Pandemic Recovery and Beyond:
Sustaining Investments in High-Quality Instructional Materials
And Curriculum-Connected Professional Development

Table of Contents

Introduction 2

A. Purpose of this Guidance 2

B. Navigating this Guidance 3

C. Supplement not Supplant Considerations 4

D. General Spending Considerations 4

ESSER (Elementary and Secondary School Emergency Relief Fund) 6

A. ESSER and Supplement not Supplant 6

B. Using ESSER Funds to Support HQIM and Related PD 6

C. Special Considerations for ARP ESSER Learning Loss Set-Aside 7

Definition of "Evidence-Based" 8

Title I, Part A 9

A. Title I, Part A and Supplement not Supplant 9

B. Using Title I, Part A Funds for HQIM and Related PD 10

Important Title I, Part A Terms 10

District-Level Title I, Part A Funds for HQIM and Related PD 11

School-Level Title I, Part A Funds for HQIM and Related PD 12

Title II, Part A 14

A. Title II, Part A and Supplement not Supplant 14

B. Using Title II, Part A Funds to Support PD Relevant to HQIM 14

Title III, Part A 16

A. Title III, Part A and Supplement not Supplant 16

B. Using Title III, Part A Funds to Support HQIM and Related PD 16

Title IV, Part A 18

A. Title IV, Part A and Supplement not Supplant 18

B. Using Title IV, Part A Funds to Support HQIM and Related PD 18

IDEA, Part B, Section 611 20

A. IDEA, Part B and Supplement not Supplant 20

B. Using IDEA, Part B Funds to Support HQIM and Related PD 20

Introduction

A. Purpose of this Guidance

This guidance is designed to help local educational agencies (LEAs) understand how they can use U.S. Department of Education (ED) grant funds to support high-quality instructional materials (HQIM), including high-quality curricula, core instructional materials and intervention materials, along with curriculum-connected professional development (PD). This is a particularly important issue now.

First, as we work to address the effects of the COVID-19 pandemic on student learning, investing in HQIM and related PD can be an important strategy for reengaging students and accelerating their learning. Research shows an aligned curriculum and high-quality instructional materials are significant factors in student academic success, particularly for the highest-need students.[1]

Second, LEAs have access to significant COVID relief funds through the Elementary and Secondary Schools Emergency Relief Fund (ESSER). These funds are more flexible than traditional ED grants, giving LEAs a unique opportunity to acquire and implement HQIM and provide educators related PD to assure grade-level instruction-for all students in all schools.

ESSER, however, is a time-limited program, so many LEAs will need to find ways to sustain critical ESSER-funded activities with other funds in the future. To support LEAs with that effort, this guidance describes how ESSER funds can be used for HQIM and related PD and how other ED programs could bolster or sustain ESSER investments.

For example, an LEA might determine that given pandemic-related disruptions a significant number of early grade students have not yet mastered foundational reading skills. To address this, the LEA decides to use ESSER funds to invest in a new districtwide K-2 structured literacy curriculum that provides explicit instruction in phonemic awareness, systematic phonics and sound-symbol association, among other components.

To bolster or sustain the new curriculum, the LEA could also use:

- Title II, Part A funds to provide ongoing professional development for all K-2 teachers.
- Title I, Part A funds to meet the needs of eligible students in Title I schools who need additional support or interventions aligned to the new curriculum.
- Up to 15% of IDEA, Part B, Section 611 funds for coordinated early intervening services (CEIS) to meet the needs of students without disabilities in any school who need additional supports or interventions aligned to the new curriculum.
- IDEA, Part B, Section 611 funds for students with disabilities in any school who need additional supports or interventions aligned to the new curriculum.

[1] Council of Chief State School Officers, *How States Can Support the Adoption and Effective Use of High-Quality Standards Aligned Instructional Materials: Overview of CCSSO's High Quality Instructional Materials and Professional Development Network*, 2021, pp. 3-4 (referred to as *CCSSO 2021 Effective Use of HQIM and Related PD* for the rest of this document).

Please note that it is a common misperception that supports and interventions for students with disabilities must be different from those for other struggling students. This is not true, as discussed in more detail in the IDEA section below. In practice, this means an LEA could use Title I, Part A to deliver a support or intervention to a struggling student in a Title I school and use IDEA, Part B funds to deliver the same support or intervention to a student with disabilities in any school. This guidance is intended to support a wide range of LEA staff. For example:

- LEA leaders, school leaders and other staff – including teaching and learning, educator supports, academics, curriculum and instruction, special education and student wellbeing, among others – might benefit from the examples of allowable activities throughout the program-specific sections. Understanding the kinds of activities ED programs can support can prompt important conversations and may reveal previously unknown options.
- Budget and finance staff might benefit from the supplement not supplant overviews, as well as the examples of allowable activities, to support their budget decisions.
- Federal program staff might benefit from the citations to law and guidance and the discussions of technical issues.

Ultimately, using ED grants to sustain ESSER investments will require close coordination among offices to identify effective strategies, plan their implementation and identify appropriate funding sources. It may also prompt in-depth analysis of current uses of ED funds and whether they could be repurposed to support or sustain ESSER-initiated investments.

B. Navigating this Guidance

Sections C and D of this Introduction describe issues that apply generally to ED programs.

The rest of the guidance is organized by program and each program description provides examples of activities LEAs might support with that program's funds.

Although this guidance is organized by ED program, we encourage LEAs to think about their spending comprehensively. One way to do that is through the following steps:

1. **Define the strategy or activity the LEA wants to implement along with its scope.** For example, if an LEA is considering investing in new high-quality K-2 reading curricula, would it be for all elementary schools or for a specific school with a specific need? Would it be a general curriculum for all students or an intervention program for struggling students?

