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April 2, 2018

**MEMORANDUM**

**TO:** All School District Superintendents and State-Chartered Charter School Head Administrators

**FROM:** Sam Ornelas, Title I Bureau Director 

**RE:** Changes in Title I, Part A "Supplement not Supplant" Compliance under the Every Student Succeeds Act of 2015

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*NOTE: The New Mexico Public Education Department is issuing this guidance to provide Local Educational Agencies (LEAs) with information to assist them in meeting their obligations under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) as it relates to provisions on supplementing and not supplanting with Title I funds. However, this guidance is not intended as legal advice or as a legally binding interpretation of the law, and shall not serve as the basis for decision making in specific instances or situations.*

Title I, Part A of the Every Student Succeeds Act<sup>1</sup> (ESSA) changes the way "supplement not supplant" (SNS) compliance must be tested and determined by local educational agencies (LEAs) and schools that receive Title I funds.

The requirement in Title I, Part A is that federal funds must supplement, and may not supplant, State and local (non-Federal) funds, or stated differently, that federal funds are in addition to and do not take the place of State and local funds in low-income schools. This is in keeping with the

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<sup>1</sup> The Every Student Succeeds Act of 2015, Pub. L. 114-95, 20 U.S.C. § 6301 *et seq.* (2015), is the most recent reauthorization of the Elementary and Secondary Education Act of 1965.

longstanding commitment under Title I that this nation's highest need students receive the additional financial resources necessary to help them succeed.<sup>2</sup>

ESSA contains a statutory directive about how school districts must demonstrate compliance with SNS. The law states that school districts must use a methodology to allocate State and local funds to Title I schools that ensures that each school receives all the State and local funding the school would have received if it did not participate in the Title I program, and that LEAs do not reduce State and local funding to Title I schools because they receive Title I funds.

The change in law shifts the review of individual Title I, Part A expenses and forgoes the three presumptions test.<sup>3</sup> ESSA's revised SNS test does not look at how LEAs and schools spend Title I funds, but instead looks at how LEAs allocate (and distribute) State and local funds to Title I schools. Stated differently, the updated SNS examines the manner in which LEAs allocate State and local funds to schools to ensure that Title I schools receive all of the funds they would have received had they not participated in Title I.

Under ESSA, no LEA is required to identify that an individual cost or service supported under Title I, Part A is supplemental, nor is the LEA required to provide Title I, Part A services through a particular instructional method, or in a particular instructional setting, in order to demonstrate the LEA's compliance.

This guidance memorandum briefly reviews the guidelines on the use of Title I funds, and then examines how Title I, Part A of ESSA changes the way SNS compliance must be tested by LEAs and schools that receive Title I funds.

### **Guidelines on Use of Title I, Part A Funds**

In addition to costs having to be necessary for the performance of the Title I program, costs *must be reasonable, allocable and allowable*.

√ A cost is **reasonable** if, in its nature and amount, it does not exceed a cost which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

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<sup>2</sup> U.S. Department of Education, *FACT SHEET: Supplement-not-Supplant under Title I of the Every Student Succeeds Act*, available at <https://www.ed.gov/news/press-releases/fact-sheet-supplement-not-supplant-under-title-i-every-student-succeeds-act>.

<sup>3</sup> These "presumptions" were set out in U.S. Department of Education guidance. See, e.g., *Title I Fiscal Issues*, available at <https://www2.ed.gov/programs/titleiparta/fiscalguid.doc>, page 38; OMB Circular A-133 *Compliance Supplement*, 2 C.F.R. Appendix XI to Part 200, available at <https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-part200-appXI> (page 4-84.000-16 of corresponding OMB Circular).

√ A cost is **allocable** to the grant if the goods or services involved are chargeable or assignable to the grant in proportion to the benefits received.

√ A cost is **allowable** if it is used to address the specific *educational needs* of Title I schools identified in the needs assessment. Title I funds are intended to support strategies and activities designed to raise the achievement of low achieving students. Title I funds may not be used for *non-educational activities* such as building maintenance and repairs, landscaping, custodial services, and general district or school administrative functions.

