

Attachment B, Budget Account 2712:

**Supplement, Not Supplant Requirements Under Title I of the
Elementary and Secondary Education Act**

It is likely that Nevada school districts will want to bring new schools on board as potential recipients of Title I funding because of the increased allocations to the program (10 billion nationally) over the next two years. The Nevada Department of Education (NDE) would certainly support such a plan as current statistics show that only 48% of eligible Title I schools are actually receiving Title I funding statewide, but Local Education Agencies (LEAs) bringing new schools on board as recipients of Title I funding will have to be careful not to violate the "Supplement, Not Supplant" requirements of Title I, Part A. The following information summarizes the Title I "Supplement, not Supplant" Requirements, as provided in the Fiscal Guidance document published by the U.S. Department of Education (USDE):

Presumption of Supplanting

To determine compliance with the "Supplement, not Supplant" requirement, a State must determine what services an LEA would have provided in the absence of Title I funds to students in Title I schools. Keep in mind that any determination about supplanting is very case specific and it is difficult to provide general guidelines without examining the details of a situation. Because Title I funds are available, the State would use a set of presumptions—that is, predictions—of what the LEA would have provided in the absence of the Title I funds based on its behavior in other situations.

In the following instances, it is presumed that supplanting has occurred:

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1. An LEA used Title I funds to provide services that the LEA was required to make available under Federal, State, or local law.

EXAMPLE:

The Individuals with Disabilities Education Act (IDEA) requires that an LEA serving children with disabilities develop an Individualized Educational Program (IEP) to ensure that a child with a disability receives a free appropriate public education. The IEP functions as a framework for the services the LEA is required to provide to each child to meet the requirements of IDEA. An LEA may not use Title I funds to provide services that must be provided under each child's IEP because, in the absence of the Title I funds, it is presumed that the LEA would use other funds or it would be in violation of the IDEA. However, in a targeted assistance school, an LEA may use its Title I funds to provide additional, supplemental services to such children. In a schoolwide school, an LEA must ensure the Title I funds a school receives

supplement the amount of funds that would, in the absence of the Title I funds, be made available from non-Federal sources for that school, including the amount of funds needed to provide services that are required by law for children with disabilities.

2. An LEA used Title I funds to provide services that the LEA provided with non-Federal funds in the prior year(s).

EXAMPLE:

An LEA paid for a reading specialist in a Title I school in the previous year from State and local resources but decides to use Title I funds to pay for that teaching position in the current year. This would be supplanting because the LEA is replacing State and local resources with Title I resources to pay for the same teaching position.

3. An LEA used Title I funds to provide services for children participating in a Title I program that the LEA provided with non-Federal funds to children not participating in Title I.

EXAMPLE:

A State requires only half-day kindergarten. A district may not use Title I funds to pay for an extended-day kindergarten program for Title I schools and then use State or local funds to pay for a full-day kindergarten program in non-Title I schools. This would be supplanting because Title I schools would not be receiving any of the State or local funds. In other words, unless the exclusion discussed in the next section applies, an LEA may not use Title I funds to pay for services in Title I schools and use State funds to pay for the same services in non-Title I schools.

These presumptions, however, are rebuttable if the LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal Title I funds not been available. For example, in the second situation discussed above, an LEA could provide programmatic and fiscal documents showing that the teaching position paid for in the previous year with State and local funds was eliminated in the current year because of State and local budget cuts. The LEA would need to ensure that it had contemporaneous records to confirm:

- There was in fact a reduced amount or lack of State and local funds available to pay for this position.
- The LEA made the decision to eliminate the position without taking into consideration the availability of Federal funding, along with the reasons for that decision—e.g., school board minutes.

Exclusions

When determining whether Title I funding is supplemental, a State Educational Agency (SEA) or LEA may exclude State and local funds expended in any school for carrying out a program that meets the intent and purposes of Title I, Part A. (These exclusions also apply when determining whether Title I and non-Title I schools are comparable.)

A program meets the intent and purposes of Title I, Part A if the program either—

- Is implemented in a school in which the percentage of children from low-income families is at least 40 percent;
- 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 academic achievement standards that all students are expected to meet;
- Is designed to meet the educational needs of all students 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 achievement standards; and
- Uses the State's system of assessment under 34 CFR 200.2 to review the effectiveness of the program.

Or—

- Serves only students who are failing, or most at-risk of failing, to meet the State's challenging student academic achievement standards;
- Provides supplementary services designed to meet the special educational needs of students who are participating in the program to support their achievement toward meeting the State's student academic achievement standards; and
- Uses the State's system of assessment under 34 CFR 200.2 to review the effectiveness of the program
[Section 1120A(d) and 34 CFR 200.79]

The fact that supplanting suppositions can be rebutted would be an important concept for Nevada LEAs to consider as they begin to fund newly served Title I schools, because in many instances, it will be possible to prove that certain positions on a school staff would have been cut because of budget shortfalls, and therefore, would not be subject to supplanting requirements. However, it would also be important for the LEA to have clear evidence that these budget shortfalls existed and of when they made the decision to no longer fund these positions.

The exclusion waivers could also be an important consideration in dealing with "Supplement, not Supplant" issues. For instance, there may be State funding (specifically the SB 404 and SB 185 monies) that would fit this definition. In these cases, the school could continue to fund a math or literacy coach with Title I funds even though these positions were supported by SB 404 or SB 185 positions in the previous year. This

would be true because the SB 404/185 funds were supplemental funds designed to carry out the same purposes as Title I funds.

Districts should contact the Title I office at the NDE if there are specific questions about "Supplement, not Supplant" that the district would like to have considered before deciding to fund eligible, but not served schools with the newly-available Title I funding.