Supplement, Not Supplant Statute and Frequently Asked Questions

Title I, Part A—Improving Basic Programs Operated by Local Educational Agencies
[P.L. 107-110, Section 1120A(b)]

A local education agency (LEA) shall use Title I, Part A funds only to supplement the amount of funds that would, in the absence of Title I, Part A funds, be made available from non-federal sources for the education of students participating in Title I, Part A programs, and, in no case may Title I, Part A funds be used to supplant those non-federal funds.

What is the intent and purpose of Title I, Part A?

To provide opportunities for children served to acquire the knowledge and skills contained in the state content standards [Texas Essential Knowledge and Skills (TEKS)] and to meet the state performance standards [Texas Assessment of Knowledge Skills (TAKS)].

What funds may be excluded in determining compliance?

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.

What documents compliance with the intent and purpose of Title I, Part A?

A supplemental state or local program will be considered to meet the requirements of a schoolwide program if the program—

- is implemented in a school that meets the schoolwide poverty threshold (40%) for eligibility;
- is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the state's challenging student academic performance standards;
- is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student academic performance standards; and
- uses the State's system of assessment to review the effectiveness of the program.

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

- serves only children who are failing, or most at risk of failing, to meet the State's challenging student academic performance standards;
- 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; and
- uses the State's system of assessment to review the effectiveness of the program.

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- 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—

- 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)]; or
- applies the 125 Percent Special Allocation Rule [P.L. 107-110, Section 1113(c)(2)(A)].

Title I, Part A (continued)

When is the 125 Percent Special Allocation Rule applicable?

- 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.

What is the difference in the Supplement, Not Supplant Requirement for Schoolwide and Targeted Assistance Programs?

Schoolwide Programs—A campus participating in a schoolwide program shall use Title I, Part A funds only to supplement the amount of funds available from non-federal sources for the campus including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency. A schoolwide campus does not have to demonstrate that activities are supplemental. The school is not required to identify particular children or to provide supplemental services to identified children. Other funds may be used on a schoolwide campus in combination with Title I, Part A to upgrade the entire educational program, but the funds must not be commingled. Such schoolwide programs are exempt from statutory or regulatory requirements of other federal education programs, provided that the intent and purposes of such programs are met and the needs of the intended beneficiaries of the federal fund sources combined are met. The effectiveness of the program is measured by student performance.

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.

Title I, Part C—Migrant Education
[P.L. 107-110, Section 1306(b)(1&2)]

Title I, Part C funds first shall be used to meet the identified needs of migratory children that result from their migratory lifestyle, and to permit these children to participate effectively in school. Funds shall be used to address the needs of migratory children that are not addressed by services available from other Federal or non-Federal programs.

What is the intent and purpose of Title I, Part C?
To assist States to--
(1) support high-quality and comprehensive educational programs for migratory children to help reduce the educational disruptions and other problems that result from repeated moves;
(2) ensure that migratory children who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and State academic content and student academic achievement standards;
(3) ensure that migratory children are provided with appropriate educational services (including supportive services) that address their special needs in a coordinated and efficient manner;
(4) ensure that migratory children receive full and appropriate opportunities to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet;
(5) design programs to help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to do well in school, and to prepare such children to make a successful transition to postsecondary education or employment; and
(6) ensure that migratory children benefit from State and local systemic reforms.
[Section 1301]

Title I, Part C (continued)

What are the most common supplant issues with Migrant funds?

The most common supplanting issue is when Migrant staff is paid 100% from Migrant funds and then assigned responsibilities other than providing supplemental services to Migrant students. Two examples are paraprofessionals assigned other "duties" and Migrant-funded counselors assigned academic counseling.

Paraprofessionals whose salary is paid 100% with Migrant funds may only provide supplemental services to identified, eligible migrant students. First priority for services to migrant students must be to those migrant students who are failing, or most at risk of failing, to meet the State's challenging State academic content standards (TEKS) and challenging State student academic achievement standards (TAKS), and whose education has been interrupted during the regular school year.

Migrant counselor responsibilities must be in addition to those provided by the foundation program to all students. Migrant counselors provide unique services to migrant students.

Uniqueness of Migrant Counseling Services	
Basic Counseling Services (provided to all students) • Group Counseling • Individual Counseling • Public Relations • Parental Involvement • Classroom Activities • Consultation Services • Tutorial Activities • Other "academic" services	Supplemental Counseling Services (unique to migrant students) • Secondary Credit Exchange • Identification of Students • Tutorial Activities unique to migrant student needs • Dissemination of information • Early withdrawal/Late entry policy implementation • Activities required by service delivery plan (areas of focus) related to secondary migrant students • Utilization of NGS records

Adapted from *Graduation Enhancement for Migrant Students*, STAR Center and Region One ESC, Revised 1999.

Title I, Part D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk
[P.L. 107-110, Section 1415(b)]

A Title I, Part D program that supplements the number of hours of instruction students receive from state and local sources shall be considered to comply with the supplement, not supplant requirement of section 1120A (as applied in this part) without regard to the subject areas in which instruction is given during those hours.

What is the intent and purpose of Title I, Part D, Subpart 2?

To provide federal financial assistance to LEAs to establish or improve programs of education for neglected or delinquent children and youth at-risk of dropping out of school.

When would a supplant occur with Title I, Part D, Subpart 2 funds?

Using Title I, Part D, Subpart 2 funds to meet any state mandate or local board policy would be considered a supplant.

