

Federal Education Programs: Hot Topics

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Agenda

- Allowable Uses of Fund
- Period of Availability and Carryover
- Supplement Not Supplant
- Equitable Services
- ESSA Spotlight: Title III, Part A
- IDEA Spotlight: CCEIS

Allowability

2 CFR PART 200
UNIFORM ADMINISTRATIVE REQ, COST
PRINCIPLES, AND AUDIT REQUIREMENTS FOR
FEDERAL AWARDS

KNOWN AS THE “UNIFORM GRANTS GUIDANCE”

2 CFR Part 200

Subpart A – Definitions

Subpart B – General Provisions

Subpart C – Pre Award Requirements

Subpart D – Post Award Requirements

Subpart E – Cost Principles

Subpart F – Audit Requirements

Program Statutes v. UGG

Program Statutes

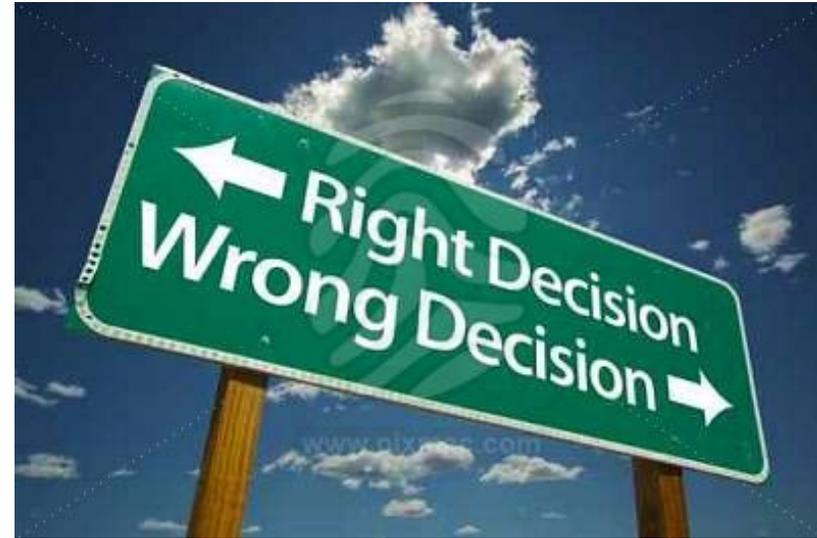
VS.

Cross-Cutting Regulations

Uniform Grant Guidance

***What about State law?*

The UGG'ly Truth About Allowability



Basic Factors of Allowability 200.403

To be allowable, a cost *must*:

- Be **necessary, reasonable** and **allocable**
- Comply with the cost principles and federal award
- Be consistent with policies and procedures applying uniformly to federal and nonfederal activities and costs
- Be consistently treated as either direct or indirect costs
- Be determined in accordance with GAAP
- Not be included or used to meet cost sharing / match requirements
- Must be net of applicable credits (see 200.406)
- Be adequately **documented**

Necessary 200.404

- ❖ Is the cost included in your plan/ grant application?
- ❖ Is it aligned with the goals of the program/ grant?
- ❖ Does your agency have the capacity to use what you are purchasing?
- ❖ Is the staff knowledgeable regarding the program?

Reasonable 200.404

Consideration must be given to:

- Whether cost is a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award;
 - Arms length bargaining (hint: procurement processes);
 - Federal, state and local laws; and
 - Terms of the grant award.
- Market Prices for comparable goods or services in the geographical area
- Whether the individuals acted with prudence under the circumstances
- No significant deviation from established prices.

Practical Questions – Reasonable + Necessary

- Do I really need this?
- Is the expense targeted to valid programmatic/ administrative need?
- Is this the minimum amount I need to spend to meet my need?
- Do I have the capacity to use what I am purchasing?
- Did I pay a fair rate?
- If I were asked to defend this purchase, would I be able to?

Allocable 200.405

- ❖ A cost is allocable to a Federal award or cost objective if the goods or services involved are chargeable or assignable in accordance with relative benefits received.
 - Incurred specifically for the award;
 - Benefits both award and other work and can be distributed in proportions that may be approximated using reasonable methods; and
 - Necessary to the overall operation of the entity and assignable to the award in accordance with this Part.

- ❖ Can only charge in proportion to the value received by the program
 - Example: Agency purchases a computer to use 50% on the Federal grant program and 50% on a state program – can only charge half the cost to the grant.

Allocable (cont.)

- ❖ Do you have enough time to implement the cost? (UGG Section 200.405)
- ❖ Is the program that bought the product using it?
- ❖ Is the program sharing the use of the item(s)?
 - Was this shared use known at the time of purchase?
 - If so, how are costs being shared?
- ❖ How is the use being documented?

Applicable Credits 200.406

- ❖ Those receipts or reduction-of-expenditure type transaction that offset or reduce expense items – must be credited to the Federal award as either cost reduction or cash refund, as appropriate.
- ❖ Examples: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, adjustments of overpayments

Direct vs. Indirect 200.413(c)

Salaries of administrative and clerical staff should be treated as “indirect” unless all of following are met:

- Such services are integral to the activity
- Individuals can be specifically identified with the activity
- Such costs are explicitly included in the budget
- Costs not also recovered as indirect

Selected Items of Cost

55 Selected Items of Cost

- ❖ Allowable
 - E.g., collection of improper payments (200.428); training and education costs (200.472)
- ❖ Allowable with special conditions
 - E.g., only as an indirect charge (leave payout, 200.431; advisory councils, 200.422); only with necessary documentation (compensation – personal services, 200.430)
- ❖ Allowable with prior approval
 - E.g., equipment and capital expenditures (200.438); entertainment (200.439); participant support costs (200.456)
- ❖ Unallowable
 - E.g., alcohol (200.423); bad debts (200.426)

Selected Items of Cost Examples

Alcohol 200.423

- Not allowable

Entertainment 200.438

- Not allowable UNLESS Prior Written Approval of Federal Awarding Agency.
- Field Trips & Holiday Parties are common examples
- Field trips may be allowed where:
 - They have a clear programmatic purpose
 - And are authorized by the federal awarding agency



Advertising/Public Relations 200.421

Allowable for programmatic purposes including:

- Recruitment
- Procurement of goods
- Disposal of materials
- Program outreach
- Public relations (in limited circumstances)

Conferences 200.432

Generally Allowable

- To be a conference, must disseminate technical information beyond the non-federal entity
- Allowable conference costs include rental of facilities, costs of meals and refreshments, transportation, unless restricted by the federal award
- Costs related to identifying, but not providing, locally available dependent-care resources
- Conference hosts must exercise discretion in ensuring costs are appropriate, necessary and managed in manner that minimizes costs to federal award

Travel 200.474

- ❖ Travel costs may be charged on actual, per diem, or mileage basis
- ❖ Travel charges must be consistent with entity's written travel reimbursement policies
- ❖ Allows costs for “above and beyond regular dependent care”
- ❖ Grantee must retain documentation that participation of individual is necessary for the project

Personnel Documentation 200.430(i)(1)

Time and effort records must accurately reflect the work performed and:

1. Be supported by a system of internal controls which provides reasonable assurance charges are accurate, allowable and properly allocated;
2. Be incorporated into official records;
3. Reasonably reflect total activity for which employee is compensated;
 - Not to exceed 100%
4. Encompass all activities (federal and non-federal);
5. Comply with established accounting policies and practices; and
6. Support distribution among specific activities or cost objectives.

Retains Capturing Time By Cost Objective

- What is a cost objective? 200.28
 - Activities
 - Mandated set-asides
 - Mandatory minimums
 - Anything that requires separate cost accounting
- Examples 200.430(vii):
 - More than one Federal award, a Federal award and a non-Federal award, an indirect and direct cost activity, etc.
 - 10% administrative set-aside, 1% mandatory minimum, etc.



Use of Budget Estimates - 200.430(i)(1)(viii)



- Budget estimates alone do not qualify as support for charges to Federal awards.
- May be used for interim accounting purposes if:
 - Produces reasonable approximations
 - Significant changes to the corresponding work activity are identified in a timely manner
 - Internal controls in place to review after-the-fact interim charges based on budget estimates

What to do when effort does not match budget?

