

Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Negotiated Rulemaking Committee

Issue Paper: Supplement Not Supplant

Statutory Cite: 1118(b) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA)

Regulatory Cite: Proposed draft § 200.XX

Background:

The purpose of Title I of the ESSA is to “provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.” The requirement that Title I funds supplement State and local funds, and do not supplant them, is intended to ensure that the Federal resources are spent to provide the **additional** educational resources and supports that at-risk students need to succeed, instead of being used to simply make up for unfair shortfalls in State and local funding. Title I is intended to provide the extra help low-income students need to succeed, but it cannot do that if State and local funds are not evenly distributed to start with. Nonetheless, today, in districts receiving Title I funds, two-thirds of students attend school where fewer State and local dollars are spent per pupil in Title I schools than in non-Title I schools.¹

Section 1118(b) of the ESEA, as amended by the ESSA, retains the general requirement that Title I funds supplement and not supplant State and local funds. However, the test for compliance with this requirement has changed in two ways. First, Section 1118(b) includes a special rule stating that “[n]o [district] shall be required to – (A) identify that an individual cost or service supported under this part is supplemental,” which effectively prohibits a key test previously used to ensure compliance in many Title I schools. Second, the law replaces the two supplement-not-supplant tests (one for targeted assistance schools and one for schoolwide program schools) with a single compliance test that focuses on a district’s methodology for allocating State and local funds. Specifically, it requires that a district “demonstrate that the methodology used to allocate State and local funds to each [Title I school] 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].” A district must meet this requirement not later than two years after the date of enactment of the ESSA — *i.e.*, by December 10, 2017. The ESSA prohibits the Department of Education from prescribing the specific methodology a district must use.

In addition to refocusing the supplement not supplant test on a district’s methodology for allocating State and local funds, the ESSA includes a new fiscal reporting requirement in Section 1111(h)(1)(C)(x), under which States and districts must report the per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual non-personnel expenditures, for each school and district on State and local report cards.

¹ This sentence is updated to correct a mistake in the original version of the issue paper. No other text has been changed.

These new statutory provisions continue the ESEA’s focus on ensuring that Title I funds are supplemental to an equitable base of State and local resources for education, and provide new flexibility for school and district leaders pursuing integrated educational strategies designed to improve outcomes for the lowest-achieving students. However, it also raises questions. For example:

- What does it mean to “ensure that a Title I school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under this part”?
- What does it mean to have a “methodology for allocating State and local funds” in a district that allocates resources such as staff positions instead of dollars? In a district that allocates funds through a school based budgeting system or weighted student funding system?
- Should regulations implementing this statutory provision create certain allowances for flexibility, such as when a district has particularly small schools or allow for different allocations among grade spans?
- How should the new emphasis on allocation of funds apply to State and local funds retained at the district level?
- What does it mean to meet this requirement two years after the date of enactment, when the date of enactment is in the middle of a school year? Does a district need additional time to meaningfully implement a methodology that meets the statutory requirement?
- What enforcement action must a State take if it finds that a district has not complied with the requirement? What corrective actions should the district have to take?

The Department is not providing draft regulatory text at this time; instead, the Department will prepare regulatory text after discussing these questions with negotiators.