# What the Law Says

# Most Every Student Succeeds Act (ESSA) programs require districts to supplement, and not supplant, the state and local funds they would otherwise spend on education. Generally, this means, ESSA funds should add to (supplement) and not replace (supplant) state and local funds. A few programs also require districts to use federal program funds to add to and not replace other federal funds. The tests for compliance with supplement not supplant requirements vary depending on the federal program being implemented.

While this brief covers the provisions in ESSA, districts should also note that IDEA and Perkins also have their own supplement not supplant requirements. Because of the unique nature of each title program, districts are encouraged to reach out to the appropriate program specialist with specific SNS questions.

|  | | Federal Grant funds must not replace: | | |
| --- | --- | --- | --- | --- |
| Federal Funds | State Funds | Local Funds |
| Title I, Part A |  | | ✓ | ✓ |
| Title I, Part C | | ✓\* | ✓ | ✓ |
| Title II, Part A | |  | ✓ | ✓ |
| Title III, Part A | | ✓\* | ✓ | ✓ |
| Title IV, Part A | |  | ✓ | ✓ |
| Title IV, Part B | | ✓\* | ✓ | ✓ |

***\*****In addition to supplementing state and local funds, Title I-C, Title III and Title IV-B must supplement* ***other federal funds****.*

# Requirements

#### Title I, Part A (Improving Basic Programs)

Before ESSA, a district was presumed to violate supplement not supplant rules if it spent Title I-A funds on (1) an activity the district is legally required to carry out, (2) an activity the district funded with state or local money the prior year, or (3) an activity the district also provides to non-Title I students with state or local funds.

Under ESSA, these three presumptions no longer apply. Instead, districts must demonstrate that the **methodology** they use to allocate state and local funds to schools provides each Title I school with all of the state and local money it would receive if it did not participate in the Title I program.[[1]](#footnote-1)In other words, a district cannot choose to allocate funds to other schools because another school receives federal funding.[[2]](#footnote-2) There are a variety of possible methodologies that districts may use when distributing state and local funds – federal law does not require a certain type of methodology. More detailed information, including examples, can be found in the U.S. Department of Education’s [Title IA Supplement Not Supplant Guidance](https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf).

#### Title I, Part C (Migrant Education Program)

ESSA requires districts and ESDs operating a migrant education program (MEP) to: (1) use MEP funds to "supplement, not supplant" non-Federal funds; and (2) provide services to migratory children with State and local funds that are at least comparable to services provided non-migratory children. Supplanting is presumed if a district uses Title I, Part C funds for an activity, or services, which:

1. The district or ESD is legally required to carry out by state law,
2. Was funded with state or local money last year,
3. Are provided only to MEP participating children and the same services are provided with state or local funds to non-participating MEP children.

A district, or MEP region, may overcome the second presumption of supplanting if it can demonstrate it cannot continue to support an activity with state or local funds because of state or local funding reductions. A district, or MEP region, can also exclude from the “supplement, not supplant” and comparability requirements State and local funds that are used to carry out special programs that meet the intent and purposes of the Migrant Education Program.

It is important to note that, districts and regions providing services to migrant students must use funds from other Federal programs before they use Title I-C funds to provide the same services. A district or region may use Title I-C funds to increase the number of migrant students who participate in the project and/or enhance the services that participating migrant students otherwise receive.

*Title II, Part A (Supporting Effective Instruction)*

Supplanting is presumed if a district uses Title II-A for an activity the district**:**

1. Is legally required to carry out, or
2. Funded with state or local money last year.

A district may overcome the second presumption of supplanting if it can demonstrate it cannot continue to support an activity with state or local funds because of state or local funding reductions.

*Title III, Part A (Language Instruction for English Learners And Immigrant Students)*

Supplanting is presumed if a district uses Title III, Part A funds for an activity:

1. Is legally required to carry out, or
2. Funded with state, local, or other federal money last year.

For the first presumption, it is important to keep in mind that districts may not use Title III-A to meet the requirements of federal civil rights laws (Title VI of the Civil Rights Act of 1964 and Equal Education Opportunities Act of 1974) or Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR). A list of these laws and rules can be found in [Oregon’s English Learner Program Guide](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/Guidance-and-Research.aspx).