Title II, Part A—Teacher and Principal Training and Recruiting
[P.L. 107-110, Section 2123(b)]

An LEA shall use Title II, Part A funds only to supplement, not supplant, non-federal funds that would otherwise be used for activities authorized under Title II, Part A.

What is the intent and purpose of Title II, Part A?

To increase student academic achievement through strategies such as improving teacher and principal quality and increasing the number of highly qualified teachers in the classroom and highly qualified principals and assistant principals in schools; and hold LEAs and schools accountable for improvements in student academic achievement.

When would a supplant occur with Title II, Part A funds?

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.

Can Title II, Part A funds be used to hire a teacher to meet the 22:1 state mandate?

No, this would be a supplant.

Can Title II, Part A funds be used to hire a principal or pay the salary for existing principal, or an existing assistant principal?

No, this would be a supplant.

Can Title II, Part A funds be used to hire an assistant principal?

Yes, if the assistant principal is a new position and could not be hired in the absence of Title II, Part A funds.

Can Title II, Part A funds be used to pay an existing teacher that has been previously paid from state and local funds?

No, this would be a supplant.

When may Title II, Part A funds be used for State-mandated activities?

The ability of an LEA to use Title II, Part A funds to carry out activities mandated by a State depends upon whether non-Federal funds are available to carry out those activities. Presumably, in the absence of Title II, Part A funds, the LEA would use State or local funds to implement any laws enacted by the state legislature, rules mandated by the State Board of Education, or rules mandated by TEA. If that is the case, using Title II, Part A funds for those activities would violate the non-supplanting requirement, because the LEA would be using Federal funds for activities that it would otherwise support with other funds.

However, in certain instances, an LEA may be able to overcome the presumption that supplanting will result if Title II, Part A funds are used for a State-Mandated program or activity. In order to make such a case, the LEA should have available written documentation (e.g., budget information, planning documents, or other materials) demonstrating that it would not be able to meet State mandates without the use of Title II, Part A funds. An agency must be able to reasonably document that the activities funded under Title II, Part A are, in fact, supplemental, even though some of them are mandated by the State.

In general, and LEA must determine what educational activities it would support if not Title II, Part A funds were available. If it is clear that no State or local funds remain available to fund certain activities that previously were funded with State or local resources, then the LEA may be able to use Title II, Part A funds for those activities. In no event, however, may an LEA decrease State or local funds for particular activities simply because Title II, Part A funds are available.

Title III, Part A—English Language Acquisition, Language Enhancement, and Academic Achievement
[P.L. 107-110, Section 3115(g)]

Title III, Part A funds 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.

What is the intent and purpose of Title III, Part A?
(1) to help ensure that children who are limited English proficient, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet;
(2) to assist all limited English proficient children, including immigrant children and youth, to achieve at high levels in the core academic subjects so that those children can meet the same challenging State academic content and student academic achievement standards as all children are expected to meet, consistent with section 1111(b)(1);
(3) to develop high-quality language instruction educational programs designed to assist State educational agencies, local educational agencies, and schools in teaching limited English proficient children and serving immigrant children and youth;
(4) to assist State educational agencies and local educational agencies to develop and enhance their capacity to provide high-quality instructional programs designed to prepare limited English proficient children, including immigrant children and youth, to enter all-English instruction settings;
(5) to assist State educational agencies, local educational agencies, and schools to build their capacity to establish, implement, and sustain language instruction educational programs and programs of English language development for limited English proficient children;
(6) to promote parental and community participation in language instruction educational programs for the parents and communities of limited English proficient children;
(7) to streamline language instruction educational programs into a program carried out through formula grants to State educational agencies and local educational agencies to help limited English proficient children, including immigrant children and youth, develop proficiency in English, while meeting challenging State academic content and student academic achievement standards;
(8) to hold State educational agencies, local educational agencies, and schools accountable for increases in English proficiency and core academic content knowledge of limited English proficient children by requiring--
(A) demonstrated improvements in the English proficiency of limited English proficient children each fiscal year; and
(B) adequate yearly progress for limited English proficient children, including immigrant children and youth, as described in section 1111(b)(2)(B); and
(9) to provide State educational agencies and local educational agencies with the flexibility to implement language instruction educational programs, based on scientifically based research on teaching limited English proficient children, that the agencies believe to be the most effective for teaching English.

Title III, Part A (continued)

When would a supplant occur with Title III, Part A funds?

Using Title III, Part A funds to meet any state mandate or local board policy would be considered a supplant. For example, the LEA has been using state and/or local funds to provide Bilingual education or ESL services to students as required by state law. Title III, Part A funds must only provide additional services beyond the basic education program that is already provided.

Title VI, Part A, Subpart 2—Funding Transferability

What is the intent and purpose of Title VI, Part A, Subpart 2?
To allow LEAs flexibility to target federal funds to federal programs that most effectively address their unique needs and to transfer federal funds allocated to other activities to allocations for certain Title I, Part A activities.

Funds that are redirected through Funding Transferability are subject to the supplement, not supplant requirement as it applies to the fund source to which the funds are redirected.

Title VI, Part B—Section 6211—REAP-Flex

[P.L. 107-110, Section 6232]

What is the intent and purpose of Title VI, Part B, Section 6211--REAP?
To address the unique needs of rural school districts that frequently—

- lack the personnel and resources needed to compete effectively for federal competitive grants; and
- receive formula grant allocations in amounts too small to be effective in meeting their intended purposes.

Funds that are redirected through REAP are subject to the supplement, not supplant requirement as it applies to the fund source to which the funds are redirected.