2. **Define the universe of specific costs the LEA needs to pay for to implement the strategy or activity.** For example, if an LEA were to implement a new K-2 reading curriculum for all elementary schools, it could incur costs such as:

- Purchasing curriculum and related instructional materials.
- Professional development for general education teachers on how to adapt instruction in the new curriculum to meet the needs of special education students.
- Stipends and substitute teacher costs to support additional time for professional development.
- Professional development for school leaders, teachers, and educators on implementing the new curriculum and using the new instructional materials.

- Professional development for special educators on the new curriculum.
- Instructional coaches and other support positions, such as reading specialists.
- Technology costs.

3. **Determine which ED grants can pay for which costs.** Keep in mind that different parts of an initiative can be supported with different funding sources, sometimes known as braiding funds.[2] For example, to support the costs listed above, the LEA might use ESSER funds to purchase the new curriculum, Title II funds to provide professional development to all teachers and IDEA funds to provide specialized professional development to teachers who work with students with disabilities. The program descriptions below provide more information about the kinds of activities each ED grant can support, but whether a particular cost can be charged to a particular program depends on the underlying facts and circumstances. Accordingly, the fact that a cost is listed in this guidance does not mean it is allowable in all circumstances. Similarly, the fact that a cost is not listed in this guidance does not mean it is unallowable.

4. **Evaluate what activities ED grants are currently supporting and whether funding should be repurposed.** To sustain ESSER initiatives with ED funds, LEAs may have to move funds away from currently supported activities. To do this effectively, LEAs can consider how long currently supported activities have been in place, whether they have achieved intended goals, whether they have been effective in improving student outcomes, whether they align to current priorities and other factors.

C. Supplement not Supplant Considerations

All of the programs discussed in this guidance **except for ESSER** have a supplement not supplant (SNS) requirement. In general, SNS is designed to ensure federal funds provide extra support beyond what LEAs would otherwise spend on education with state and local funds.

Some believe ED funds cannot be used for HQIM and related PD because curriculum and instructional materials are core responsibilities and are therefore barred under SNS requirements. But, as discussed in the sections below, there are many ways ED funds can be used for HQIM and related PD in various circumstances.

Importantly, SNS compliance is tested differently in different federal programs. Understanding the differences between programs is important for understanding what activities can, and cannot, be supported by each grant. Because SNS considerations affect spending options, SNS is the first topic discussed in the sections that follow.

D. General Spending Considerations

All costs paid with ED funds must be consistent with rules set out in federal regulations called the Uniform Grant Guidance (UGG).[3] The UGG applies to most federal grants, including every ED grant discussed in this guidance.

[2] 34 CFR § 76.760.
[3] The Uniform Grant Guidance, also referred to as the Uniform Administrative Requirements, is in 2 CFR Part 200.

The UGG affects ED grant spending in several ways. For example, it:

- *Lists costs that may never be paid for with federal funds*. For example, federal funds can never pay for alcohol or lobbying.
- *Lists general criteria all costs supported with federal funds must satisfy*. For example, federal funds can pay only for costs that are "necessary and reasonable" for the performance of the grant.
- *Sets additional requirements for certain costs supported with federal funds*. For example, LEAs that use federal funds for employee compensation must keep records to accurately reflect the work performed.
- *Sets rules for how LEAs procure goods and services* with federal funds, how they *track items* paid for with federal funds and the kinds of *records* they must keep about their grant spending.

In addition, activities supported by ED funds must be consistent with the LEA's application for funds approved by the SEA.

ESSER (Elementary and Secondary School Emergency Relief Fund)

A. ESSER and Supplement not Supplant

ESSER does not have a supplement not supplant requirement.[4] Accordingly, LEAs may spend ESSER funds on a wide range of expenses, including expenses normally supported with state or local funds.[5] This makes ESSER more flexible than other ED funding sources and gives LEAs many options to serve students affected by the pandemic. For example, an LEA could invest in core curricula HQIM and related PD in all schools. Although this benefits all students, research shows systemic approaches to improvement particularly benefit high-need students in high-poverty schools.[6] As discussed below, other more targeted approaches to HQIM and PD are also permissible. An LEA could, for example, invest in high-quality intervention materials to assist students with specific needs in light of the pandemic.

B. Using ESSER Funds to Support HQIM and Related PD

ESSER is emergency relief funding to help LEAs prevent, prepare for and respond to COVID-19.[7] ED encourages LEAs to think about the response to COVID broadly to include efforts "to make educational systems better for students, educators, staff, schools, and their communities post-pandemic."[8] This can include addressing "pre-existing challenges that, if left unaddressed, will impede recovery from the pandemic."[9]

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[4] See, for example, U.S. Department of Education, *Frequently Asked Questions Elementary and Secondary School Emergency Relief (ESSER) Programs Governor's Emergency Education Relief (GEER) Program*, May 2021, p. 9 (referred to as *ED May 2021 ESSER and GEER FAQs* for the rest of this document). For more information about ESSER, see also, U.S. Department of Education, *Elementary and Secondary School Emergency Relief Fund website*.

[5] U.S. Department of Education, *Elementary and Secondary School Emergency Relief Fund Frequently Asked Questions about the Elementary and Secondary School Emergency Relief Fund (ESSER Fund)*, May 2020, Q&A 20. Please note, while LEAs may use ESSER funds for expenses normally supported with state or local funds, LEAs still must comply with IDEA and ESEA's maintenance of effort (MOE) requirements. See *ED May 2021 ESSER and GEER FAQs*, Q&A E-12 and E-14.

[6] Kerstin Carlson Le Floch et al., *Study of Title I Schoolwide and Targeted Assistance Programs: Final Report, US Department of Education*, 2018, p. 1. For a broader discussion of relevant research, see also *CCSSO 2021 Effective Use of HQIM and Related PD*, pp. 3-4.