Also in the context of the first presumption, please note that guidance from the U.S. Department of Education clarified that in some circumstances districts can spend Title III-A funds for certain activities required by Title I-A. Some of these activities may include:

* EL parental notification regarding language instruction educational programs (LIEPs) and related information *[ESEA, Section 1112(e)(3)],*
* Parental participation (e.g., regular EL parent meetings) *[ESEA, Section 1116(f)],* and
* Reporting to the State on the number and percentage of ELs achieving English language proficiency *[ESEA, Section 1111(h)(2)]*.[[3]](#footnote-3)

In order to use Title III-A funds for the above listed Title I-A activities:

* The activity being supported must be consistent with Title III purposes and meet federal guidelines for “reasonable and necessary costs,”[[4]](#footnote-4)
* The activity being supported must be supplemental to the district’s civil rights obligations to ELs under Title VI of the Civil Rights Act and the EEOA, and
* The district can demonstrate it is also using Title III funds to conduct activities required under Title III.[[5]](#footnote-5)

For the second presumption, please note Title III is more expansive than other programs and presumes supplanting when a district uses Title III-A funds to pay for an activity that was funded with other federal funds last year. For example, using Title III funds to pay for a professional development program the district funded with Title II-A last year would raise a presumption of supplanting.

A district may overcome the second presumption of supplanting if it can demonstrate it cannot continue to support an activity with state, local or other federal funds because of funding reductions.

*Title IV, Part A (Student Support and Academic Enrichment Grants)*

Supplanting is presumed if a district uses Title IV-A for an activity the district**:**

1. Is legally required to carry out, or
2. Funded with state or local money last year.

A district may overcome the second presumption of supplanting if it can demonstrate it cannot continue to support an activity with state or local funds because of state or local funding reductions.

*Title IV, Part B (21st Century Community Learning Centers)*

Supplanting is presumed if a district uses Title IV-B for an activity the district**:**

1. Is legally required to carry out, or
2. Funded with state, local, or other federal money last year.

For the second presumption, please note Title IV-B is more expansive than some other programs and presumes supplanting when a district uses Title IV-B funds to pay for an activity that was funded with other federal funds last year.

A district may overcome the second presumption of supplanting if it can demonstrate it cannot continue to support an activity with state, local, or other federal funds because of funding reductions.

# Relationship of SNS to other ESSA Fiscal Tests

ESSA includes other fiscal tests to ensure districts use Federal funds to increase educational spending.

For example, a **maintenance of effort** test compares how much state and local money districts spend on education from year to year. In general, districts must spend at least 90% of the state and local money they spent the prior year on providing a free public education.[[6]](#footnote-6) The following programs are covered by ESSA’s maintenance of effort test: Title I-A, Title I-C, Title I-D, Title II-A, Title III-A, Title IV-A, Title IV-B, and Title V-B-2.[[7]](#footnote-7)

Also, as a condition of receiving Title I funds, districts must ensure that state and local funds are used to provide services that taken as a whole, are **comparable** between Title I and non-Title I schools.[[8]](#footnote-8) In Oregon, this is done through submission of the [Comparability Report](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/Documents/FAQs%20for%20IA%20Comp%20Report.docx).

# Elementary and Secondary School Emergency Relief (ESSER)

Regarding Elementary and Secondary School Emergency Relief Funds (ESSER I, II, III),these funds allocated through the CARES Act, the CRSSA Act, and the ARP Act are intended to serve as emergency relief monies to address the impact of the COVID-19 pandemic on students, educators, and schools. **These funds are not subject to the SNS rules and considerations.** As a result, districts have flexibility to allocate those funds in a manner consistent with district priorities, students’ academic and social strengths and needs, and the ESSER I, II, III spending parameters.

Resources

* [Supplement Not Supplant Guidance for Title I, Part A](https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf) (USED)
* [Non-Regulatory Guidance Title I, Part C](https://www2.ed.gov/programs/mep/mepnonregulatoryguidance317.docx) (USED)
* [Dear Colleague Letter Regarding English Learners](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf) (USED)
* [Title II, Part A Non-Regulatory Guidance](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/IIA/Documents/essatitleiipartaguidance.pdf) (USED)
* [Title III, Part A Non-Regulatory Guidance](https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguidenglishlearners10219.pdf) (USED)
* [Addendum to Non-Regulatory Guidance: English Learners and Title III (](https://www2.ed.gov/policy/elsec/leg/essa/elandiitleiiiaddendum1219.pdf)USED)
* [Title IV, Part A Guidance](https://www2.ed.gov/policy/elsec/leg/essa/essassaegrantguid10212016.pdf) (USED)
* [2020 Compliance Supplement](https://www.whitehouse.gov/wp-content/uploads/2020/08/2020-Compliance-Supplement_FINAL_08.06.20.pdf) (document used by auditors when performing Single Audit -- OMB)
* [Oregon Federal Funds Guide](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/Documents/ESSA%20Oregon%20Guide.docx) (ODE)
* [Title I-A Methodology Statement](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/Documents/Title%20I-A%20Methodology%20Reference%20Sheet.docx) (ODE)
* [Comparability Report Frequently Asked Questions](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/Documents/FAQs%20for%20IA%20Comp%20Report.docx) (ODE)
* [Title IV, Part B (21st CCLC Companion Guidance to RSSL](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/Pages/FedProgCOVID19.aspx) (ODE)