Two Options:

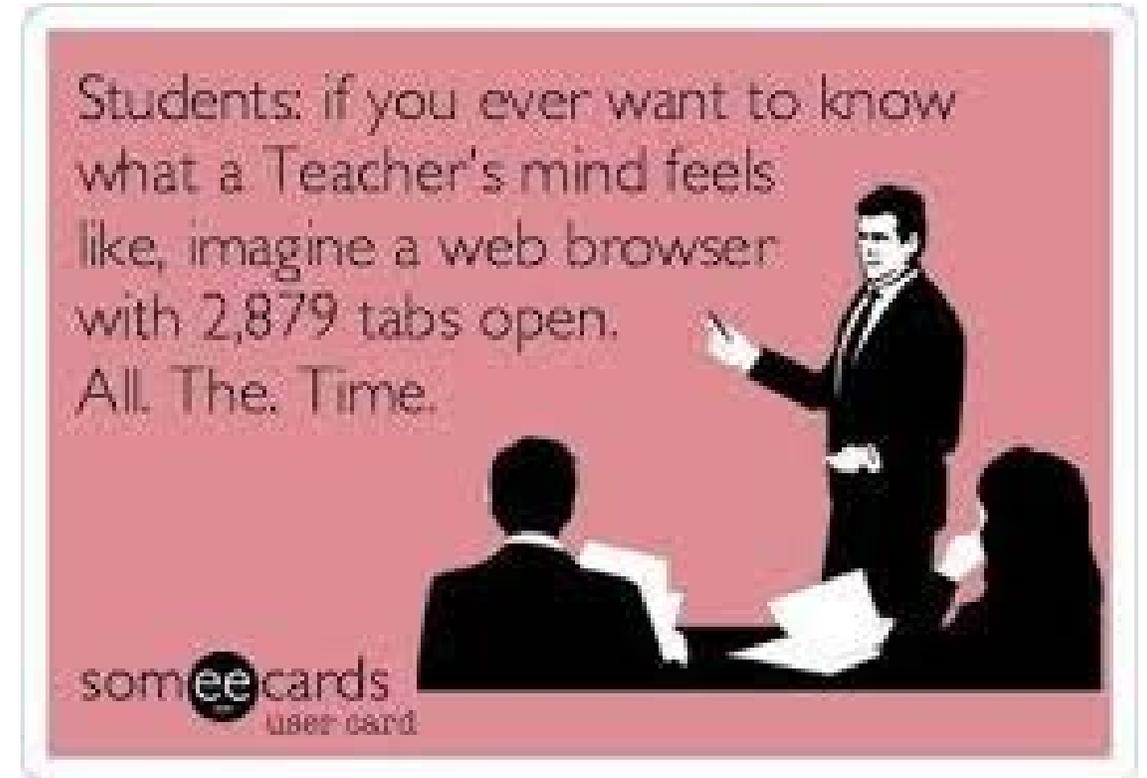
- (1) Change job duties to ensure more time is spent on funded cost objectives
- (2) Change budget to ensure it is aligned with job duties



Recording Effort

If a federally paid teacher works on a single cost objective but also has limited other responsibilities, such as cafeteria or bus duties. This teacher must keep:

- A. Must keep records that distribute his/her effort on limited other activities
- B. Does not have to account for time on limited other responsibilities



De Minimus Benefit

Limited work on another cost objective does not need to be captured in time and effort records.

Employees may work 5% or less on another cost objective.

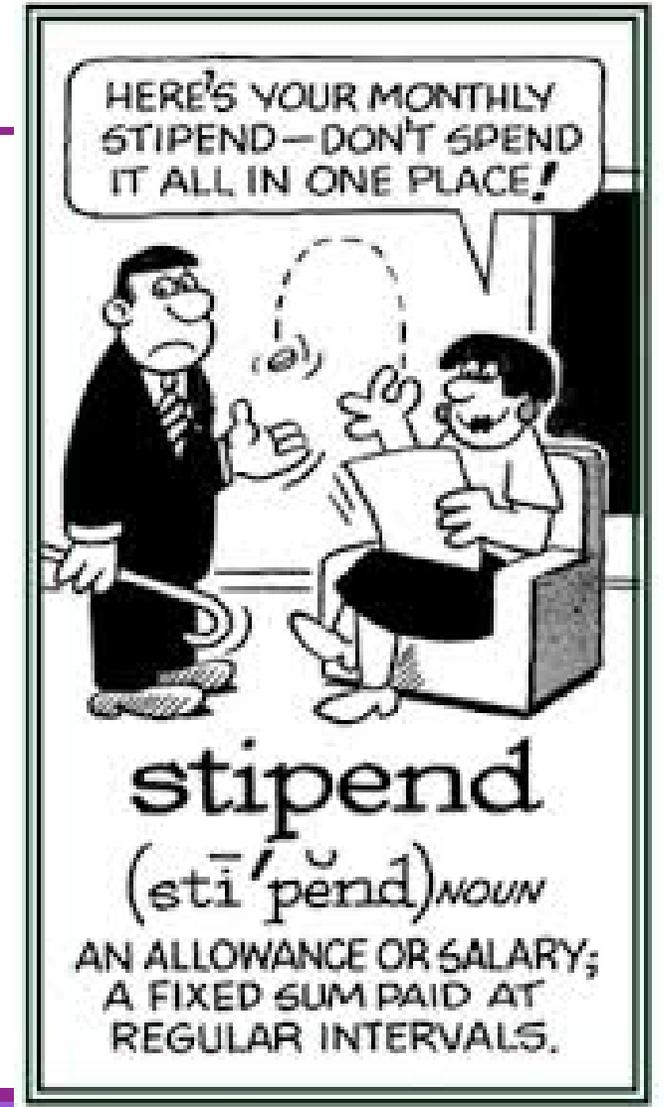
The work performed on these limited duties cannot deprive a benefit from the intended beneficiaries.

The Montana Compact on Time Distribution, at p. 8, Q11.

Federal Stipends

If a State-funded employee is paid a stipend with federal funds for attending professional development, does time and effort documentation have to be kept?

- A. Yes
- B. No



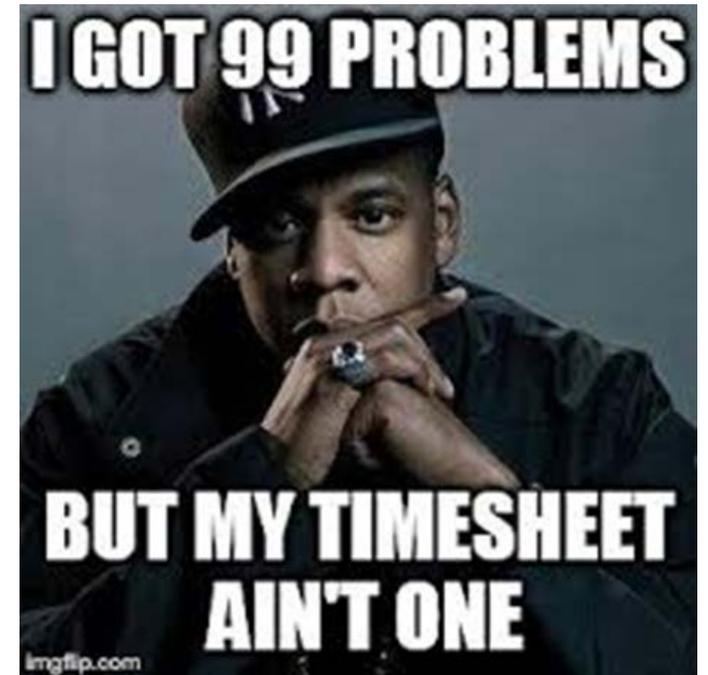
Federal Stipends

Federal funds can generally be used to pay for stipends for professional development or other extra-curricular activities.

Time and Effort documentation must be kept.

Maryland January 2013 ARRA Audit -

- Documentation not kept for employees partially funded with federal funds.