[7] There have been three rounds of ESSER funding: (1) CARES ESSER (awarded through the Coronavirus Aid, Relief, and Economic Security Act), (2) CRRSA ESSER (awarded through the Coronavirus Response and Relief Supplemental Appropriations Act), and (3) ARP ESSER (awarded through the American Rescue Plan Act). Although each round was awarded through different laws with slightly different language about the allowable uses of funds, all three ESSER grants can be spent on the same activities. *ED May 2021 ESSER and GEER FAQs*, Q&A A-3.

[8] U.S. Department of Education, *Fact Sheet COVID Connection: Frequently Asked Questions Elementary and Secondary School Emergency Relief (ESSER) Fund and Governor's Emergency Education Relief (GEER) Fund Use of Funds to Prevent, Prepare for, and Respond to the COVID-19 Pandemic*, December 2021, p. 1 (referred to as *ED December 2021 COVID Connection Fact Sheet* for the rest of this document).

[9] *ED December 2021 COVID Connection Fact Sheet*, p. 1.

Specifically, ED advises that implementing curricula is an allowable approach to prevent, prepare for, and respond to the pandemic that can be supported with ESSER funds.[10] Among other things, this might include spending ESSER funds on:

- Rigorous curricula for all students to accelerate learning, reengage students and better meet the needs of struggling students inside the classroom.[11]
- High-quality intervention materials aligned to a high-quality core curriculum for students who need extra support, including students with disabilities and English learners.[12]
- Professional development for teachers and other educators on high-quality curricula, instructional materials and intervention materials.[13]
- Other educator supports such as coaching and mentoring.[14]

For example, an LEA might use ESSER funds to purchase and implement a new English language arts curriculum in all of its elementary schools after determining its existing curriculum does not include enough explicit and systematic instruction in how to decode words. This is a valid response to COVID even if the curricular deficiencies preexisted the pandemic because ineffective curricula can exacerbate pandemic-related learning loss, while effective curricula can accelerate learning and reengage students. As noted above, such systemic approaches can be particularly helpful for high-need students. An LEA also might use ESSER funds to expand the reading interventions it uses for special education students to other struggling readers after determining its existing interventions for struggling readers without disabilities are ineffective.

C. Special Considerations for ARP ESSER Learning Loss Set-Aside

LEAs must reserve at least 20% of their ARP ESSER funds for evidence-based activities (see below for more information) to address learning loss – referred to in ED guidance as the *academic impact of lost instructional time*.[15] These activities must respond to students' academic, social and emotional needs and address the disproportionate impact of the coronavirus on certain ESEA student subgroups (Low-income families, students of color, students with disabilities, English Learners, migratory students),[16] students experiencing homelessness and children and youth in foster care.[17] To the extent activities to implement HQIM meet these requirements, they can be supported through the 20% reservation.

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[10] *ED December 2021 COVID Connection Fact Sheet*, pp. 1-2.
[11] *ED May 2021 ESSER and GEER FAQs*, p. 9. See also U.S. Department of Education, *Strategies for Using American Rescue Plan Funding to Address the Impact of Lost Instructional Time*, August 2021, p. 13 (referred to as *ED August 2021 Addressing Lost Instructional Time* for the rest of this document).
[12] See, for example, *ED May 2021 ESSER and GEER FAQs*, Q&A C-2 and C-15.
[13] See, for example, *ED August 2021 Addressing Lost Instructional Time*, pp. 12, 13, 16-17. See also *ED May 2021 ESSER and GEER FAQs*, Q&A C-2.
[14] See, for example, *ED August 2021 Addressing Lost Instructional Time*, p. 16. See also *ED May 2021 ESSER and GEER FAQs*, Q&A D-1.
[15] ARP, Section 2001(e)(1).
[16] These are: each major racial and ethnic group, economically disadvantaged students, children with disabilities, English proficiency status, gender, and migrant status. See ARP, Section 2001(e)(1) referencing ESEA, Section 1111(b)(2)(B)(xi).
[17] ARP, Section 2001(e)(1).

Definition of "Evidence-Based"

ARP ESSER uses ESEA's definition of "evidence-based," which describes four levels (or tiers) of evidence.[18] Specifically, "evidence-based" means an activity, strategy or intervention that:

For the first three tiers, **demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on**:

Tier 1. **Strong Evidence**, meaning there is at least one well-designed and well-implemented experimental study (e.g., a randomized control trial) on the intervention.

Tier 2. **Moderate Evidence**, meaning there is at least one well-designed and well-implemented quasi-experimental study on the intervention.

Tier 3. **Promising Evidence**, meaning there is at least one well-designed and well-implemented correlational study with statistical controls for selection bias on the intervention.

For the remaining tier:

Tier 4. **Demonstrates a rationale** based on high-quality research findings or positive evaluation that such activity, strategy or intervention: 1) is likely to improve student outcomes or other relevant outcomes and 2) includes ongoing efforts to study or examine the effects of such activity, strategy or intervention.[19]

An activity supported through the 20% set-aside can meet any of the above four tiers of evidence. ED clarified that the evidence need not have been generated during the COVID-19 pandemic.[20]

Please note, while considering available evidence is a good practice when designing programs, local ESSER-funded activities are only required to meet the legal definition of evidence-based described above when supporting activities paid out of ARP ESSER's 20% learning loss set-aside or when using ESSER funds for full-service community schools. Similarly, only certain activities supported with ESEA funds are covered by the evidence-based requirement as described in the relevant program sections below.

[18] ARP, Section 2001(h) referencing ESEA, Section 8101(21).

[19] *ED May 2021 ESSER & GEER FAQs*, Q&A A-10. For additional information about the evidence-based standard under ESEA, which is the same standard used by ESSER, see U.S. Department of Education, *Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments*, 2016, pp. 8-12.

[20] *ED May 2021 ESSER and GEER FAQs*, Q&A A-10.

