



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN J. WHISTON  
STATE SUPERINTENDENT

**MEMORANDUM**

**DATE:** October 13, 2016

**TO:** Local and Intermediate School District Superintendents  
Public School Academy Directors

**FROM:** Venessa A. Keesler, Ph.D., Deputy Superintendent *V. Keesler*  
Division of Educator, Student, and School Supports

**SUBJECT:** Comments Requested by U.S. Department of Education on  
Proposed Regulations regarding Supplement Not Supplant  
Provisions in  
ESSA Title I, Part A

The U.S. Department of Education (ED) proposed new Title I, Part A "supplement not supplant" regulations that would affect the way local educational agencies (LEAs) spend state and local dollars to support their schools. The proposed rule would require LEAs that receive Title I funds to spend roughly the same amount (or more) of state and local funds in Title I schools as they do in non-Title I schools. ED's goal of promoting educational equity is laudable; however, concern has been raised that the proposed regulations do not take into account the many factors that affect school-to-school spending at the state and local level. As a result, the regulations, as currently drafted, could undermine existing approaches to equity and cause local operational concerns. We are bringing these to your attention so that you are fully aware of the proposed regulations and have opportunity to provide input.

ED has asked the public for feedback on the proposed regulations. Because the regulations affect LEAs most directly, it is important ED hear from local leaders like you.

**STATE BOARD OF EDUCATION**

JOHN C. AUSTIN – PRESIDENT • CASANDRA E. ULBRICH – VICE PRESIDENT  
MICHELLE FECTEAU – SECRETARY • PAMELA PUGH – TREASURER  
LUPE RAMOS-MONTIGNY – NASBE DELEGATE • KATHLEEN N. STRAUS  
EILEEN LAPPIN WEISER • RICHARD ZEILE

608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909  
[www.michigan.gov/mde](http://www.michigan.gov/mde) • 517-373-3324

Page 2  
October 13, 2016

The draft regulations can be accessed here:  
<https://www.federalregister.gov/documents/2016/09/06/2016-20989/title-i-improving-the-academic-achievement-of-the-disadvantaged-supplement-not-supplant>, and you can submit comments through that link through November 7, 2016.

The attached document provides an overview of the proposed regulations, and raises issues you might consider as you think through how these regulations could affect your districts and schools.

If you choose to submit comment on these regulations, I ask that you also share a copy of those comments with MDE by sending a copy to:  
[mde-essa@michigan.gov](mailto:mde-essa@michigan.gov).

Please send any questions to [keeslerv@michigan.gov](mailto:keeslerv@michigan.gov).

Attachment: Overview of Proposed Supplement Not Supplant Regulations

cc: Michigan Education Alliance

## **Overview of the Proposed Title I, Part A Supplement Not Supplant Regulations**

Under the proposed regulations local educational agencies (LEAs) would be required to demonstrate supplement not supplant compliance in one of four ways:

1. **Weighted student funding formula:** allocate to schools almost all of the money available to the LEA through a per-pupil formula where students with educational disadvantage (e.g. poverty, English learners, special education) generate more money for their schools.
2. **Resource formula:** allocate to schools almost all of the money available to the LEA by distributing staff positions and non-personnel resources through a consistent formula where each Title I school receives:
  - The average districtwide salary for each category of school personnel, multiplied by the number of school personnel in each category assigned to the school under the formula, plus
  - The average districtwide expenditure for non-personnel resources multiplied by the number of students in the school.
3. **State-established test:** allocate to schools almost all of the money available to the LEA through a methodology developed by the state and approved through a federal peer review process.
4. **Equalized per-pupil spending:** spend at least as much per-pupil in Title I schools as the LEA spends, on average, in non-Title I schools.

LEAs could demonstrate compliance with all four options on a districtwide or grade-span basis. These regulations would not apply to LEAs that do not receive Title I funds, to LEAs with only one school, or in any grade span with just one school.