Reconciliation - 200.430(i)(1)(viii)(C)

All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

Percentages - 200.430(i)(1)(ix)

Because practices vary as to the activity constituting a full workload, records may reflect categories of activities expressed as a percentage distribution of total activities.



Food

While Part 200 does not prohibit food, ED generally does not allow for the purchase of food:

“Generally, there is a very high burden of proof to show that paying for food and beverages with federal funds is necessary to meet the goals and objectives of a federal grant. When a grantee is hosting a meeting, the grantee should structure the agenda for the meeting so there is time for participants to purchase their own food, beverages, and snacks. In addition, when planning a meeting, grantees may want to consider a location in which participants have easy access to food and beverages. These determinations will be made on a case-by-case basis, and there may be some circumstances where the cost would be permissible. Grantees, therefore, will have to make a compelling case that the unique circumstances they have identified would justify costs as reasonable and necessary.”

Department of Education Guidance on Food, 2014

Food, cont.

What about parent and family engagement?

What does “light snacks and refreshments” mean?

Is pizza a snack or a meal?



Food - Cont.

Proposed change to UGG:

- Federal agencies cannot reference nonbinding guidance as part of the terms and conditions of an award.
 - 2 CFR 200.210
- This may change restrictions on food.

Documentation



Know Where your Documents Are!

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**“I am not disorganized — I know *exactly* where everything is!
The newer stuff is on top and the older stuff is on the bottom.”**

Allowability Documentation

- ❖ 2 CFR 200.403(g): To meet allowability requirements... costs must be adequately documented.
- ❖ Retention Requirements For Records EDGAR – 2 CFR 200.333
 - Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a **period of three years** from the date of submission of the final expenditure report.
 - Watch Statute of Limitations! (Example, USDE = 5 years under the General Education Provisions Act)

Written Procedures: Must or Should?

- Cash Management Procedures - 200.302(b)(6) & 200.305
- **Allowability Procedures - 200.302(b)(7)**
- Managing Equipment – 200.313(d)
- Conflicts of Interest Policy - 200.318(c)
- Procurement Procedures - 200.319(c)
- Method for Conducting Tech Evals of Proposals - 200.320(d)(3)
- Travel Policy - 200.474(b)

- Time and Effort Procedures - “essential” ED, Cost Allocation Guide (agency specific)
- Subrecipient Monitoring Procedures – required by Compliance Supplement
- Grant Application Procedures
- Record Retention Procedures
- Audit Resolution Procedures
- Program-specific Procedures

How to Maintain Documentation?

- ❖ When original records are electronic and cannot be altered, there is no need to create and retain paper copies. (UGG Section 200.335)
- ❖ When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided they:
 - Are subject to periodic quality control reviews;
 - Provide reasonable safeguards against alteration; and
 - Remain readable.

Documentation HOT BUTTON Issues

- ❖ Are records kept by school, grant, fiscal year?
- ❖ Do you backup documentation?
 - Where and how often?
- ❖ What happens when staff retire or voluntarily leave?
- ❖ What happens when staff are fired?
- ❖ What happens when a school closes?
- ❖ Staff keep documentation at home?



Pop quiz!

Test Your Knowledge!

An administrator spends 10% of their time working on Title I admin and 90% of his time working on non-federal activities. Does the administrator have to keep time and effort records?

Test Your Knowledge!

You are attending a conference in New Orleans. The conference is in December and you purchase your airplane ticket in September. When does the airplane ticket obligate?

Test Your Knowledge!

Are costs associated with advertising in media such as newspapers, radio and television, direct mail, or email allowable?



Test Your Knowledge!

May Franklin Elementary School use Title I funds to purchase light snacks and water for a parent meeting?



Test Your Knowledge!

Franklin Elementary School wants to use Title I funds to purchase light snacks and water for a staff meeting that is outside in 100 degree heat, is all day, and is in the middle of the woods and its with killer mosquitoes. Can it do this?



Test Your Knowledge!

To increase their assessment scores, Roosevelt Elementary wants to give students an incentive so if a student attends after school tutoring for the year, the student will receive a gift certificate for a pizza. Is this allowable under Title I?



Test Your Knowledge!

Can a school use Title I funds to buy ingredients for pizza as part of a culinary arts class?



Test Your Knowledge!

Smith Middle School wants to use Title I-A funds to pay for a school counselor to provide counseling to all students. Is this allowable?



Test Your Knowledge!

Can a district reimburse a private school the costs of their teachers attending an academic conference related to improving student achievement?



Test Your Knowledge!

Carter High School wants to purchase cameras and other related security devices to protect assistive technology and other equipment purchased with Title I funds. Is this allowable?



Test Your Knowledge!

Smith Elementary wants to send its parent coordinator to a parental involvement conference. Are the costs associated with registration fees, travel, conference expenses, and other related fees allowable under Title I?



Timely Spending



The Requirements

Obligations: 34 CFR 76.707; 76.708

Period of Performance: 2 CFR 200.309

Carryover (Tydings): GEPA Sec. 421(b); 34 CFR 76.709; 76.710

- Program restrictions, ESSA Sec. 1126(c) (limits TI-A carryover to 15%); Perkins V, Sec. 133(b) (requires states to redistribute unobligated balances at the end of academic year; no carryover at local level)
- Tydings does not apply at local level if funding distributed by competition
 - 21st CCLC; Adult Ed

Liquidation: 2 CFR 200.343

“ED and the EAB have consistently held that ‘expended’ as used in the Statute means ‘obligated’.”

Appeal of the State of Michigan, Dkt. No. 8(272)88 (Nov. 27, 1987)

ED Approval of Late Liquidations (2005, 2007, 2011, 2016)

- Defines Obligations Period as the period of availability

The Issues

Can the SEA shorten the period of availability?

Can the SEA shorten the liquidations period?

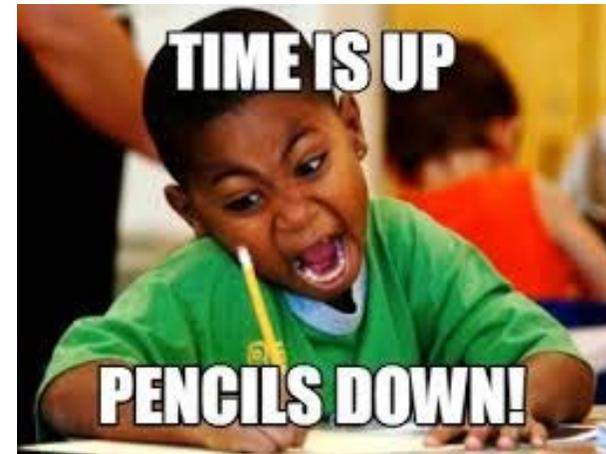
Can the SEA authorize pre-award costs for LEAs?



OSS Performance Reviews

Finding: SEA cannot shorten the obligation period for LEAs.

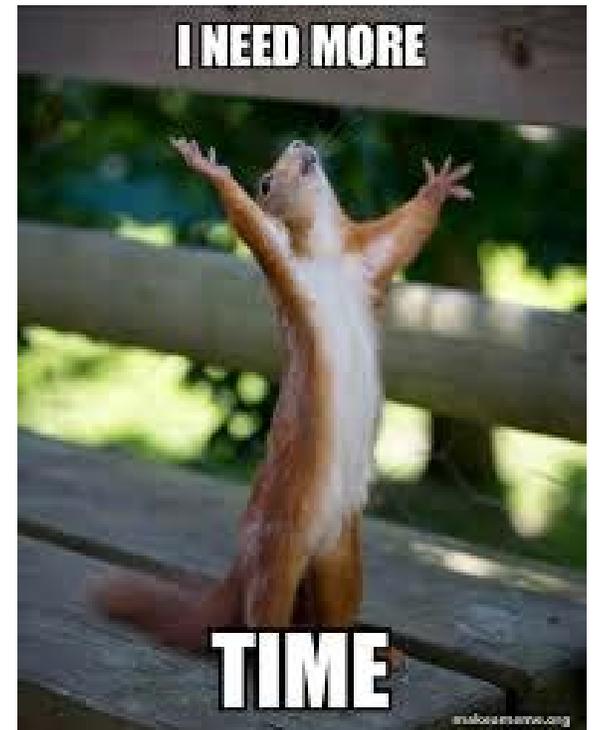
- Tydings Amendment
 - 1. Formula programs, no authority to redistribute
 - 2. Formula programs, with authority to redistribute
 - 3. SEA distributes on competitive basis, or has discretion on how to distribute
- Tydings applies only at state level



OSS Performance Reviews

Findings: SEA must provide as much time as is “administratively feasible” for LEAs to liquidate valid obligations.