Title I, Part A

A. Title I, Part A and Supplement not Supplant

Title I, Part A has a supplement not supplant (SNS) requirement.[21] To comply, LEAs must demonstrate the methodology they use to allocate state and local funds to schools provides each Title I school with all of the state and local money it would receive if it did not participate in the Title I program.[22]

> *For example, if an LEA's methodology for allocating state and local funds to schools includes an instructional materials allotment for each of its schools, then Title I schools must also receive that state and locally funded allotment. Title I schools could then use Title I funds to enhance the allotment through, for example, upgraded or expanded materials.*

LEAs are not required to show that individual Title I costs or services are supplemental.[23] LEAs are also not required to provide Title I services through a particular instructional method or in a particular instructional setting to demonstrate SNS compliance.[24]

Please note this methodology-based test took effect in the 2018-2019 school year and is different from how Title I SNS compliance was tested previously.[25]

Also please note some funds can be excluded from the SNS analysis.[26] Specifically, LEAs can take a school's Title I status into account when allocating supplemental state and local funds for programs that meet Title I's intent and purposes.[27] For example, according to ED guidance, an LEA would not violate SNS if it allocated supplemental state or local funds to non-Title I schools to provide extra supports to struggling readers while using Title I funds to provide the same supports to struggling readers in Title I schools.[28]

[21] ESEA, Section 1118(b).
[22] ESEA, Section 1118(b)(2).
[23] ESEA, Section 1118(b)(3)(A).
[24] ESEA, Section 1118(b)(3)(B).
[25] For guidance on Title I's supplement not supplant requirement, including examples, see U.S. Department of Education, *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: Non-Regulatory Informational Document*, 2019 (referred to as *ED 2019 Title I SNS Guidance* for the rest of this document).
[26] ESEA, Section 1118(d).
[27] *ED 2019 Title I SNS Guidance*, p. 24.
[28] *ED 2019 Title I SNS Guidance*, pp. 26-27.

B. Using Title I, Part A Funds for HQIM and Related PD

Title I provides supplemental funding to help districts and schools affected by poverty expand opportunities for educationally disadvantaged students.[29]

Important Title I, Part A Terms
The following terms are important for understanding Title I spending options:

- **Title I participating schools**: Title I schools are schools that receive Title I funds (sometimes also called Title I participating schools). Please note this does not encompass all schools that might be *eligible* for Title I funds. Instead, Title I schools are the schools LEAs select to receive Title I funding through a process often known as "ranking and serving."[30] The Title I, A funds are allocated to eligible school attendance areas in rank order. If funds remain, the LEA can annually rank order eligible schools from highest to lowest based on grade-span or for the entire LEA according to the % of children from low-income families. The only exception is the LEA can reduce the amount of funds under Title I, A for a school by the amount that the school expends for programs that meet the requirements of Title I (Sec. 1114 and 1115) from supplemental state or local funds.

- **Schoolwide program** and **targeted assistance program**: Title I participating schools can operate one of two Title I program models. Title I schools with at least 40% poverty may operate a *schoolwide program* model, where the school may use Title I funds to upgrade its entire educational program and all students in the school can participate in Title I funded activities.[31] To operate a schoolwide program, a school must conduct a comprehensive needs assessment, develop a schoolwide plan based on identified needs and review and revise the plan annually as necessary.[32] Any Title I school may operate a *targeted assistance program* model, where the school must determine which students are eligible and will be served under this program. Title I funds can then be used to provide resources to help eligible students meet state standards and to include methods and instructional strategies to strengthen the academic program for the eligible students. .[33]

- **Students and staff in Title I participating schools:**: This depends on the type of program a Title I school operates.
  In a *schoolwide program*, all students are eligible and can be served with Title I funds and all staff can receive Title I funded training and support.

  In a *targeted assistance program*, the school must determine which students will receive Title I services by identifying those with the greatest need for assistance from among the following

[29] See, e.g., U.S. Department of Education, *Title I, Part A Program website*.
[30] For more about the ranking and serving process, please see U.S. Department of Education, *Within-District Allocations under Title I, Part A of the Elementary and Secondary Education Act of 1965*, February 2022.
[31] ESEA, Section 1114. For more information about schoolwide programs, please see U.S. Department of Education, *Supporting School Reform by Leveraging Federal Funds in a Schoolwide Program*, 2016 (referred to as *ED 2016 Schoolwide Guidance* for the rest of this document).
[32] ESEA, Section 1114(b).
[33] ESEA, Section 1115.

eligible population which includes all students age 21 or under who are entitled to a free public education through grade 12 and children who are not yet at grade level at which the LEA provides a free public education. From the eligible population, eligible students are students the school has identified as failing, or most at risk of failing to meet state standards on the basis of multiple, educationally related objective criteria established by the LEA and supplemented by the school. Students who are economically disadvantaged, English learner students, students with disabilities and migrant children are eligible for services on the same basis as other students selected to receive services under target assistance programs. Students in a local institution for neglected and delinquent children and youth and students who are homeless and attending a school in the LEA are all eligible for services under this part. Additionally, children who participated in Head Start or certain ESEA-funded preschool programs or literacy programs for young children within the past two years (including Title I supported preschool) are eligible for services in a targeted assistance program.,[34] Title I funded activities must focus on the needs of the eligible students in a targeted assistance school. Funds in this program may not be used to provide services that are required by law to be made available to the above-mentioned students and children but can be used to coordinate or supplement those services. Any teacher, for example, could receive Title I funded training, but only to the extent it is specific to meeting the needs of eligible students.

