, an LEA must provide a TTIPS grantee campus all of the non-federal funds the campus would have received were it not a TTIPS grantee campus, and TTIPS funds must supplement the *amount* of those non-Federal funds. An LEA would be supplanting if it reduced the amount of state and local funds it provided to a TTIPS campus because the campus received the TTIPS grant.

21st Century Community Learning Centers

Academic remediation is often funded with Title I funds and is also an allowable use of 21st Century Community Learning Centers (CCLC) funds. When a 21st CCLC grant is awarded, grantees may want to divert their Title I funds to other uses and use 21st CCLC funds for academic remediation in place of the Title I funds. This would be a supplant. Using 21st CCLC funds to increase the number of students served or the scope of services offered through academic remediation would be allowable.

Program-Specific Supplement, Not Supplant Requirements

The following table lists the text of the major supplement, not supplant provisions found in ESEA, IDEA, and Perkins. Note that the provisions vary. Perkins, for instance, specifies that funds shall supplement and

not supplant funds from non-federal sources, while many of the ESEA provisions specify that funds shall supplement and not supplant funds from federal, state, and local sources.

Citation	Supplement, Not Supplant Provision
Title I, Part A, Section 1120A(b) of ESEA: Improving Basic Programs Operated by LEAs	A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds. More information is available in the next section related to supplement, not supplant requirements specific to Title I, Part A.
Title I, Part C, Section 1304(c)(2) of ESEA: Education of Migratory Children	Such programs and projects will be carried out in a manner consistent with the objectives of … subsections (b) and (c) of section 1120A [as cited above]. NOTE: See also the related Title I, Part C, Section 1306(b)(2), which states "Funds provided under this part shall be used to address the needs of migratory children that are not addressed by services available from other Federal or non-Federal programs."
Title II, Part A, Sections 2113(f) and 2123(b) of ESEA: Teacher and Principal Training and Recruitment	Funds received under this subpart shall be used to supplement, and not supplant, non-Federal funds that would otherwise be used for activities authorized under this subpart.
Title II, Part B, Section 2202(a)(4) of ESEA: Mathematics and Science Partnerships	…funds received under this part shall be used to supplement, and not supplant, funds that would otherwise be used for activities authorized under this part.
Title II, Part D, Section 2413(b)(6) of ESEA: Enhancing Education through Technology	…financial assistance provided under this subpart will supplement, and not supplant, State and local funds.
Title III, Part A, Section 3115(g): English Language Acquisition, Language Enhancement, and Academic Achievement	Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for limited English proficient children and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.
Title IV, Part B, Section 4204(b)(2)(G) of ESEA: Public Charter Schools	…funds under this part will be used to increase the level of State, local, and other non-Federal funds that would, in the absence of funds under this part, be made available for programs and activities authorized under this part, and in no case supplant Federal, State, local, or non-Federal funds
Title V, Part A, Section 5144 of ESEA: Innovative Programs	Funds made available under this part shall be used to supplement, and not supplant, any other Federal, State, or local education funds.
IDEA (34 CFR 300.162(c))	Funds paid to a state under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.

Citation	Supplement, Not Supplant Provision
Carl D. Perkins Career and Technical Education Act of 2006, P.L. 109-270, Title III, Part A, Section 311	Funds made available under this Act for career and technical education activities shall supplement, and shall not supplant, non-Federal funds expended to carry out career and technical education activities and tech prep program activities.

Supplement, Not Supplant Requirements Specific to Title I, Part A

For the purposes of determining compliance with the supplement, not supplant requirement in section 1120A(b) and the comparability requirement in section 1120A(c) of P.L. 107-110, an LEA may exclude supplemental state or local funds expended in any school attendance area or school for programs that meet the intent and purpose of Title I, Part A.