- 200.343: “Up to 90 days”
- 76.722: State may set procedures for LEAs to provide reports in manner and format that enable SEA to meet its own reporting requirements
 - 45 days?
 - 60 days?
 - 75 days?



OMB proposed change

Subrecipients must prepare closeout reports and final accounting within 90 days after period; pass-through entities have **120 days**

2 CFR 200.343

Gives districts more time to complete liquidations

- BUT – costs still must be “**incurred**” (obligated?) within period (**2 CFR 200.402**)



Pre-Award Costs

Federal agency or pass-through agency approval?

- Formula programs: Neither ED nor the SEA can authorize pre-award costs (obligations) incurred before the appropriations period (July 1).
- Discretionary programs: SEA can authorize pre-award costs for subrecipients. (34 CFR 76.708)
- Other programs: 200.309 states federal or pass-through; 200.468 states federal only
- **OMB Proposed Change:** Deletes 200.309; federal agency approval only.



Equitable Services

Guidance – A Caveat

ESSA Sec. 1111(e)(1)(C): “Nothing in this Act shall be construed to authorize or permit the Secretary... to issue new non-regulatory guidance that... purports to be legally binding...”

October 2019 Executive Order: “it is the policy of the executive branch... to require that agencies treat guidance documents as **non-binding both in law and in practice**, except as incorporated into a contract.... Agencies may impose legally binding requirements on the public only through regulations and on parties on a case-by-case basis through adjudications, and only after appropriate process.”

Guidance must “clearly state that it does not bind the public”



Equitable Services
Non-regulatory guidance (October 2019)

Equitable Services

New Guidance Supersedes:

- 2003 Toolkit
- and
- 2016 Guidance



Consultation (ESSA Section 1117(b); 8501(c))

Consultation is still key

Written affirmation that timely and meaningful consultation occurred

LEAs must give option to private school officials to indicate belief that timely and meaningful consultation did not occur or that the program design is not equitable with respect to eligible private school children.

When disagreement, the LEA must provide in writing:

- The basis of the disagreement,
- The LEA's decision, and
- The right to complain.



Consultation



LEA initiates annual contact – *even if declined past year (A-6)*

Intent to participate form

- Best practice
- Can set “reasonable deadlines” for submission
- Send to all privates in district that may have eligible students

Consultation Topics

- Children's needs
- Services
- How, where, by whom
- Size and scope
- Data to ID students
- How and when LEA makes decisions
- If LEA disagrees on TP contract - reasons in writing
- **School by school or pooling**
- Time of day for provision of services
- Consolidate with other programs, caution not consolidation

Consultation

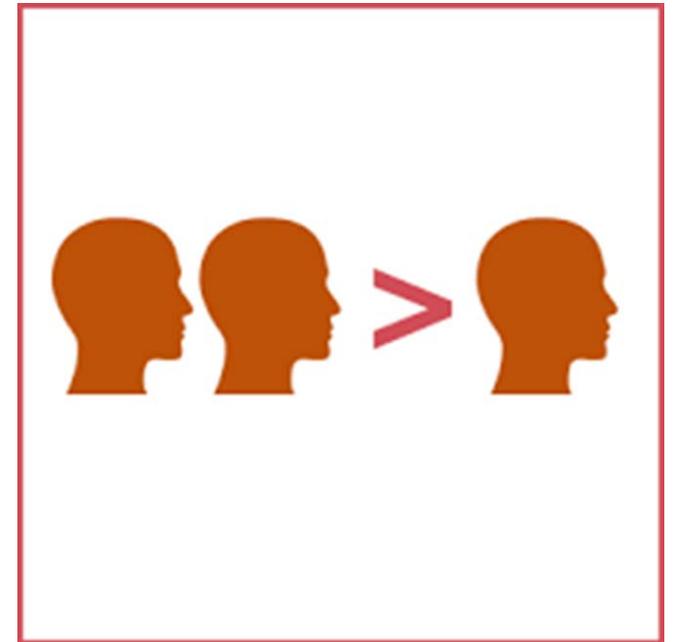
A-12. Is other documentation on consultation helpful?

- **Yes**, LEAs & private schools should maintain a record of notes about issues in consultation meetings
- As a best practice LEA should document that it has:
 - Annually informed private school officials of available services;
 - Engaged in timely consultation;
 - Identified needs of private school student, teachers, families;
 - Allocated amounts appropriately;
 - Provided services;
 - Evaluated programs and services for effectiveness;
 - Adequately addressed problems and formal complaints.

Private School Documentation

A-15. In general, what documentation does an LEA need from private school officials in order to provide Title I services to eligible students in those schools?

- LEA may request documentation, as needed.
 - Info to ID students who generate equitable services funds
 - Info to ID student eligible for services
 - Achievement levels of eligible students
 - Eligible students residing in a different LEA



Newly Opened School

A-16. What is an LEA's obligation to consult with, and provide services to eligible students attending, a new private school that opens after the LEA's deadline for indicating an intent to participate?

- An LEA is NOT required to provide equitable services in the current year if the school opens after the LEA's deadline for indicating an intent to participate.
- However, LEA can choose to do so
- When contacting schools in the following year, the new school must be included

Private School Declines

A-17. What is an LEA's obligation to provide equitable services under Title I if a private school declines to participate or does not respond to the LEA's request to consult?

- LEA has no further responsibility to provide equitable services to students in that school during that school year.
- LEA must demonstrate it made a good faith effort.
- LEA must contact the school again next year.

Preschool Participants?

C-2: Unless state law considers preschool to be part of elementary education, an LEA is not required to provide equitable services to preschool children in private school and low-income preschoolers do not generate funds for such services.



Title I, A Proportionate Share Calculation

Proportionate Share Formula (ESSA Section 1117(a)(4)):

Determine the number of children from low-income families residing in each Title I participating attendance area who attend public and private schools.

Figure out the proportion of children in private schools.

Apply the private school proportion to the LEA's total Title I allocation to determine the equitable services proportionate shared.

Include funds transferred into Title I

Total Allocation

B-2. What does it mean for an LEA to determine the proportional share of Title I funds available for equitable services based on the total amount of Title I funds received by the LEA prior to any allowable expenditures or transfers of funds?

- LEA applies the proportion used to calculate the proportional share to its entire Title I allocation, including:
 - Admin
 - Parental Involvement
 - Neglected & Delinquent
 - Homeless
 - District-wide Initiatives

Administration

B-36. Public school program administration is separate from equitable services program administration. Accordingly, two cost objectives. Time and effort documentation must show distribution of time across each.



Indirect Costs

B-40. May an LEA charge indirect costs associated with providing equitable services to the proportional share of Title I funds available for equitable services?

- Yes (but subject to LEA's restricted rate under Title I)
- Required consultation topic

Pooling

B-8: Methodologies:

- School-by-school (no pooling)
- Pooling within LEA
 - LEA must establish criteria to determine the eligible private school students in greatest educational need to receive services
→ need-based
- Pooling across LEAs
 - LEA develops need-based criteria as above
 - “Low-achieving private school children in greatest need who reside in a participating Title I public school attendance area in any of the applicable LEAs may be served with the pooled funds”

Pooling across LEAs

Equitable Services, Pooling across LEAs

ED, citing 2003 guidance, says cannot pool across districts
(July 2018)

Draft Equitable Services Guidance (March 2019)

- Silent on the issue

Final Equitable Services Guidance (Oct 2019), allowed.