Costs likewise must comply with the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found at 2 C.F.R. Part 200, which streamlines and consolidates government requirements for receiving and using federal awards so as to reduce administrative burden and improve outcomes.<sup>4</sup>

The federal guidelines on reasonableness, allocability, allowability and cost principles regarding the use of Title I, Part A funds remained the same under the ESSA changes.

### **Supplement Not Supplant**

Title I historically has contained a supplanting provision.<sup>5</sup> Generally, this has meant that Title I funding should only be used *to supplement the funds* that would, in the absence of Title I funds, be made available from State and local resources for the education of students in Title I schools, and *not to supplant those funds*, although the test for this requirement has varied over the years.

Under ESSA, the law now states that SNS compliance in Title I, Part A must not be based on an analysis of individual Title I costs,<sup>6</sup> instead:

[A] local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part

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<sup>4</sup> See, <https://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>.

<sup>5</sup> See, ESSA, Section 1012 (“Supplement Not Supplant”) stating:

(b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT, NON-FEDERAL FUNDS.—

(1) IN GENERAL.—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 State and local sources for the education of students participating in programs assisted under this part, and not to supplant such funds.

<sup>6</sup> See, ESSA, Section 1012(b)(3) stating:

(b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT, NON-FEDERAL FUNDS.—

(3) SPECIAL RULE.—No local educational agency shall be required to—

(A) identify that an individual cost or service supported under this part is supplemental; or

(B) provide services under this part through a particular instructional method or in a particular instructional setting in order to demonstrate such agency’s compliance with paragraph (1).

ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under this part.<sup>7</sup>

Although the term “methodology” is not defined in ESSA, a Senate committee report describing the revised SNS test clarifies that it refers to “the manner in which [LEAs] allocate State and local resources to schools.”<sup>8</sup>

### **Importance of ESSA Changes to LEAs**

The Public Education Department recognizes that there are several ways an LEA may allocate State and local funds to schools, which may vary from one school district to another (or one state-chartered charter school to another), depending upon local school board (or governing body) policies. Under ESSA, LEAs must demonstrate to the Public Education Department that the methodology used to allocate State and local funds to each school receiving assistance under Title I, Part A ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving Title I, Part A assistance. Stated differently, LEAs must demonstrate that the method for allocating funds must be Title I neutral and give no consideration to whether a school receives Title I assistance or not when allocating State and local funds.<sup>9</sup>

The Public Education Department does not require an LEA to implement a specific methodology to allocate State and local funds to its schools, provided that the methodology selected and implemented is neutral with regard to the Title I status of the schools and is implemented consistently among all schools in the LEA.

LEAs must have a methodology for allocating State and local funds to all schools that ensures that Title I schools get their fair share of State and local funds. Districts cannot reduce State and local funding to Title I schools because they receive Title I funds. When this requirement is met Title I funding allocated to Title I schools is considered supplemental. Individual expenditures at these schools are not reviewed to determine if they are supplemental. For district-level expenditures, Title I schools must benefit from State and local funding in an equitable manner.

LEAs will provide an assurance and a description of the specific, verifiable methodology used to allocate State and local funds in their individual 2018-19 Title I applications. The Public Education

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<sup>7</sup> See, ESSA, Section 1012(b)(2), stating:

(b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT, NON-FEDERAL FUNDS.—

(2) COMPLIANCE.—To demonstrate compliance with paragraph (1), a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under this part.

<sup>8</sup> U.S. Senate, Committee on Health, Education, Labor, and Pensions, S. Rpt. 114-231, available at <https://www.congress.gov/114/crpt/srpt231/CRPT-114srpt231.pdf>, page 31.

<sup>9</sup> The ESSA permits the LEA to exclude State and local funds expended in any school for programs that meet the intent and purpose of Title I, Part A.

Department Title I Bureau will conduct follow-up monitoring to (a) review the LEA's methodology, and (b) confirm that the methodology has been implemented.