District-Level Title I, Part A Funds for HQIM and Related PD

While most Title I funds are spent at the school level, LEAs have the option to reserve some Title I funds for district-managed activities in all or a subset of their Title I participating schools.[35] This could include:

- Upgrading curricula , including upgraded core curricula in schools operating schoolwide programs assuming (as with all costs) the district has satisfied its SNS responsibilities.[36]
- High-quality instructional materials , including additional instructional materials to support differentiated instruction and intervention materials to meet the needs of students in their classrooms, including English learner students or students with disabilities.[37]
- Relevant professional development for educators .[38]

[34] ESEA, Section 1115(c).
[35] 34 CFR § 200.77(f).
[36] ESEA, Section 1114(a)(1)(A) and (b)(7)(A)(ii). See also U.S. Department of Education, *Maximizing Flexibility in the Administration of Federal Grants*, 2013, p. 6. Please note this guidance is archived because it was developed under the No Child Left Behind Act (NCLB), the version of the Elementary and Secondary Education Act (ESEA) before the Every Student Succeeds Act (ESSA), but the Title I spending options described are still valid.
[37] U.S. Department of Education, *Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies to Strengthen Education, Drive Reform, and Improve Results for Students*, 2009, Q&A C-8 (referred to as *ED 2009 Title I Reform Guidance* for the rest of this document). Please note ED developed this guidance to support LEAs in spending Title I funds appropriated through the American Recovery and Reinvestment Act in 2009, but it applies to all Title I funds (see p. 15 of the guidance). Also please note the guidance was developed before ESSA was passed in 2015 (see previous footnote). ESSA made several important changes to Title I, including revising Title I's supplement not supplant requirement, so parts of the guidance are out-of-date.
[38] *ED 2009 Title I Reform Guidance*, Q&A E-6, E-7, and E-8.

- Other supports for educators through activities such as coaching and mentoring.[39]
- Training and supporting principals of Title I participating schools.[40]

School-Level Title I, Part A Funds for HQIM and Related PD

All the district-level Title I activities described above could also be carried out by individual Title I participating schools with school-level Title I funds.

In schools operating Title I **schoolwide programs,** all students may participate in Title I-funded services.[41] Services must be consistent with the school's needs and schoolwide plan.[42]

For example, after reviewing assessment and related data, a Title I elementary school operating a schoolwide program might determine that a root cause of poor math proficiency in grades 3 through 5 is a lack of foundational math skills that are prerequisite to higher order math. The school could use Title I funds to upgrade its K-2 math curriculum to improve math proficiency for all students, but particularly those most at risk of not meeting state standards.

In Title I participating schools operating **targeted assistance programs,** only eligible students may participate in Title I-funded services.[43]

For example, after reviewing data and considering relevant research, a Title I elementary school operating a targeted assistance program might determine that eligible students struggling with reading comprehension need additional support with phonological decoding to improve fluency and, in turn, comprehension. The school could use Title I funds to purchase high-quality intervention materials to better support its eligible students.

It is a common misperception that Title I activities must be limited to reading and mathematics, but Title I can support a wide range of academic subjects as part of a well-rounded education.[44] This means Title I can support HQIM in subjects including but not limited to:

English	Mathematics	Geography	Any other subject, as determined by the SEA or LEA, with the purpose of providing all students access to an enriched curriculum and educational experience.[45]
Reading or language arts	Foreign languages	Computer science	
Writing	Civics and government	Music	
Science	Economics	Career and technical education	
Technology	Arts	Health	
Engineering	History	Physical education	

[39] *ED 2009 Title I Reform Guidance*, Q&A E-6.
[40] *ED 2009 Title I Reform Guidance*, Q&A E-13 and E-14.
[41] ESEA, Section 1114(a)(2).
[42] ESEA, Section 1114(b). Schools operating schoolwide programs must regularly monitor and revise their schoolwide plans and plan implementation as necessary based on student needs to ensure that all students are provided opportunities to meet state standards. ESEA, Section 1114(b)(3). See also 34 CFR § 200.26(c). Schools should ensure their plans reflect current needs given the pandemic.
[43] ESEA, Section 1115(a).
[44] ESEA, Section 1114(b)(7)(A) and ESEA, Section 1115(b)(2)(A). See also *ED 2016 Schoolwide Guidance*, pp. 5-6.
[45] ESEA, Section 8101(52).

Title I can also support nonacademic activities that contribute to academic achievement, which could include instructional materials and related PD for topics such as mentoring, behavioral supports, mental health and related areas.[46]

[46] ESEA, Section 1114(b)(7)(3)(iii) and Section 1115(b)(2)(B).

Title II, Part A

A. Title II, Part A and Supplement not Supplant

Title II, Part A has a supplement not supplant requirement which operates differently than the requirement in Title I, Part A.[47] In Title II, supplanting is generally presumed when:

- An LEA uses Title II funds to pay for an activity that is required by state, local or other federal law.
- An LEA uses Title II funds to pay for an activity it supported with state or local funds the year before.

An LEA may overcome a presumption of supplanting if it has written documentation (such as legislative, budget or other materials) that it does not have the funds necessary to implement the activity and would not carry out the activity absent Title II funds.

B. Using Title II, Part A Funds to Support PD Relevant to HQIM

Title II provides supplemental funding to help support effective instruction. The program's purposes are to increase student achievement, improve educator quality and effectiveness, increase the number of effective educators and provide low-income and minority students greater access to effective teachers, principals and other school leaders.[48]

LEAs can use Title II funds for a wide range of activities to support the quality and effectiveness of teachers, principals and other school staff. LEAs cannot use Title II funds to purchase HQIM, but they can use Title II funds to support educators implementing HQIM, including:

- Professional development for teachers, instructional leaders, principals and other school leaders,[49] which could include:
    - Community of learning opportunities where principals and other school leaders engage with their school teams to fully develop broad curriculum models.[50]
    - Opportunities for principals and other school leaders to collaborate, problem-solve and share best practices.[51]
    - "Time banks" or flexible time for collaborative planning, curriculum writing, peer observations and leading trainings, which may involve using substitute teachers to cover classes during the school day.[52]

[47] ESEA, Section 2301.
[48] ESEA, Section 2001. For more information, see U.S. Department of Education, *Title II, Part A website*.
[49] ESEA, Section 2103(b)(3)(E). Such professional development must be evidence-based to the extent the SEA, in consultation with LEAs, determines evidence is reasonably available. See page 9 of this guidance for more information about ESEA's definition of evidence-based.
[50] U.S. Department of Education, *Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Leading*, 2016, p. 15 (referred to as *ED 2016 Title II Guidance* for the rest of this document).
[51] *ED 2016 Title II Guidance*, p. 15.
[52] *ED 2016 Title II Guidance*, pp. 13, 24.