Pooling

B-8: Need consultation and agreement from private schools for any pooling!

- “agreement” requirement new – places more power in hands of schools
- But can use “reasonable deadlines” and pooling option to encourage more schools to participate/use offered opportunities?



Transferability

LEAs may transfer funds out of Title II-A, Title IV-A, into several programs.

- Before transfer, must discuss in consultation.
- BUT, if disagreement, LEA may move forward (i.e., LEAs may choose unilaterally to transfer funds)

B-24 & B-25: May an LEA retain funds or transfer funds solely to provide equitable services?

- No

Carryover

B-28: How does the 15 percent carryover limitation in ESEA section 1127(a) apply to equitable services carryover?

“[I]f an LEA exceeds the carryover limitation, and an SEA reduces the LEA’s allocation as a result, such reduction may not come from the portion of carryover funds used to provide equitable services.”

→ strongly leaning in favor of private schools

(Exception if one or more private schools declines some or all services AND there are no other participating private schools)

Supplanting

C-14. How does the principle of supplement not supplant apply to equitable services under Title I?

- 34 C.F.R. § 200.66 requires that an LEA use Title I funds to provide equitable services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children.
- Cannot meet needs of private school
- Cannot meet general educational needs
- Cannot replace any instruction private school would provide

Third party contracting (C-28)

May contract with religious organizations

Trinity Lutheran v. Comer (Supreme Court)

Any third party contractor must be independent from private school



Third party contracting

C-32 Third party providers

- Qualifications of teachers/Paras
- Must meet state requirements
 - Applicable to third party providers

C-33 Paraprofessionals

- Direct supervision?
- Up to State



Complaint Requirements

F-1. What information must a formal written complaint to the SEA include?

- A statement that an SEA or LEA has violated a requirement of a Federal statute or regulation that applies to a program requiring equitable participation;
- The facts on which the statement is based and the specific statutory or regulatory requirement allegedly violated; and
- The signature of the complainant.

34 CFR §299.12

SEA Handling of Complaints

F-3. What options are available to private school officials if the SEA does not answer their complaint in a timely manner or if the SEA's response fails to resolve the problem?

- Private school officials may appeal to ED no later than 30 days following the SEA's resolution of the complaint (or its failure to resolve the complaint within 45days).
- ED investigates and resolves the appeal no later than 90 days after receipt of the appeal. (ESEA section 8503).

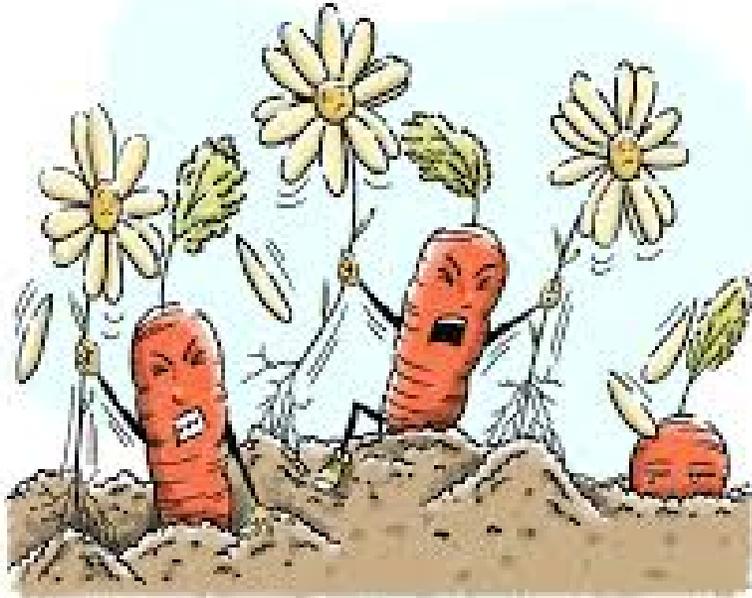
F-4. May an SEA require a private school official to file a formal complaint with the LEA and await the LEA's resolution before filing a complaint with the SEA?

- Yes, but the 45-day limit still applies

Supplement Not Supplant

ESSA Supplement Not Supplant

SUPLANT



ESSA Title I, A SNS Sec. 1118(b)

Standard: Federal funds must be used to supplement and in no case supplant state, and local resources

Title I, A SNS

Sec. 1118(b)(1)-(2)

Test: The LEA shall demonstrate that the methodology used to allocate State and local funds to Title I schools ensures that the school receives all the State and local funds it would otherwise receive if it were not receiving Title I funds.

- **Presumptions of supplanting do not apply to Title I, A at the school-level!**

ESSA Title I, A SNS Sec. 1118(b) (cont.)

Methodology 2 Part Test!

School-level expenditures

- Methodology for allocating funds – if neutral with regard to Title I status, then schools are in fact meeting supplement not supplant.

District-level expenditures

- Districtwide initiatives must be expended in a way that ensures all applicable schools receive the same amount of state/local funding on a neutral basis with respect to Title I status.



All Other ESSA Titles

2 CFR 200, Subpart F Compliance Supp.

Auditors presume supplanting occurs if federal funds were used to provide services . . .

1. Required to be made available under other federal, state, or local laws
2. Provided with nonfederal funds in prior year
3. **[Title I, C and Perkins only]** Provided services to eligible students with federal funds, and the same services were provided to non-eligible students with nonfederal funds.

Presumption Rebutted! (sometimes)

If SEA or LEA demonstrates it would not have provided services if the federal funds were not available.

NO non-federal resources available this year!



Which State/local funds?

“all the State and local funds it would otherwise receive”

Only on the State and local funds each school is allocated from its LEA.

- At LEA discretion (re: which funds)

Because many LEAs do not allocate all State and local funds to schools, there may naturally be some State and local funds that are not subject to the compliance demonstration.

For State and local funds that an LEA does not allocate to schools, the LEA is required to conduct activities supported by such funds in a manner that does not take into account a school’s Title I status.

SNS Guidance Q&A 5

Title I SNS Exceptions

Exclusion of Funds:

- SEA or LEA may exclude supplemental state or local funds used for program that meets *intents and purposes* of Title I Part A (Sec. 1118(d)). SNS Guidance Q&A Section VII.
- Excluded from SNS Methodology Test:
 - Single School LEAs
 - A grade span with a single school (i.e., no methodology is required for the single school grade span); or
 - Only Title I schools.

SNS Guidance Q&A 26

New Q&A from SNS Guidance

Can Title I schools receive more State/local funds than non-Title I schools?

- Yes. SNS Guidance Q&A 7

Can different methodologies be used?

- Yes. An LEA might use a different methodology for allocating State and local funds to high schools than it uses to allocate such funds to elementary schools. SNS Guidance Q&A 8

Can a different methodology be used for charter schools?

- Yes. An LEA may allocate State and local funds to charter schools within the LEA using a separate methodology from that through which it allocates State and local funds to non-charter schools, consistent with any/all applicable State charter school laws. For example, some LEAs allocate State and local funds to charter schools to cover facility costs but do not allocate such funds to traditional public schools. SNS Guidance Q&A 13

Methodology Examples

Distribution of non-Federal resources based on characteristics of students ("weighted per pupil" funding formula):

- Allocation/student = \$7,000
- Additional allocation/student from a low-income family = \$250
- Additional allocation/English Learner = \$500
- Additional allocation/student with a disability = \$1,500
- Additional allocation/preschool student = \$8,500

Methodology Examples

Distribution of non-Federal funds based on student enrollment:

1 Principal

1 Assistant Principal per 400 students

1 School Counselor per 250 students

1 School Resource Officer per 250 students

Teachers based on State class size requirements (Funds are calculated based on the average salary for that position within the district)

Technology/ Supplies: \$25,000 per 100 students

Professional Development: \$10,000 per building

Additional Necessary Costs: \$1,500 per student

Allocation v. Expenditure of Funds

If funds are allocated for teachers or for supplies, does this mean funds have to be used for that specific purpose?

No – unless the State or LEA require otherwise!



Does this mean all costs are allowable?