This guidance memorandum identifies:

- √ The funds that must be considered in a budget allocation model to comply with the ESSA supplanting rules.

- √ The funds that may be considered in a budget allocation model depending on certain circumstances.

- √ The funds that are not a consideration for a budget allocation during the development of the school district's or state-chartered charter school's budget.

### **State and Local Funds As Compared to Other Funds**

School districts and state-chartered charter schools account for many different funds. It is not uncommon for a school district or a charter school to have 60 to 70 separate active funds in its general ledger, from federal, state, local and private resources. This guidance memorandum, however, is limited to revenue from State and local sources.

The Uniform Chart of Accounts used by every school district and state-chartered charter school in New Mexico prescribes the fund number and the object code for recording revenue in the general ledger. The table below lists the funds and notes whether or not they should be included in an LEAs methodology for allocation of state and local funds.

<b>Fund</b>	<b>Subject to SNS Allocation/Source of Funds</b>	<b>Discussion</b>
<b>10000 – General Fund</b>		These are funds that are almost exclusively funded by state and local resources.
<ul style="list-style-type: none"> <li>• 11000 - Operational</li> </ul>	<p><b>Yes</b> Resources: Local, State &amp; Federal (indirect costs)</p>	Revenue from this fund is almost completely funded from state and local revenue. Additionally, this fund is primarily responsible for funding staff for the educational mission of the district. Allocation of budget and staff to schools must comply with the supplanting rules.
<ul style="list-style-type: none"> <li>• 12000 – Teacherage</li> </ul>	<p><b>No</b> Resource: Local</p>	Although this fund is within the general fund and is typically funded from local resources, this fund is established to be a self-sustaining fund to provide housing in some of the most rural schools within the state. The fund contains rent from the teacher/tenants and the rents received are used to maintain the facilities. This fund is not used for the basic education program.
<ul style="list-style-type: none"> <li>• 13000 – Transportation</li> </ul>	<p><b>No</b> Resource: State</p>	Although this fund is funded entirely by the state it is restricted in use for transportation of students to and from school. These funds are not allocated to schools for use in the educational program.
<ul style="list-style-type: none"> <li>• 14000 – Instructional Materials</li> </ul>	<p><b>Yes</b> <b>Depending on Local Practice</b> Resource: State</p>	<p>This fund is comprised entirely of state resources and the use of the appropriation is restricted by the Legislature for the purchase of instructional materials. The applicability of the SNS requirement for this fund depends upon an individual district's budget practices. In general, most districts allocate this budget to the schools. In this situation, an allocation model should be developed for the equitable distribution of these resources in compliance with the SNS guidance. However, if the district purchases instructional materials on a reasonable district-wide policy or standard, no allocation may be necessary. For instance if a district has a policy for one reading textbook per elementary student and textbooks are purchased to meet the enrollment needs and wear and tear replacement at all schools regardless of Title I status.</p>