### **Issues to Consider**

#### **The “Almost All” Standard**

The proposed regulations require LEAs to allocate to schools “almost all State and local funds available to the LEA.”<sup>1</sup> That term is not defined, but few LEAs allocate “almost all” state and local funds to their schools because of:

- Legal restrictions on how certain funds can be used (such as funding sources that are earmarked for a specific purpose),
- Cash reserve/fund balance requirements,
- LEA expenses that do not relate to individual schools (such as debt services, pension obligations, and other post-retirement benefits for employees),
- Expenses that relate to schools but are paid for centrally such as:
  - Special education costs,
  - Transportation costs,
  - Maintenance costs,
  - Employee benefit costs, and
  - Programs that take place at a school site but draw from broader attendance areas, such as summer school programs, magnet programs, preschool programs, CTE programs, etc.

---

<sup>1</sup> Proposed 200.72(b)(1)(B)(ii)

An LEA might consider commenting on how it handles these issues and how they affect the LEA's ability to comply with the proposed "almost all" standard. For example, an LEA might address:

- The percentage of the LEA's budget that is paid for centrally.
- The nature of any restrictions on funding sources that affect the LEA's ability to distribute funds to schools.
- The effect of allocating costs like employee benefits, transportation, maintenance, and special education to schools, on school-to school spending levels. For example:
  - Employee benefit costs depend on employee choices like whether an employee participates in the LEA's health care plan or is covered by a spouse's plan, whether the employee elects for individual coverage or family coverage, whether the employee takes medical leave, etc.
  - Transportation costs depend on things like residential density, desegregation orders, school choice options, magnet programs, special education programs, and the like.
  - Maintenance costs depend on repair needs in a given year, the age of the physical plant, etc.
  - Special education costs vary from site-to-site and year-to-year based on the placement and needs of special education children reflecting factors such as the severity of a disability, legal obligations under IEPs, and the placement high cost students (including sometimes private placement).

It would be helpful to explain how, if at all, your LEA's accounting procedures, compliance with generally accepted accounting practices, and related state or local financial reporting standards might be affected by the proposed regulations.

### **Weighted Student Funding Formulas (Compliance Option 1)**

If an LEA chooses the weighted student funding option, it must allocate "almost all" available state and local funds to schools through a per-pupil formula that generates more money for students with educational disadvantage.<sup>2</sup> It is not clear whether a formula that generates money for students with other characteristics – such as gifted and talented or CTE status – would comply. It also appears an LEA would not comply if it used a "hybrid" model that distributes some money to schools through a per-pupil formula and some through other methods.

If your LEA uses, or is considering, a weighted per-pupil funding formula, you might consider commenting on:

- The student characteristics that are weighted (or are being considered for weighting) in your LEA. This is particularly important if there are characteristics that do not directly relate to educational disadvantage.
- The overall percentage of LEA funding that is distributed (or will be) through the per-pupil funding formula.
- Whether any school-level costs are paid for centrally. For example, some LEAs use a weighted student formula to generate some school-level funds, and then also distribute resources or funds to schools outside of the formula based on school size, staffing, programming, or other needs (for example, school-level

---

<sup>2</sup> 200.72(b)(1)(ii)(A)

special education services, transportation, maintenance, or safety costs are often paid for centrally in districts that use a weighted student funding formula).

- The period of time it took to fully implement a weighted student funding formula. For example, did your LEA pilot the formula in a few schools at first, or flow a limited amount of money through the formula, and then gradually increased the amount.
- If your LEA is considering moving to a per-pupil formula, the period of time it will take to get to full implementation.

### **Distributing Funds via Resource Formula (Compliance Option 2)**

If an LEA chooses the resource formula option, it must allocate “almost all” available state and local funds to schools through a resource formula where each Title I school receives “for its use an amount of actual state and local funds at least equivalent to the sum of” districtwide salary and non-personnel spending averages.<sup>3</sup>

Most LEAs use some type of resource formula to staff and fund schools (for example, it is fairly common for LEAs to allocate staffing positions based on the size of a school, teacher-student staffing ratios, etc.). Your LEA might consider commenting on issues the regulations do not address like:

- What does it mean that each Title I school must receive an “actual amount of State and local funds for its use?”
- What is considered to be part of “salary?” Presumably this does not include benefits, but what about other types of compensation like performance pay, stipends for additional work, or recruitment and retention incentives?
- How would LEAs account for teachers and other staff who serve more than one school? What if their time in individual schools is based on need, and therefore is not allocable in advance?
- What does it mean to use a consistent districtwide formula? Could LEAs use a formula that varies resource allocations based on a school’s programming (for example providing extra staff in any school that offers specialized programs like International Baccalaureate, language immersion, special education, etc.)?
- How should an LEA handle long-term substitutes?
- What constitutes a “non-personnel resource” under the proposed rule?
- How should a LEA handle multi-year spending projects under the proposed rule? For example, if an LEA is implementing a technology initiative to every school in the district, but rolls it out gradually to a certain group of schools each year, how should that be handled under the rule?
- How should capital improvement or major maintenance projects be handled?
- If your LEA cannot raise new revenue, it might have to move teachers from one school to another to comply with the rule. What if this conflicts with collective bargaining agreements or school improvement initiatives designed to give principals more autonomy over hiring?
- How will the proposed rule affect schools that are eligible for Title I but do not receive Title I funds (in other words high-poverty, non-Title I schools)? If an

---

<sup>3</sup> 200.72(b)(1)(ii)(B)

LEA cannot raise additional revenue, are these schools at risk of losing state and local resources to Title I schools in order to comply with the rule?

### **Equalized Per-Pupil Spending (Compliance Option 4)**

Under this option, known as the “special rule” the proposed regulations permit LEAs to use any methodology to distribute state and local funds to schools so long as it results in the LEA spending at least as much per pupil in Title I schools as the average amount spent per pupil in non-Title I schools, with several exceptions:

- Spending in Title I schools can vary up to 5% of average spending in non-Title I schools in a given year,
- An LEA can exclude any school with less than 100 students, and
- An LEA can demonstrate compliance if it demonstrates that one or more non-Title I schools gets extra money to serve a high proportion of students with disabilities, English learners, or students from low income families, which disproportionately affects the average spending in non-Title I schools.<sup>4</sup>

You might consider commenting on issues such as:

- What costs must be included or excluded in the per-pupil calculations?
- If, as it seems, the rule requires LEAs to allocate to schools employee benefits, transportation, maintenance, special education and other costs typically paid for at the central level, how would this affect school-to-school spending levels from year-to-year? For example:
  - Employee benefit costs depend on employee choices like whether an employee participates in the LEA’s health care plan or is covered by a spouse’s plan, whether the employee elects for individual coverage or family coverage, whether the employee takes medical leave, etc.
  - Transportation costs depend on things like residential density, desegregation orders, school choice options, magnet programs, special education programs, and the like.
  - Maintenance costs depend on repair needs in a given year, the age of the physical plant, etc.
  - Special education costs vary from site-to-site and year-to-year based on the placement and needs of special education children reflecting factors such as the severity of a disability, legal obligations under IEPs, and the placement high cost students (including sometimes private placement).
- What does “high proportion” mean for the exception and how does it work?
- What about a non-Title I school that does not serve a “high proportion” of special education students but still has disproportionately high special education costs (such as the cost of serving a few students with more intensive needs)?
- What about specialized programs located in non-Title I schools but open to Title I students such as magnets, CTE, or other specialized programs?
- What about programs that are cost variable such as:
  - School choice,
  - Course choice,

---

<sup>4</sup> 200.72(a)(iii)

- Dual enrollment programs, or
  - Performance pay?
- The Title I supplement not supplant language in ESSA and the proposed regulations establishes that the LEA must establish through one of the methods that Title I schools receive the same amount of state and local funds as non-Title I schools. After meeting this requirement annually, the state is prohibited from further testing supplement not supplant for any Title I funded program or activity.

We also encourage you to comment on any other aspects of the proposed regulations that you strongly support or about which you have concerns.

### **Additional Resources and Background Information on the Proposed Regulations**

- <http://www.ed.gov/news/press-releases/fact-sheet-supplement-not-supplant-under-title-i-every-student-succeeds-act>
- <http://www.titlei.org/news-and-resources/blogs/legislation/proposed-supplement-not-supplant-regulations-released-by-ed>
- <http://aasa.org/policy-blogs.aspx?id=40256&blogid=84002>