Schoolwide Programs

The supplement, not supplant requirement usually means that federal funds cannot be used to perform a service that would normally be paid for with state or local funds. In a schoolwide program, however, the LEA only needs to demonstrate that the Title I, Part A funding given to each campus is supplemental to what the campus would have received in the absence of Title I, Part A, without considering whether Title I, Part A funding was used to buy an additional service or benefit. An LEA can demonstrate its compliance with this requirement by passing the **supplemental funds test**.

To pass the supplemental funds test, an LEA must demonstrate that the method it uses to allocate state and local funds to its campuses is applied consistently and does not reduce the allocation of state and local funds to a schoolwide campus because of Title I, Part A funds.

When an LEA passes the supplemental funds test, its campuses can use their funds to improve their entire educational program without having to demonstrate that each expenditure is "supplemental." However, the LEA must maintain documentation that verifies that it passed the supplemental funds test and that it applied the same funding methodology to all of its campuses, including those that do not receive Title I, Part A funds.

Targeted Assistance Programs

Title I, Part A *funds and services* must supplement, not supplant the *services* that would be provided, in the absence of Title I, Part A funds, from non-federal sources. Records must be maintained that document that Title I, Part A funds are expended on activities and services for only Title I, Part A eligible children identified as having the greatest need for special assistance. Any program activity required by local policy, state law, or State Board of Education rule may not be funded with Title I, Part A funds.

A supplemental state or local program will be considered to meet the requirements of a targeted assistance program if the program does the following:

- It serves only children who are failing, or most at risk of failing, to meet the state's challenging student academic performance standards.
- It provides supplementary services designed to meet the special educational needs of the children who are participating to support their achievement toward meeting the state's student academic performance standards that all children are expected to meet.
- It uses the state's system of assessment to review the effectiveness of the program.

These conditions also apply to supplemental state and local funds expended if an LEA does either of the following:

- It elects not to serve an eligible school attendance area that has a higher percentage of low-income children than that of a served school [P.L. 107-110, Section 1113(b)(1)(D)].
- It applies the 125 Percent Special Allocation Rule [P.L. 107-110, Section 1113(c)(2)(A)].

The 125 Percent Special Allocation Rule is applicable under the following conditions:

- If the LEA serves any attendance area where the poverty rate is less than 35 percent, each participating attendance area must receive 125 percent of the per pupil amount.
- An LEA may reduce the amount of funds allocated according to the 125 Percent Special Allocation Rule for a school attendance area by the amount of any supplemental state or local funds expended in that school attendance area that meet the requirements of schoolwide or targeted assistance programs.

Exceptions

Title I

Title 34 of the Code of Federal Regulations, Part 200, Section 79 (34 CFR 200.79) does provide for an exception under which expending state or local funds would not be considered a supplant. The LEA is using state or local funds to provide a program that meets the intent and purpose of Title I (with "intent and purpose" defined in 34 CFR 200.79). Those state or local funds expended for a "Title I-like program" may be excluded for the purpose of determining compliance with the supplement, not supplant requirement.

IDEA-B

Before 1992, IDEA-B included a "particular cost test" for determining whether supplanting occurred. If an LEA expended IDEA-B funds to pay a salary that in the prior year had been paid with state or local funds, the LEA would fail the particular cost test, resulting in a supplant. Since the removal of the particular cost test from statute, no requirement exists related to supplanting particular costs. If an LEA maintains local—or state and local—effort (maintenance of effort requirement), it will not violate the IDEA-B supplement, not supplant provision.

Penalty for Violating the Provision

Penalties for supplanting are often severe. All federal funds involved in a supplant normally must be returned to the federal government. Since audits are usually conducted after the grant period has ended, there is often no other alternative corrective action available other than returning the funds.