- Professional development on effectively teaching certain subgroups of students, such as students with disabilities,[53] English learners,[54] students in early grades[55] and students who are gifted and talented.[56]
- Other educator supports, such as coaching and mentoring.[57]

Activities supported with Title II funds must:

- Be consistent with Title II's purposes.
- Address the learning needs of all students, including children with disabilities, English learners and gifted and talented students.[58]

LEAs must prioritize Title II funds to schools that:

- Are implementing comprehensive support and improvement (CSI) activities and targeted support and improvement (TSI) activities
- Have the highest percentage of economically disadvantaged students.[59]

LEAs must consult meaningfully with a wide array of stakeholders on the LEA's plan for carrying out Title II activities.[60] LEAs must also conduct ongoing consultation with those stakeholders to update and improve activities supported with Title II funds.[61]

[53] ESEA, Section 2103(b)(3)(F).
[54] ESEA, Section 2103(b)(3)(F).
[55] ESEA, Section 2103(b)(3)(G).
[56] ESEA, Section 2103(b)(3)(J).
[57] ESEA, Section 2103(b)(3)(B)(iv)-(v). See also *ED 2016 Title II Guidance*, pp. 9-11, 14.
[58] ESEA, Section 2103(b)(1)-(2).
[59] ESEA, Section 2102(b)(2)(C). Economically disadvantaged students include children aged 5 to 17 who live in (1) families with incomes at or below the poverty level (according to Department of Commerce),(2) families with incomes above the poverty level, but who receive local assistance through Part A of Title IV of the Social Security Act (i.e., Temporary Aid to Needy Families, or TANF) (according to Department of Health and Human Services), (3) institutions for neglected and delinquent children that local governments administer (according to ED), and (4) foster homes in which the foster parents receive payments from a state or county for the children's support (according to Department of Health and Human Services).
[60] ESEA, Section 2102(b)(3). Stakeholders include teachers, principals, other school leaders, paraprofessionals (including organizations representing such individuals), specialized instructional support personnel, charter school leaders (in a LEA that has charter schools), parents, community partners and other organizations or partners with relevant and demonstrated expertise in programs and activities designed to meet Title II purposes. ESEA, Section 2102(b)(3)(A).
[61] ESEA, Section 2102(b)(2)(D).

Title III, Part A

A. Title III, Part A and Supplement not Supplant

Title III, Part A has a supplement not supplant requirement.[62] In Title III, supplanting is generally presumed when:

- An LEA uses Title III funds to pay for an instructional program/service provided to all students.
- An LES uses Title III funds to meet Lau V. Nichols (1974) requirements.
- An LEA uses Title III funds to pay for an activity that is required by state, local, or other federal law.[63]
- An LEA uses Title III funds to pay for an activity it supported with state or local funds the year before.

An LEA may be able to overcome these presumptions if it can show it could not have provided the services in question with state or local funds.[64]

Given the first presumption above, LEAs may not use Title III funds to meet their legal obligations to ensure English learners can meaningfully and equally participate in educational programs and services.[65]

More information about those legal obligations is available in a joint Dear Colleague Letter from the U.S. Department of Education and U.S. Department of Justice available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf

B. Using Title III, Part A Funds to Support HQIM and Related PD

LEAs must use Title III funds to assist English learners (ELs) in learning English and meeting state academic standards.[66] Title III spending must include three kinds of activities providing effective language instruction educational programs (LIEPs),[67] providing effective professional development [68] and

[62] ESEA, Section 3115(g).
[63] Title III, Part A can pay for Title I-required activities in certain circumstances. For more information, see U.S. Department of Education, *Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA)*, 2019, Q&A A-4 (referred to as *ED 2019 Title III Guidance* for the rest of this document).
[64] *ED 2019 Title III Guidance*, Q&A A-2.
[65] *ED 2019 Title III Guidance*, Q&A A-2 and A-3.
[66] ESEA, Section 3115(a). Please note Title III includes two types of subgrants to LEAs. First are "formula" subgrants available to LEAs (or a consortium of LEAs) that generate at least $10,000 under a formula established in the Title III law. These subgrants must be used to support ELs in learning English and meeting state academic standards. Second are "targeted" subgrants SEAs might award to LEAs that experience a significant increase in immigrant children and youth and should provide immigrant children with enhanced instructional opportunities. This section only addresses formula subgrants.
[67] ESEA, Section 3115(c)(1). For federal guidance about LIEPs, please see *ED 2019 Title III, Part A Guidance*, Section C.
[68] ESEA, Section 3115(c)(2). For federal guidance on educators of English Learners, including professional development, please see *ED 2019 Title III, Part A Guidance*, Section D.

enhancing or supplementing LIEPs including parent, family and community engagement.[69] LEAs may also use Title III funds for other HQIM-related activities, such as:

- Identifying, acquiring and upgrading curricula and instructional materials to improve the instructional program for EL students.[70]
- Providing EL students with materials in a language they can understand to support academic or career and technical education.[71]
- Improving the English language proficiency and academic achievement of EL students.[72]
- Buying or developing instructional materials for EL students with disabilities.[73]
- Offering early college high school or dual or concurrent enrollment programs or courses designed to help EL students achieve success in postsecondary education.[74]

[69] ESEA, Section 3115(c)(3). For federal guidance on parent, family, and community engagement, please see *ED 2019 Title III, Part A Guidance*, Section E.
[70] ESEA, Section 3115(d)(2).
[71] ESEA, Section 3115(d)(3).
[72] ESEA, Section 3115(d)(5).
[73] ESEA, Section 3115(d)(7).
[74] ESEA, Section 3115(d)(8).