<b>Fund</b>	<b>Subject to SNS Allocation/Source of Funds</b>	<b>Discussion</b>
<b>20000 – Special Revenue</b>		Resources accounted for within this fund type are special purpose funds. The uniform chart of accounts dictates the fund number for special purpose funds. How the resources are used is mandated by the granting agency or funding source. Typically, funds within the special revenue section are a restricted use revenue source.
<ul style="list-style-type: none"> <li>• 21000 – Food Services</li> </ul>	<p><b>No</b> Resources: Local and Federal</p>	The largest source of revenue for this fund is the per meal reimbursement from USDA and is primarily funded from federal revenue. Resources from this fund are not allocated to the schools for use in the educational program.
<ul style="list-style-type: none"> <li>• 22000 – Athletics/Gate Receipts</li> </ul>	<p><b>No</b> Resource: Local</p>	The primary funding for this program is derived from charging entry fees to patrons attending athletic events. The money raised through gate receipts is restricted in use for the athletic programs of the district.
<ul style="list-style-type: none"> <li>• 23000 – Non-Instructional Support</li> </ul>	<p><b>No</b> Resource: Local</p>	Many school districts use this fund as an activity fund for schools. Money generated for this fund is typically derived from fund raising activities at the school and the school uses the money for the needs of the school.
<ul style="list-style-type: none"> <li>• 24000 – Federal Flow-through</li> <li>• 25000 – Federal Direct Grants</li> </ul>	<p><b>No</b> Resource: Federal</p>	These funds are used to account for resources that are classified as grants from federal sources.
<ul style="list-style-type: none"> <li>• 26000 – Local Grants</li> <li>• 27000 – State Flow-through</li> <li>• 28000 – State Direct</li> <li>• 29000 – Combined Local/State Grants</li> </ul>	<p><b>Yes (Depending on Local Practice)</b> Resources: Local, State and Private</p>	<p>Most revenue in this fund is from specific purpose grants. The revenue received must be used as designated by the grant documents.</p> <p>Many districts have started receiving revenue that is locally generated that appear-to be a “Pilot”<sup>10</sup> or an additional assessment within the locality’s GRT<sup>11</sup>. Examples are wind-farms, solar farms or the GRT add-on for Spaceport America. Each of the arrangements generate local tax revenue for the district. In each case, a review of the documentation regarding the use of the revenue must be conducted to determine whether the use of the revenue is restricted. If the revenue is restricted, then an allocation does not need to occur. If the revenue</p>

<sup>10</sup> Payment In Lieu of Taxes

<sup>11</sup> Gross Receipts Tax

		<p>gained through a special agreement is not restricted, an allocation may be required.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• Wind-farm revenue – Generally, this is money that is not restricted in use and a local board of education may direct the use of the resource. If the funds are made available to the schools within the district for staffing or supplies, the district must follow the supplanting rules.</li> </ul> <p>Example #1, a BOE<sup>12</sup> for a district designates the revenue received from a wind farm for technology replacement and/or improvements. The district—follows the BOE adopted technology plan and the plan was prepared without regard to the Title I status of any school. In this example, an allocation to the schools is not necessary. The district may direct the resources to a district-wide program as long as the program does not take into consideration the Title I status of any school.</p> <p>Example #2, Again the BOE designates the revenue from the wind farm to be used for technology but the money is given to each school and the school's technology committee is responsible for determining the use of the funding. In this situation, an allocation of the resources in compliance with the SNS requirement should occur.</p>
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Fund	Subject to SNS Allocation/Source of Funds	Discussion
<b>30000 – Capital Projects</b>		
<ul style="list-style-type: none"> <li>• 31100 – Bond Building</li> </ul>	No Resource: Local	Generally, the project list approved by the voters is based upon the district's needs/priorities and the list is prepared without regard to a school's Title I status. Additionally, this revenue source provides money for projects that are not permitted under ESSA.

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<sup>12</sup> Board of Education



<b>Fund</b>	<b>Subject to SNS Allocation/Source of Funds</b>	<b>Discussion</b>
<ul style="list-style-type: none"> <li>• 31200 – Public School Capital Outlay</li> </ul>	<p><b>No</b> Resource: State</p>	<p>This fund accounts for grants awarded by PSCOC<sup>13</sup> and administered by PSFA<sup>14</sup>. The money within this fund are state resources. However, the award is made to the district based upon overall need of the district and state and a school's Title I status is not a consideration for the grant award.</p>
<ul style="list-style-type: none"> <li>• 31300 – Special Capital Outlay - Local</li> </ul>	<p><b>Yes (Depending on Local Practices)</b> Resource: Local</p>	<p>This fund accounts for resources acquired from local sources. If the district allocates money to the schools from this fund, the allocation must comply with SNS guidance. However, no allocation is necessary if the fund resources are used consistent with the approved facilities master plan or the resources are not allocated to the schools.</p>
<ul style="list-style-type: none"> <li>• 31400 – Special Capital Outlay – State</li> </ul>	<p><b>No</b> Resource: State</p>	<p>These funds are used to account for special grants that are made by the NM Legislature for a special project. The awards are made to a district without regard to the Title I status of a school.</p>
<ul style="list-style-type: none"> <li>• 31500 – Special Capital Outlay – Federal</li> </ul>	<p><b>No</b> Resource: Federal</p>	<p>The purpose of this fund is to account for capital outlay awards from the federal government and are not subject to the SNS rules.</p>
<ul style="list-style-type: none"> <li>• 31600 – HB-33</li> </ul>	<p><b>Yes (Depending on Local Practices)</b> Resource: Local</p>	<p>The revenue for this fund is derived from local resources. Generally, if the funds are used for district projects, an allocation does not need to occur. However, if the district provides a budget to the schools with these funds, the budget should be allocated without regard to a school's Title I status.</p>
<ul style="list-style-type: none"> <li>• 31700 - SB-9 – State Match</li> <li>• 31701 – SB-9 Local</li> </ul>	<p><b>Yes (Depending on Local Practices)</b> Resources: State and Local</p>	<p>The revenue accounted for within these funds is from state and local resources. Generally, if the funds are used for district projects (i.e. Facilities Master Plan) an allocation does not need to occur. However, if the district provides a budget to the schools with these funds, the budget should be allocated without regard to a school's Title I status.</p>