# Sample Scenarios

* + - * A district was paying for an elementary school’s digital learning software with Title I-A funds, but wants to use those funds for math intervention this year. If the district uses Title IV-A funds to pay for the digital learning software, is it supplanting? *No, this switch would not be supplanting and would be allowable assuming other Title IV, A requirements are met. For Title IV-A, supplanting applies only to replacing state and local funds*.
      * A district is purchasing computers for all students to engage in distance learning and wants to use its Title I-C funds to pay for computers that will be provided to migrant students. Is this supplanting? *Yes. Using Title I-C funds to purchase the same technology for migrant students that are purchased for non-migrant students from other state, local, or federal funds would be considered supplanting.*
      * A district paid a stipend for a school’s family engagement coordinator with local funds the prior year. Would it be supplanting to use Title I-A funds to pay the stipend this year? *No, it would not be supplanting as long as the school received its state and local funds without regard to its Title I-A status, and the expense is necessary, reasonable, and included in the needs assessment.*
      * A district wants to use Title III funds to pay for an outreach coordinator for the district’s English Learner Parent Action Committee (PAC).  Is this supplanting? *It depends. If the district combines the Title I-C (Migrant) and Title III PACs, the district could only pay the portion of costs related to the Title III PAC out of Title III funds because Title I-C requires a PAC*.
* A district is paying for summer school using state funds. Can Title I-C funds be used to pay for migrant students to attend?  *Yes, with some caveats. In accordance with supplement not supplant requirements MEP funds may not be used to provide services to migratory children that are available from other funding source(s).  If the district is providing a summer school program using other Federal and non-Federal funds* ***and that program is available to migratory children****, the MEP may not offer a separate, equivalent program during the same hours and in the same format for migratory children using MEP funds.*

*However, MEP funds could be used to:*

* *increase the capacity of the district’s program to serve additional migratory children,*
* *to provide services or activities that help migratory children access and/or benefit from the district’s summer school program that are not otherwise provided by the district,*
* *to provide instructional services to migratory children during hours that differ from the district’s program, and*
* *to provide services to migratory children that are not offered by other programs.*

*As always, MEP funds must be used for services and activities that are consistent with the program purposes and Oregon’s comprehensive needs assessment and service delivery plan.*

* + - * A district uses Title I-A funds to provide academic support after school. It subsequently receives a Title IV-B (21st CCLC) grant. Would it be supplanting to use Title IV-B funds to provide the after school academic support? *It depends. If the district was using Title I-A funds to support academic support in the previous year before the grant, the use of Title IV-B funds in this manner would be supplanting. While academic support during out of school time is an allowable use of both Title I-A and Title IV-B funds, Title IV-B funds must supplement state, local and other federal funds. Using Title IV-B funds to increase the number of students served or the scope of services offered through academic support would be allowable.*

1. ESEA, Sec. 1118(b)(2) [↑](#footnote-ref-1)
2. ESEA, Sec. 1118(b*)* [↑](#footnote-ref-2)
3. U.S. Department of Education, *English Learners and Title III of the Elementary and Secondary Education Act (ESEA),* as amended by the Every Student Succeeds Act (ESSA) (September 2016) available at <http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguidenglishlearners92016.pdf>, Question A-4. This guidance will be referred to as *ED 2016 Title III, Part A Guidance* for the rest of this document. [↑](#footnote-ref-3)
4. The concept of “reasonable and necessary” costs comes from federal regulations known as the Uniform Grant Guidance (UGG). See, for example, the discussion in *Basic Considerations* of the UGG, available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=1ab34260fd33363573a554baedb4aa24&mc=true&node=pt2.1.200&rgn=div5#sg2.1.200_1401.sg12>. [↑](#footnote-ref-4)
5. *ED 2016 Title III, Part A Guidance*, Question A-4. [↑](#footnote-ref-5)
6. ESEA, Sec. 8521 [↑](#footnote-ref-6)
7. ESEA, Sec. 8101(11) [↑](#footnote-ref-7)
8. ESEA, Sec. 1118(c) [↑](#footnote-ref-8)