Title IV, Part A

A. Title IV, Part A and Supplement not Supplant

Title IV, Part A has a supplement not supplant requirement.[75] In Title IV, supplanting is generally presumed when:

- An LEA uses Title IV funds to pay for an activity that is required by state, local or other federal law.
- An LEA uses Title IV funds to pay for an activity it supported with state or local funds the year before.

An LEA may overcome a presumption of supplanting if it has written documentation (such as legislative, budget or other materials) that it does not have the funds necessary to implement the activity and would not carry out the activity absent Title IV funds.

B. Using Title IV, Part A Funds to Support HQIM and Related PD

Title IV provides supplemental funding to help provide a well-rounded education, improve school conditions for student learning and improve the use of technology.[76]

If consistent with their needs,[77] LEAs can spend Title IV funds for HQIM and related professional development in:

- All areas of a well-rounded education.[78]
- Music and arts, as well as programs that integrate multiple disciplines, such as incorporating art and mathematics.[79]
- Science, technology, engineering and mathematics, including hands-on learning.[80]
- Accelerated learning, such as Advanced Placement, International Baccalaureate, dual or concurrent enrollment programs and early college high schools.[81]
- American history, civics, economics, geography, government, foreign language and environmental education.[82]

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[75] ESEA, Section 4110. See also U.S. Department of Education, *Non-Regulatory Guidance: Student Support and Academic Enrichment Grants,* 2016, p. 14 (referred to as *ED 2016 Title IV Guidance* for the rest of this document).
[76] For more information, see U.S. Department of Education, *Title IV, Part A, Student Support and Academic Enrichment Program website.*
[77] LEAs that receive $30,000 or more in Title IV, Part A funds must, at least once every three years, conduct a comprehensive needs assessment of (1) access to and opportunities for, a well-rounded education for all students, (2) school conditions for student learning to create a healthy and safe school environment, and (3) access to personalized learning experiences supported by technology and professional development for the effective use of data and technology. ESEA, Section 4106(d). LEAs that receive less than $30,000 in Title IV, Part A funds do not have to conduct a formal needs assessment but are encouraged to consider the needs above when deciding how to spend Title IV, Part A funds. *ED 2016 Title IV Guidance,* p. 16, footnote 14.
[78] ESEA, Section 8101(52). See also *ED 2016 Title IV Guidance,* p. 19.
[79] ESEA, Section 4107(a)(3)(B) and (I). *ED 2016 Title IV Guidance,* pp. 20--21.
[80] ESEA, Section 4107(a)(3)(C). *ED 2016 Title IV Guidance,* p. 20.
[81] ESEA, Section 4107(a)(3)(D). *ED 2016 Title IV Guidance,* pp. 21-22.
[82] ESEA, Section 4107(a)(3)(E), (F), and (G). *ED 2016 Title IV Guidance,* pp. 21-23.

- Social and behavioral skill instruction.[83]
- Programming to promote safe, healthy, supportive and drug-free school environments, such as drug and violence prevention activities,[84] and nutritional and physical education and schoolwide positive behavioral supports, among others.[85]
- Technology.[86]

Please note an LEA's spending choices may be affected by spending requirements that apply if an LEA receives $30,000 or more in Title IV funds.[87]

Activities supported with Title IV funds must prioritize schools that have the greatest needs as determined by the LEA, have the highest percentages or numbers of low-income children, are identified for comprehensive support and improvement (CSI) or targeted support and improvement (TSI) under Title I, or are identified as a persistently dangerous school.[88]

LEAs must develop objectives for their Title IV programs and intended outcomes for Title IV-funded activities.[89] LEAs must use these objectives and outcomes to periodically evaluate the effectiveness of Title IV-funded activities.[90] LEAs must also provide SEAs with information about their progress towards their objectives and outcomes so SEAs can satisfy their reporting requirements.[91]

LEAs must meaningfully consult with a wide array of stakeholders when designing their Title IV programs.[92] They must also engage in continuing consultation with stakeholders to improve Title IV activities and to coordinate Title IV activities with other activities conducted in the community.[93]

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[83] ESEA, Section 4107(a)(3)(J). *ED 2016 Title IV Guidance*, pp. 23-24.
[84] ESEA, Section 4108(5)(A). Such programs must be evidence based to the extent the SEA, in consultation with LEAs, determines evidence is reasonably available.
[85] ESEA, Section 4108 (2) and (5). *ED 2016 Title IV Guidance*, pp. 6, 27-31.
[86] ESEA, Section 4109(a). Of the Title IV, Part A funds spent on technology, LEAs may not spend more than 15% of those technology funds to purchase technology infrastructure. ESEA, Section 4109(b). See also *ED 2016 Title IV Guidance*, p. 32.
[87] LEAs that receive $30,000 or more in Title IV, Part A funds must spend at least 20% on activities to support a well-rounded education, at least 20% to activities to support safe and healthy students, and at least some funds for activities to support the effective use of technology. ESEA, Section 4106(e)(2)(C)-(E).
[88] ESEA, Section 4106(e)(2)(A). ESEA requires LEAs to prioritize the distribution of funds to high-need schools. ED's guidance clarifies that an LEA can provide districtwide services with Title IV funds, but must prioritize activities for high-need schools. *ED 2016 Title IV Guidance*, pp. 14-15.
[89] ESEA, Section 4106(e)(1)(E).
[90] ESEA, Section 4106(e)(1)(E).
[91] ESEA, Section 4104(a)(2); see also ESEA, Section 4106(e)(2)(F).
[92] Stakeholders include parents, teachers, principals, other school leaders, specialized instructional support personnel, students, community-based organizations, local government representatives (which may include a local law enforcement agency, local juvenile court, local child welfare agency, or local public housing agency), Indian tribes or tribal organizations that may be located in the region served by the local educational agency (where applicable), charter school teachers, principals and other school leaders (if such agency or consortium of such agencies supports charter schools), and others with relevant and demonstrated expertise in programs and activities designed to meet SSAE purposes. ESEA, Section 4106(c)(1).
[93] ESEA, Section 4106(c)(2).