NO!!

Keep in mind just because a cost is not a supplanting issue does not make it automatically allowable!

All costs must be necessary, reasonable and allocable!

- Must be included in your district/schoolwide/targeted assistance plan!



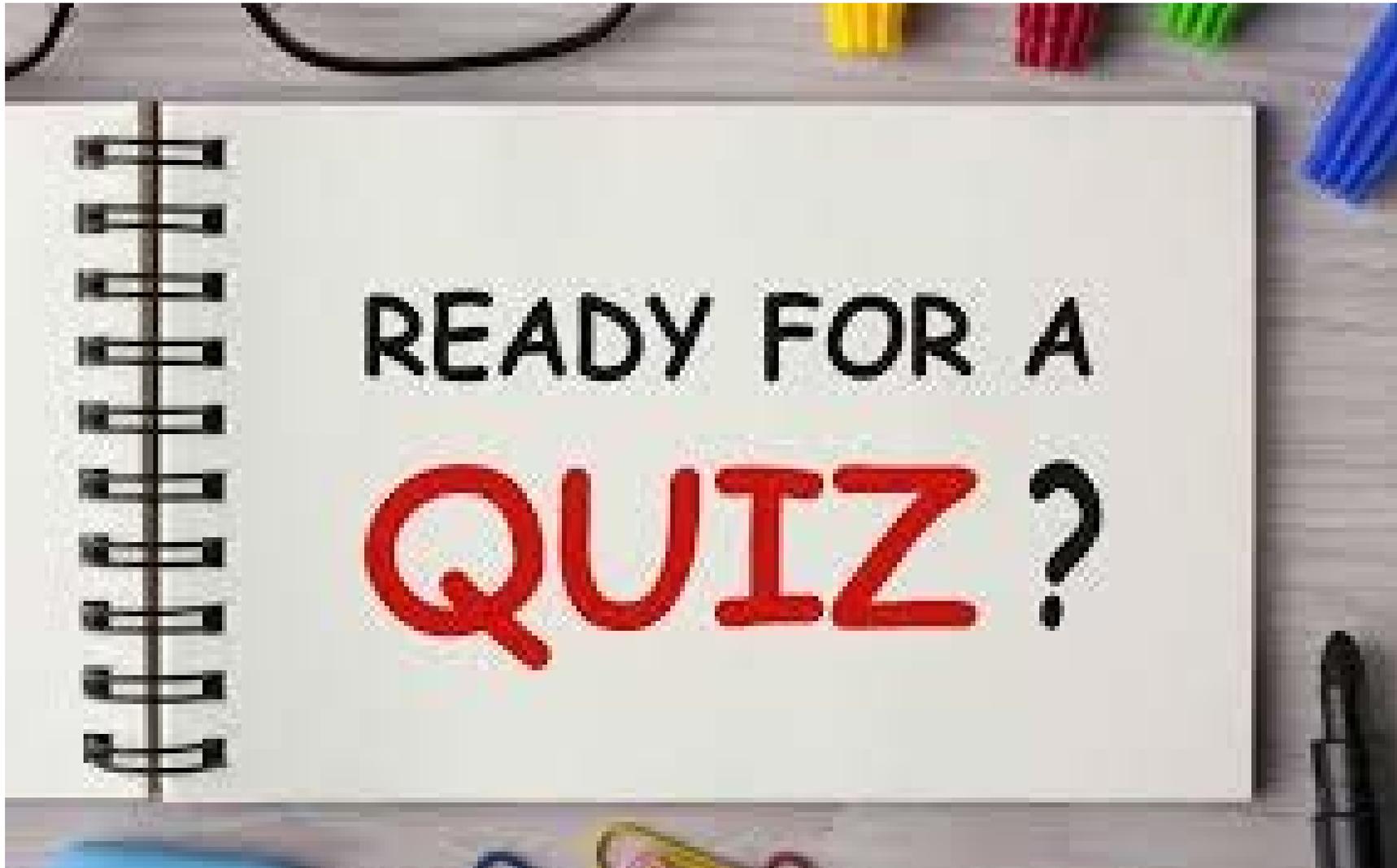
SNS Noncompliance?

What happens if the LEA does not meet the methodology test?

What happens if the LEA refuses to change its methodology?

ED: Follow GEPA enforcement provisions





SNS Pop Quiz Question 1

Last year, an LEA implemented a Title I district-wide summer camp initiative for its Title I schools only. It was so successful that this year they will continue the program but expand it to include the non-Title I schools using state funds.

Is this supplanting?

Is this allowable?



SNS Pop Quiz Question 2

Agrabah Middle School has been paying for a digital learning program with its local funds but it now wants to use those funds on other initiatives so the school decides to pay for it next school year with **Title IV, A** funds.

Is this supplanting?

Is this allowable?



SNS Pop Quiz Question 3

Jafar Middle School was just cited for having 3 doors that do not meet fire code. Since it is a Title I schoolwide school, Jafar Middle wants to use its Title I funds to fix the doors.

Is this supplanting?

Is this allowable?



SNS Pop Quiz Question 4

Jasmine Elementary School, a schoolwide school, paid for a math enrichment software program last year using State funds. This year the school wants to use its Title I funds to pay for the program.

Is this supplanting?

Is this allowable?



SNS Pop Quiz Question 5

Abu Elementary, a targeted assistance school, heard about that great math enrichment software program and now wants to purchase it to use for all students using its Title I funds.

Is this supplanting?

Is this allowable?

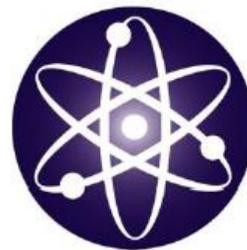


SNS Pop Quiz Question 6

Last year the LEA implemented a State-funded professional development series on the importance of STEM programs. This year, the District has Title II funds available so plans to use their Title II funds on the professional development series.

Is this supplanting?

Is this allowable?



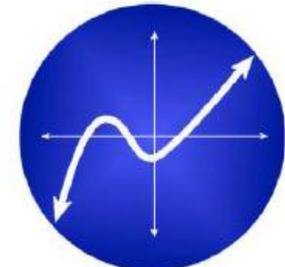
Science



Technology



Engineering



Mathematics

SNS Pop Quiz Question 7

Genie Elementary School, a targeted assistance school, wants to purchase science enrichment workbooks for students. It charges the workbooks 80% to its State funds and 20% to Title I, A funds since 20% of the students are Title I students.

Is this supplanting?

Is this allowable?



Supplement Not Supplant under IDEA



LEA Supplement Not Supplant

IDEA Part B funds must be used to supplement State, local and other Federal funds (used for providing services to children with disabilities) 34 CFR 300.202

- If LEA meets MOE, then LEA meets supplement/not supplant requirements
 - No particular cost test
 - ARRA Guidance, April 2009

LEA Supplement Not Supplant (cont.)

Notwithstanding 300.202 (SNS), 300.203 (MOE), and 300.162 (Commingling), funds provided to an LEA may be used for:

- Services and aids that also benefit nondisabled children
- **Early intervening services**
- High cost special education and related services

34 CFR 300.208

OSEP Policy letter

MN Dept of ED, Jan. 30, 2013

- “The district would be required to demonstrate that the federal IDEA Part B funds they are requesting to be used for CEIS supplement and do not supplant existing state, local and other federal funds, including ESEA funds, the district is using for [its program].”