How to Document Compliance for an Auditor

Any determination about supplanting is specific to the individual situation, and general guidelines cannot be provided to meet the particular details of any situation. Examples of the types of documentation auditors may request from an LEA to demonstrate that the expenditure is supplemental to other federal and/or non-federal programs include the following:

- Fiscal or programmatic documentation to confirm that, in the absence of federal funds, the grantee would have eliminated staff or other services in question
- Board minutes/agendas with discussion of elimination of staff due to lack of state funds
- State or local legislative actions
- Itemized budget histories from one year to the next and supporting information
- Planning documents

- Actual reduction in state or local funds
- Decision to eliminate position or services was made without regard to the availability of federal funds, including the reason the decision was made
- Class-size data from previous years and upcoming year
- Specific policies and procedures related to supplement, not supplant requirements

Frequently Asked Questions

1. **An LEA has hired a Director of Literacy as a K-12 administrative position. All the Title I schools in the LEA are K-5 targeted assistance schools. Thirty percent of the students in the LEA receive Title I services. May Title I pay for 30 percent of the Literacy Director's salary?**

   No. This is a K-12 position and this employee is responsible for literacy services for all children in the LEA, not just at-risk children in Title I schools. No supplemental services are being provided by the Literacy Director to Title I students. In other words, Title I students are receiving the same services that non-Title I students are receiving, and nothing more. This would be supplanting. In looking at this situation, it is also helpful to ask what the LEA would do in the absence of Title I funds. Since 70 percent of the students are non-Title I students, it is likely the Literacy Director would still be a necessary position that would be paid for with State and/or local funds.

2. **May Title I funds be used in a targeted assistance program to pay for Title I students' participation in an extended-day kindergarten program?**

   Yes, if the Title I program is designed to extend the time that a Title I-eligible student is in kindergarten. For example, the district provides only morning instruction through State and local funds to all students, including Title I students. Title I students identified as most in academic need are then served in the afternoon through Title I funds by an appropriately licensed teacher. The teacher may be the same individual who teaches kindergarten in the LEA's regular kindergarten program, with Title I funding the second half of the teacher's day and salary. This model meets the supplement, not supplant test since Title I students are receiving services above and beyond those provided by the LEA to all students.

3. **May an LEA use state and local funds to pay for non-Title I students' participation in a full-day kindergarten and Title I funds to pay for Title I Targeted Assistance program students' participation in the same full-day kindergarten?**

   No. In the situation described in Q2, in which an LEA funds morning kindergarten instruction for all its students with State and local funds, the LEA may not provide afternoon kindergarten for non-Title I students with State and local funds while using Title I funds to provide afternoon kindergarten for Title I-eligible students. (This principle applies within a single Title I school, or across the district among Title I and non-Title I schools.) This would violate the supplanting prohibition because an LEA may not use Title I funds to provide services to Title I students that it provides with non-Title I funds for non-Title I students.

   If the state requires only half-day kindergarten, a district may not use Title I funds to pay for an extended-day kindergarten program for Title I schools and then use state or local funds to pay for a full-day kindergarten program in non-Title I schools. This would be supplanting because Title I schools would not be receiving any of the state or local funds. In other words, unless the state or local funds can be excluded from a supplement, not supplant determination because they were expended for carrying out a program that meets the intent and purposes of Title I, Part A, an LEA may not use Title I funds to pay for services in Title I schools and use state funds to pay for the same services in non-Title I schools.

4. **May an LEA use Title I funds to pay for extended-day kindergarten costs for Title I eligible students, while parent contributions pay for non-Title I students?**

   Yes, Title I funds could be used to pay for extended-day kindergarten for Title I-eligible students while parents of non-Title I students pay to participate in the same program, provided that the program the non-Title I students are paying for is the same program that is being provided to Title I students with Title I funds at no cost to the Title I students. This assumes that there are no state or local legal prohibitions to charging parents tuition or a fee for education provided by a public school.

5. **Does the supplement, not supplant requirement apply to indirect costs?**

   Yes. Because of the supplement not supplant requirement, an LEA must use the indirect cost rates outlined in 34 CFR 76.564. If the supplement, not supplant provision applies to the grant program, the LEA must use the current restricted indirect cost rate.

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