IDEA, Part B, Section 611

Please note IDEA, Part B is made up of two grant programs: (1) Section 611, which supports students with disabilities ages 3 to 21, and (2) Section 619, which supports students with disabilities ages 3 to 5. This section focuses on Section 611 funds.

A. IDEA, Part B and Supplement not Supplant

IDEA, Part B has a supplement not supplant requirement,[94] but for Section 611 funds, LEAs demonstrate compliance with supplement not supplant by meeting their local maintenance of effort obligations.[95] Put another way, LEAs that comply with maintenance of effort comply with supplement not supplant as well. LEAs do not have to show that individual costs or particular activities supported with IDEA funds are supplemental and the presumptions of supplanting described for other programs in this guidance do not apply to IDEA.

B. Using IDEA, Part B Funds to Support HQIM and Related PD

A central purpose of IDEA, Part B is to help states provide special education[96] and related services[97] to students with disabilities. Assuming LEAs satisfy fiscal requirements,[98] they may spend IDEA, Part B funds on a wide variety of activities to support eligible students with disabilities.[99] This could include:

- HQIM for students with disabilities.[100]
- Technology for students with disabilities, including approaches that improve access to the general curriculum.[101]
- Implementing Universal Design for Learning strategies.[102]
- Intervention materials for students with disabilities.[103]

[94] 34 CFR § 300.202(a)(3).
[95] See for example, U.S. Department of Education, *Letter to Kennedy*, 2008.
[96] 34 CFR § 300.39.
[97] 34 CFR § 300.34.
[98] These fiscal requirements are: (1) maintenance of effort (MOE), (2) supplement not supplant – which is satisfied if the LEA meets MOE, and (3) excess cost. For more information about MOE, see U.S. Department of Education, *OSEP Memo 15-10*, 2015. See also, Center for IDEA Fiscal Reporting (CIFR), *Local Educational Agency (LEA) Maintenance of Effort (MOE) Organizer*, which provides a number of LEA MOE resources, including an LEA MOE calculator. For more information about excess cost, see *Appendix A to Part 300 - Excess Costs Calculation*.
[99] For more information, see U.S. Department of Education, *IDEA website*.
[100] See, for example, U.S. Department of Education, *American Recovery and Reinvestment Act of 2009: Using ARRA Funds Provided Through Part of the Individuals with Disabilities Education Act (IDEA) to Drive School Reform and Improvement*, 2009, p. 3; Section B, pp 16-31 (referred to as *ED 2009 IDEA Reform Guidance* for the rest of this document). Please note, ED developed this guidance to help LEAs spend the additional IDEA, Part B funds appropriated through the American Recovery and Reinvestment Act, but it applied to regular IDEA, Part B funds as well. The guidance is now archived on ED's website, but the examples are still relevant to IDEA, Part B spending.
[101] *ED 2009 IDEA Reform Guidance*, p. 12.
[102] *ED 2009 IDEA Reform Guidance*, pp. 16-19.
[103] *ED 2009 IDEA Reform Guidance*, pp. 22-25.

- Professional development for teachers, principals and other school leaders on using or adapting HQIM for students with disabilities.[104]
- Coaching and mentoring for teachers on how to support students with disabilities.[105]

LEAs may also reserve up to 15% of their Part B allocation to provide coordinated early intervening services (CEIS) to nondisabled students who struggle to succeed in the general education environment.[106] This can include HQIM and related professional development to support students not yet identified as students with disabilities in kindergarten through 12th grade who need additional academic and behavioral supports to succeed in the general education environment.[107]

It is a common misperception that curricular and instructional materials for students with disabilities must be different from the materials used with other students. For example, it is commonly believed an LEA could not spend IDEA funds to buy a reading intervention for students with disabilities if it uses another funding source to buy the same intervention for other struggling readers without disabilities. This is not so under federal law.[108]

For example, an LEA could use IDEA funds to purchase a self-regulation program for students with disabilities. The LEA could also use another funding source to buy the same self-regulation program to support other students who could benefit from it even if they have not been identified as having a disability.

A Note About Accessibility

LEAs must take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials.[109]

[104] *ED 2009 IDEA Reform Guidance*, pp. 3, 6-7, 33.
[105] *ED 2009 IDEA Reform Guidance*, pp. 7, 10, 33.
[106] 34 CFR § 300.226. Please note LEAs with "significant disproportionality" must reserve funds for comprehensive coordinated early intervening services to address a policy, practice or procedure the LEA identifies as contributing to the significant disproportionality. 20 USC § 1418(d)(2)(B), 34 CFR § 300.646(d).
[107] 34 CFR § 300.226(a). Please note LEAs cannot use CEIS funds to replace an expense the LEA was supporting with ESEA funds. 34 CFR § 300.226(e). In other words, if an LEA is already paying for intervention services with ESEA funds, it cannot switch to paying for those services with CEIS funds instead. The LEA could, however, expand the ESEA-funded intervention services with CEIS funds.
[108] *ED 2009 IDEA Reform Guidance*, pp. 22-23. See also *CCSSO IDEA & COVID-19*.
[109] 34 CFR § 300.172(b)(4) and 34 CFR § 300.210(b)(3).