CEIS and Supplement Not Supplant

CEIS must supplement any ESEA activities or services. 34 CFR 300.226(e)

Model example:

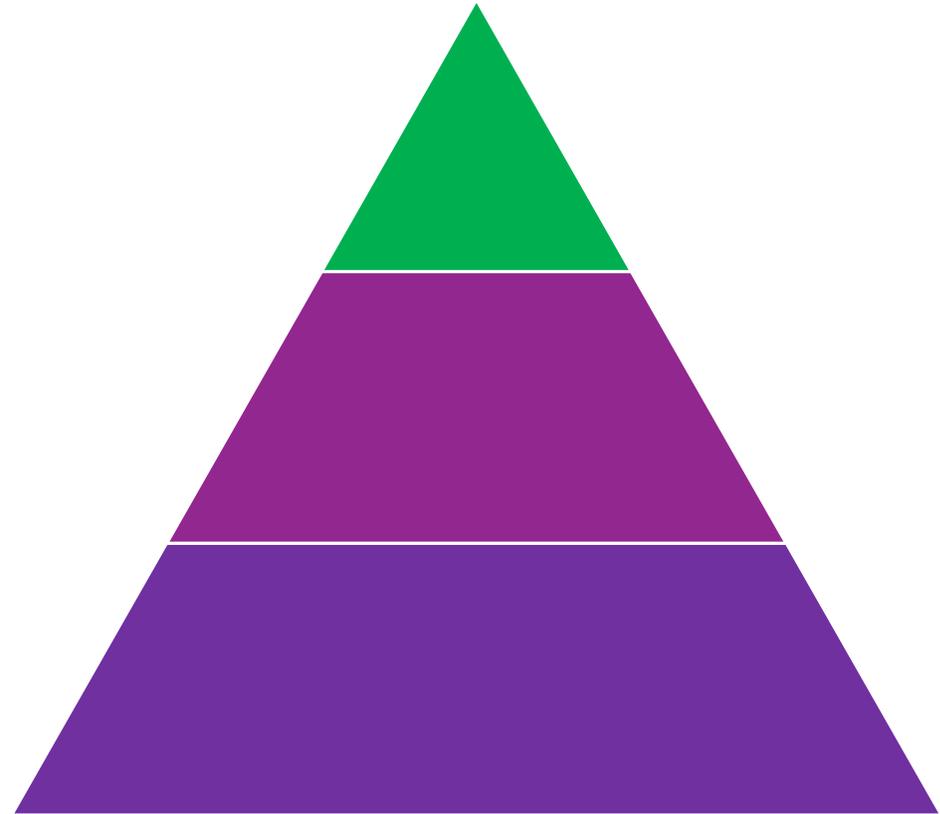
1. CEIS and local funds serve total population – CEIS for eligible CEIS students
2. Title I provides **Response to Intervention** to Title I students and CEIS supplements

IDEA Supplement Not Supplant: Exceptions to SNS

State Administrative Set-Aside	IDEA Regs § 300.704(d)
Other State-Level Activities Set-Aside	IDEA Regs § 300.704(d)
Equitable Services (reverse supplement not supplant)	IDEA Regs § 300.133(d)
Services and aids that benefit nondisabled children	IDEA Regs § 300.208(a)(1)
Early Intervening Services	IDEA Regs § 300.208(a)(2)
High Cost Fund	IDEA Regs § 300.208(a)(3)
Schoolwide Funds (only amount consolidated)	IDEA Regs § 300.206(a)

ESSA: Title III, Part A

The Big Picture



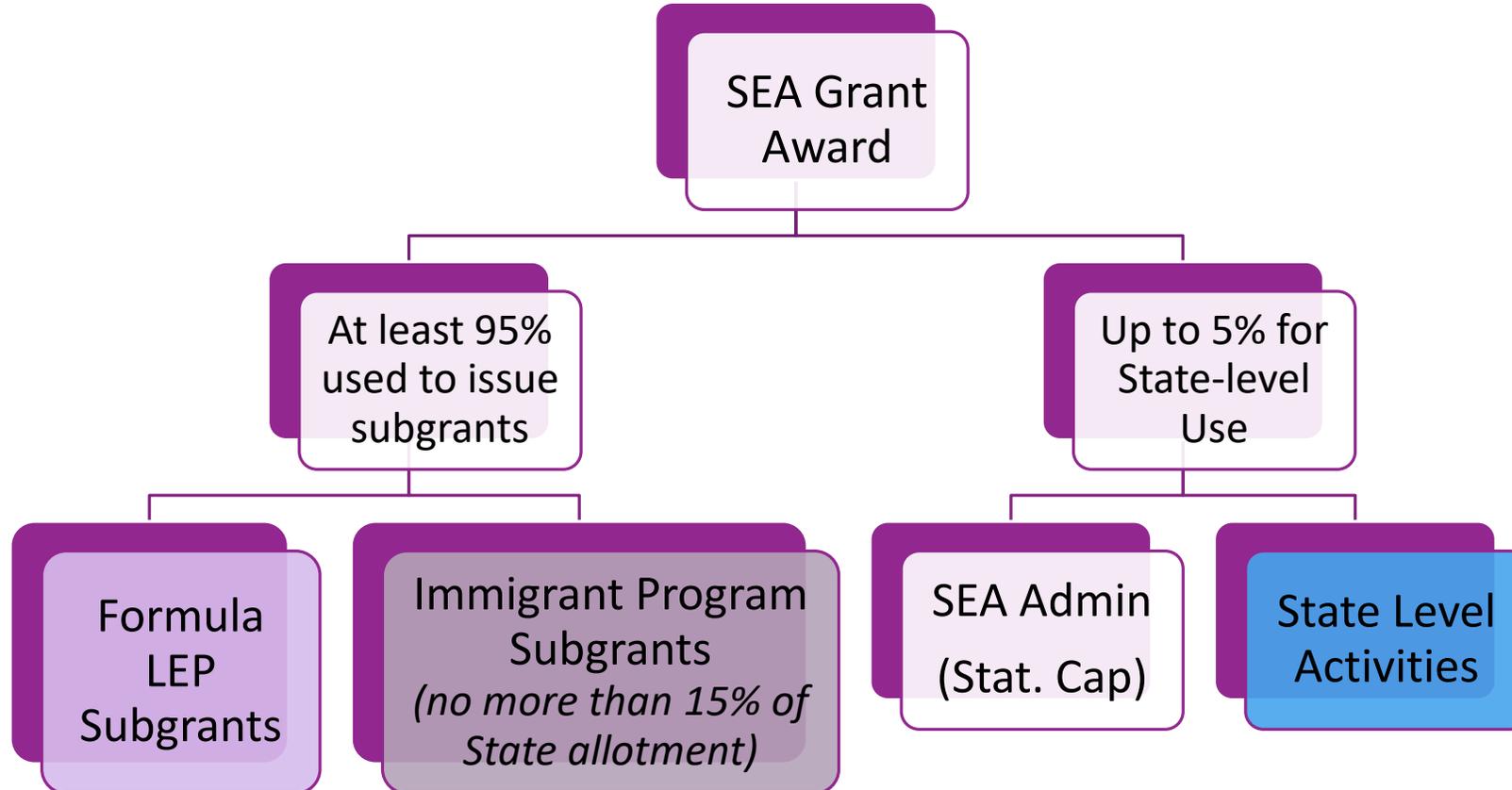
Serving ELs with ESEA Title III Funds

Purposes of Title III Sec. 3102(3-4)

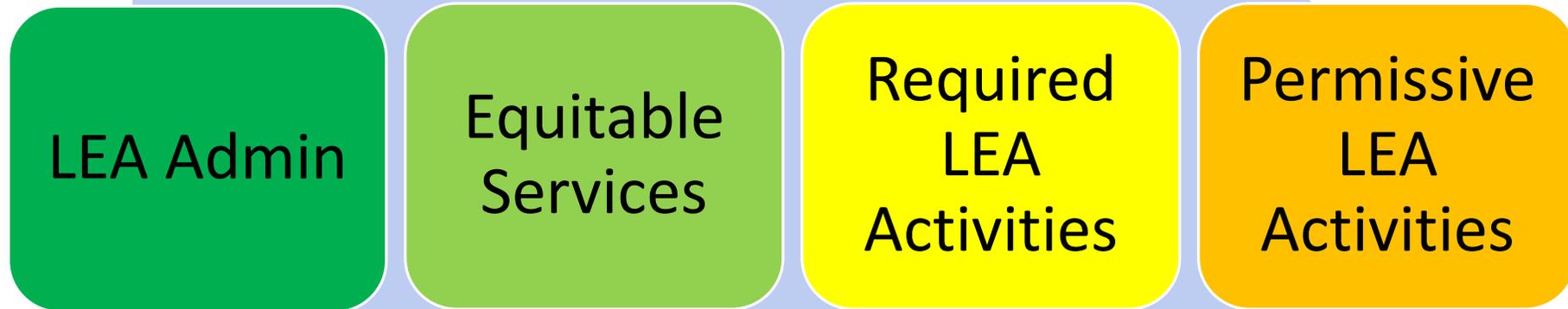
NEW: To assist teachers (including preschool teachers), principals and other school leaders, SEAs, LEAs...