<sup>13</sup> Public Schools Capital Outlay Committee

<sup>14</sup> Public School Facilities Authority

<b>Fund</b>	<b>Subject to SNS Allocation/Source of Funds</b>	<b>Discussion</b>
<b>40000 -- Debt Service</b>		
<ul style="list-style-type: none"> <li>• 41000 – Debt Service</li> <li>• 42000 – Deferred Sick Leave, and</li> <li>• 43000 – Ed. Tech. Debt Service</li> </ul>	<b>No</b> Resource: Local	These funds are used to account for local tax revenue that is legally restricted for payment of long-term debt obligations. These resources are not available to the schools nor subject to the SNS guidelines.

### **Allocation Model and Considerations**

The allocation models used by school districts range from simple to complex, depending upon their individual needs and past practices. Since the needs of every district are different, districts are permitted to use the allocation model that best fits their needs. An allocation model is a systematic approach to providing budgetary resources to the schools and departments within the organization/district. Traditionally, budgetary allocations are distributed to schools based on enrollment although conditions may exist where an allocation model based other factors is appropriate (e.g., allocating custodial supplies based upon square footage). Regardless of the allocation model implemented, the model will meet the SNS guidance if the model is applied without regard to the Title I status of a school.

A lump-sum budget distribution of funds for supplies and materials without regard to the enrollment at the individual schools is not an acceptable allocation and will not be deemed as compliant with SNS rules.

Below are some points for districts to consider as they review their current allocation models or develop new models.

#### **√ Level of sophistication and manageability**

Every school district has different level of complexity; what is a reasonable practice for a larger district may not be practical for a smaller district. For example, one district may use the funding formula weightings to determine the program units at a school in their model, yet another may use the average enrollment from the 80<sup>th</sup> and 120<sup>th</sup> days, and still another may use a hybrid model.

Regardless of the methodology a school district decides to implement, it must consistently apply the allocation model for the distribution of State and local resources.

√ **Operational Staff**

Some school districts may choose to allocate staff and the associated costs to the schools. Other districts may decide to provide the staff and keep the associated costs for those staff at the district level. Either method will work. Most accounting software provides the ability to budget for the salaries and benefits and capture the actual cost by school site.

√ **Custodial Supplies**

If a school district decides to allocate a budget to the school site for custodial supplies, the district may elect to modify the allocation model using square footage as the basis instead of enrollment. However, an allocation model based upon enrollment will also meet the compliance testing.

√ **SB-9 and HB-33 Funds**

Some school districts may elect to allocate a portion of the SB-9 and/or HB-33 funds to schools in which instance the budget provided to the schools should utilize an appropriate allocation model based on either square footage or enrollment, depending on the restrictions placed on the funds. However, if funds are not allocated to the sites but are based on district-wide priorities or an improvement plan that is Title I neutral, the allocation is not required.