

SENT VIA EMAIL TO [OESE.Feedback@ed.gov](mailto:OESE.Feedback@ed.gov)

To: US Department of Education  
From: Jennifer Kammerud, Policy Initiatives Advisor, Wisconsin Department of Public Instruction  
Date: February 28, 2019  
Re: Draft Title I Supplement not Supplant Document

The Wisconsin Department of Public Instruction (WDPI) appreciates the opportunity to review and comment on the United States Department of Education's (USDE's) draft non-regulatory guidance to implement the supplement, not supplant (SNS) provision of Title I, Part A of the Every Student Succeeds Act (ESSA). Much of the guidance is helpful and confirms WDPI's understanding and interpretation of the requirement. The comments below thus focus only on areas where the WDPI is unclear about the intent of particular areas of the guidance.

Title I, Part A Section 1118(b)1, states "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." Please clarify if an LEA's Title I neutral methodology must demonstrate that a school received enough state and local funds to operate a school in order to meet this section of the statute.

The language defining "supplemental" state or local funds described in Section 1118(d) is unclear. Specifically, Section VII, Example 3 of the draft states that funds used to meet a state law requirement are considered "supplemental" and therefore not subject to the SNS methodology. It could be argued that most, if not all, state funds given to school districts are given with the understanding that schools are to use them to carry out the requirements of state laws. While we appreciate the USDE's efforts to provide flexibility, the supplemental definition is so broad that we believe it will create inherent confusion. There are no clear guideposts in this definition. While we want districts to have flexibility, they also need clarity to ensure they can better meet the needs of students as well as the requirements and intent of the SNS provisions

In the general section (page 8) USDE states, "...other non-federal funds, such as private contributions, fundraising, and parent fees, need not be part of determining compliance with Title I, Part A supplement, not supplant requirement." In Wisconsin, required school fees must be used for instructional purposes by state law, so omitting them would understate instructional costs. Furthermore, ongoing instructional costs supported with fundraising (e.g. library books purchased with book fair proceeds) are still instructional expenditures. WDPI recommends updating that statement with the following addition, "...other non-federal funds, such as private contributions, fundraising, and parent fees, if for instructional costs, should be part of determining compliance with Title I, Part A supplement, not supplant requirement." This would also, then, be aligned with how we are implementing school expenditure reporting requirements.

USDE clarifies that school-level expenditure data should not be the methodology used to meet the SNS requirement, but WDPI would appreciate further guidance on whether or not an SEA could use the school level expenditure data as a mechanism to test the LEA's methodology.

WDPI agrees with the statement on page 20 that says, "because the general supplement not supplant requirement in ESEA section 1118(b)(1) applies to all State and local funds, an LEA must conduct districtwide activities supported by such funds in a manner that does not take into account a school's Title I status.....As long as a school's Title I status is not taken into account when an LEA makes its determinations about use of, access to, or assignment of such districtwide resources, the LEA would be in compliance with ESEA section 1118(b)(1)." However, additional guidance is necessary to help SEAs and LEAs understand the type of documentation necessary to demonstrate districtwide resources are Title I neutral. It is important that schools, and their auditors, are consistent and clear about what is needed to meet this provision.

The guidance does not identify the consequences or method of enforcement by an SEA if they find that an LEA does not have a compliant methodology, or if it refuses to change its methodology to one that is Title I neutral. WDPI requests clarification regarding penalties or consequences if an LEA is found to be in violation of the SNS requirement.

USDE's guidance seems to conflict with the statutory language in Title I, Part C. Title I, Part C, Section 1304(c)(2) specifically states that the SEA must assure TI-C programs and projects will be carried out in a manner consistent with 1118 (b). Yet, in Question 20 of USDE's draft guidance it states that Title I, Part C is "not affected by the new language in ESEA section 1118(b)." WDPI requests clarification regarding SNS and Title I, Part C.

Additionally, Title I, Part D, Section 1415(b) has its own supplement, not supplant requirement and the methodology is not required. Please clarify if the three SNS presumption tests also apply to Title I, Part D.

Thank you again for the opportunity to provide feedback. If you have any questions, please contact Jonas Zuckerman, Director, Title I and School Support, at [jonas.zuckerman@dpi.wi.gov](mailto:jonas.zuckerman@dpi.wi.gov).

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