- and schools in establishing, implementing, and sustaining effective language instruction educational programs designed to assist in teaching English learners, including immigrant children and youth;
- to develop and enhance their capacity to provide effective instructional programs designed to prepare ELs, including immigrant children and youth, to enter all-English instructional settings.

Allocation of Title III Funds



Distribution of Title III Funds in LEA- Level Formula LEP Subgrants



LEA-Required Activities, 3115(c)

- **Effective language instruction educational programs that demonstrate effectiveness in increasing:**
 - English language proficiency
 - Student academic achievement
- **Effective professional development to:**
 - Improve instruction and assessment
 - Enhance the ability of teachers to understand and implement curricula, assessment practices, and instructional strategies
 - Increase English language proficiency or substantially increasing knowledge
 - Of sufficient intensity and duration

LEA-Required Activities, 3115(c)

- NEW. Provide and implement other effective activities and strategies that enhance or supplement language instruction educational programs for ELs, which--
 - Shall include parent, family, and community engagement activities; and
 - May include strategies that serve to coordinate and align related programs.

LEA-Permissive Activities, 3115(d)

To achieve Title III subgrant purposes by...

1. Upgrading program objectives and effective instruction strategies
2. Improving the instructional program for ELs by identifying, acquiring, and upgrading curricula, instructional materials, educational software, and assessment procedures
3. Providing to ELs—
 - Tutorials and academic or career and technical education; and
 - Intensified instruction, which may include materials in a language that the student can understand, interpreters, and translators



LEA-Permissive Activities, 3115(d)

4. Developing and implementing effective preschool, elementary school, or secondary school language instruction educational programs that are coordinated with other relevant programs and services
5. Improving the English proficiency and academic achievement of ELs
6. Providing community participation programs, family literary services, and parent and family outreach and training activities to ELs and their families—
 - To improve English language skills of ELs; and
 - To assist parents and families in helping their children improve their academic achievement and becoming active participants in the education of their children.

LEA-Permissive Activities, 3115(d)

7. Improving the instruction of ELs, which may include ELs with a disability, by providing for—
- The acquisition or development of educational technology or instructional materials;
 - Access to, and participation in, electronic networks for materials, training, and communication; and
 - Incorporation of the resources described above into curricula and programs, such as those funded under Title III-Part A.

LEA-Permissive Activities, 3115(d)

8. NEW. Offering early college high school or dual or concurrent enrollment programs or courses designed to help ELs achieve success in postsecondary education
9. Carrying out other activities that are consistent with the purposes of this section

Early College High School & Dual or Concurrent Enrollment

- A-19. Valuable opportunity to promote college and career readiness for ELs and to bridge their transition to postsecondary education
- A-20. Definition of “Dual or Concurrent Enrollment Program” (ESEA Sec. 8101(15))
- A-21. Definition of “Early College High School” (ESEA Sec. 8101(17))

Dual or Concurrent Enrollment Program, ESEA Sec. 8101(15)

- Partnership between at least one institution of higher education and at least one LEA
- Secondary school student not yet graduated is able to enroll in one or more postsecondary courses
- And earn postsecondary credit that—
 - Is transferable to the institutions of higher education in the partnership; and
 - Applies toward completion of a degree or recognized educational credential

Early College High School, ESEA Sec. 8101(17)

- Partnership between at least one LEA and one institution of higher education
- Allows participants to simultaneously
 - complete requirements toward earning a regular high school diploma and
 - earn not less than 12 credits that are transferable to the institutions of higher education in the partnership as a part of an organized course of study toward a postsecondary degree or credential
- At no cost to the participant

Funding Dual or Concurrent Enrollment Program

If an LEA provides a dual or concurrent enrollment program for all students who qualify, and some of those students are ELs, can it pay for some of the entire dual or concurrent enrollment program with Title III funds?

Title III SNS Provision, 3115(g)

*Federal funds made available under this subpart 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 ELs and immigrant children and youth and in no case to supplant such **Federal**, State, and local public funds.*

INTENT: To ensure services provided with Title III funds are in addition to, and do not replace or supplant, services that students would otherwise receive.



Sept. 2016 Guidance & SNS, A-2

- Presumption of Supplanting under Title III, if:
 - 1) Federal funds are used to provide services that were required to be made available under other laws
 - 2) Federal funds are used to provide services that were provided with non-Federal funds in the prior year
- Rebuttable if can demonstrate would not have provided the services with non-Federal funds had Federal funds not been available

IDEA: CCEIS

COMPREHENSIVE COORDINATED EARLY INTERVENING SERVICES

Significant disproportionality regulations

Promulgated under the Obama administration (December 2016)

Intended to address disparities in the treatment of minority students with disabilities

Established a standard methodology to determine disproportionality across 14 categories and 7 race and ethnicity groups

- 14 categories related to disability, placement and discipline and 7 race and ethnicity groups = 98 risk ratios
- What is deemed “significant” is (still) defined by states



What is Significant Disproportionality?

Significant disproportionality based on race and ethnicity with respect to:

- Identification of children as CWDs, including a particular impairment
- Placement in a particular setting
- Incidence, duration and type of disciplinary actions, including suspensions

Significant Disproportionality is different from:

- **Disproportionate representations** – States identify LEAs with disproportionate representation of racial and ethnic groups in sped that is the result of inappropriate identification
- **Significant discrepancy** – States identify LEAs with significant disparities by race and ethnicity or by disability status in the rate of long-term suspensions and expulsions of CWDs.

Significant Disproportionality

In February 2018 the Trump administration delayed implementing the regulations until July 1, 2020.

- The date for children ages three to five was pushed to July 1, 2022

The delay (published in the Federal Register July 2018) allowed States to move forward with the new methodology but delayed formal enforcement so that ED could review whether or not the rule was effective.



Significant Disproportionality

COPAA v. DeVos (March 7, 2019) vacated the 2018 regulation delaying implementation of the December 19, 2016 Equity in IDEA regulation on significant disproportionality. ED was ordered to immediately reinstate the 2016 rules.

In Fall of 2019, ED announced that it would **NOT** seek to appeal the ruling.





Enforcement of Significant Disproportionality Regulations

States need to set risk - ratios (all 98!!) and ensure they comply with the new regulations ASAP.

Consider: Where are you in this process?



Enforcement of Significant Disproportionality Regulations

What happens if I don't comply?

LEA must set aside 15% of the IDEA funds for comprehensive coordinated early intervening services (CCEIS) to address factors contributing to significant disproportionality.

Public reporting & revision of policies and procedures for each year identified.

Changes to CEIS/CCEIS under the new regulations

COORDINATED EARLY INTERVENING SERVICES (CEIS)- 34 CFR SEC. 300.226

- Voluntary
- K-12
- May only be used to provide services that address sig disprop for children not currently identified as needing special education or related services
- Up to 15% of IDEA Part B funds

COMPREHENSIVE COORDINATED EARLY INTERVENING SERVICES (CCEIS)– 34 CFR SEC. 300.646

- Mandatory
- Age 3- grade 12
- May be used to provide allowable services for children who either have or have not been found eligible for special education services (may not *exclusively* be used for this group however)
- Exactly 15% of IDEA Part B funds

Allowability & Significant Disproportionality

Can CEIS be consolidated in a schoolwide program?

Yes, but must document an amount equal to the amount consolidated was used to pay for allowable activities under CEIS, regardless of whether IDEA funds paid for the activity.

Can CEIS be used to pay for services identified in a child's IEP, if related to the factors contributing to significant disproportionality?

Arguably yes, but proceed with caution.





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