

# North Carolina

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## *Flexibility in Times of Budget Shortfalls*

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# Three Pillars of Mandatory – State Local Effort

- Maintenance of Effort
- Comparability
- Supplement not Supplant



# Guidance:

- NEW: “Title I Fiscal Issues,” February 2008  
(replaced May 2006)
  - [www.ed.gov/programs/titleiparta/fiscalguid.doc](http://www.ed.gov/programs/titleiparta/fiscalguid.doc)
- Consolidating funds in schoolwide programs,  
MOE, SNS, Comparability, Grantbacks,  
Carryover

# Maintenance of Effort

Most Directly Affected by  
Declining Budgets

# MOE: The NCLB Rule

- The combined fiscal effort per student or the aggregate expenditures of the LEA
- From state and local funds
- From preceding year must not be less than 90% of the second preceding year

# MOE: Preceding Fiscal Year

- Need to compare final financial data
- Compare “immediately” PFY to “second” PFY
- EX: To receive FY2005 funds (available July 2005), compare FY2004 (2003-04) to FY2003 (2002-03)

# MOE: Failure under NCLB

7

- SEA must reduce amount of allocation in the exact proportion by which LEA fails to maintain effort below 90%
- Reduce all applicable NCLB programs, not just Title I



	Aggregate expenditures	Amount per student
SY 04	1,000,000	6,100
SY05 – must spend 90%	900,000	5,490
05 – Actual amount	850,000	5,200
Shortfall	-50,000	-290
Percent shortfall/ reduction	-5.6%	-5.3%**

# MOE: Waiver

- USDE Secretary may waive if:
  - Exceptional or uncontrollable circumstances such as natural disaster
  - OR
  - Precipitous decline in financial resources of the LEA

- July 2009 Draft Non-Regulatory Guidance
  - SEA may apply for waiver on behalf of LEAs

<http://www.ed.gov/policy/gen/leg/recovery/programs.html>

# MOE: IDEA

- State and Local
- Measures Only Expenditures for
  - Special Education
- SEA – State Funds
- LEA – Local only or State and Local

# MOE: IDEA

- Compare current year to prior
- Failure = Reduction as with NCLB – For SEA only
- Failure – LEA?



# MOE: IDEA

- State
- USDE Secretary May Waive
- Similar to NCLB
- LEA – No Waiver!

# MOE: IDEA

- Flexibility
- 50% Increase Over Prior Year
- Treat as Local for MOE Only
- Funds Remain Federal for Allowability!

# MOE: IDEA

## Flexibility – IDEA Part B Grant

<b>2008 - 2009</b>	<b>\$1,000,000</b>
2009 - 2010	\$1,800,000
Increase	\$800,000
50%	\$400,000

# MOE: IDEA

## Flexibility

### Required Level of MOE for ...

2009 – 2010 =	\$7,000,000
50% of Increase =	\$400,000
Required Level of MOE =	\$6,600,000

# MOE: IDEA

## Flexibility

- \$400,000 Must Be Spent on
  - ESEA Activities
  - **Caution** – Reduced by EIS

# MOE – IDEA

- Eligibility for 50% Reduction
  - Must receive “meets requirements”
  - Must not be “significantly disproportionate”
  - Cannot have SEA assume FAPE responsibility

April 13, 2009 ED Guidance

<http://www.ed.gov/policy/gen/leg/recovery/programs.html>

# Complications in calculating expenditures from schoolwide programs

- Need to calculate state and local expenditures across district
- Use proportional approach
- IF 85% of school's budget from state and local sources
- THEN 85% of expenditures attributable to state and local sources

# Comparability Under Title I

\* Not affected by declining budgets \*

# Comparability

Legal Authority:

Title I Statute: §1120A(c)

# General Rule- §1120A(c)

- An LEA may receive Title I Part A funds only if it uses state and local funds to provide services in Title I schools that, taken as a whole, are at least comparable to the services provided in non-Title I schools.
- If all are Title I schools, all must be “substantially comparable.”

# Timing Issues

- Guidance: Must be *annual* determination
- YET, LEAs must maintain records that are updated at least “biennially” (1120A(c)(3)(B))
- Review for current year and make adjustments for current year

# Written Assurances

- LEA must file with SEA written assurances of policies for equivalence:
  - LEA-wide salary schedule
  - Teachers, administrators, and other staff
  - Curriculum materials and instructional supplies
- Must keep records to document implemented and “equivalence achieved”

# May also meet through. . .

- Student/ instructional staff ratios;
- Student/ instructional staff salary ratios;
- Expenditures per pupil; or
- A resource allocation plan based on student characteristics such as poverty, LEP, disability, etc. (i.e., by formula)

# How to measure??

## Compare:

- Average of all non-Title I schools to
- Each Title I school

- Basis for evaluation:
  - grade-span by grade-span
  - or
  - school by school



May divide to large and small schools

# Exclusions:

- Federal Funds
- Private Funds



# Exclusions:

- Need not include unpredictable changes in students enrollment or personnel assignments that occur after the start of a school year



# **Exclusions:** LEA may exclude state/local funds expended for:

- Language instruction for LEP students
- Excess costs of providing services to students with disabilities
- Supplemental programs that meet the intent and purposes of Title I
- Staff salary differentials for years of employment

# Who is “instructional staff”?

- Consistent between Title I and non-Title I
- Teachers (art, music, phys ed), guidance counselors, speech therapists, librarians, social workers, psychologists
- Paraprofessionals – up to SEA/ LEA
  - Only if providing instructional support
  - ED urges NO!

Surprisingly Not Greatly Affected by  
Declining Budgets!

**Supplement  
Not Supplant**

# Supplement not Supplant

- Federal funds must be used to supplement and in no case supplant (federal), state, and local resources

**“What would have happened in the absence of the federal funds??”**

# Auditors' Tests for Supplanting

OMB Circular A-133  
Compliance Supplement

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

- If required to be made available under other federal, state, or local laws

**Auditors presume supplanting  
occurs if federally funded  
services  
were . . . .**

- Provided with non-federal funds in prior year

# Presumption Rebutted!

- 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!



# What documentation needed?

- Fiscal or programmatic documentation to confirm that, in the absence of fed funds, would have eliminated staff or other services in question
- State or local legislative action
- Budget histories and information



# Must show:

- Actual reduction in state or local funds
- Decision to eliminate service/position was made without regard to availability of federal funds (including reason decision was made)

# Rebuttal Example

- State supports a reading coach program 2008 - 2009
- State cuts the program from State budget 2009 - 2010
- LEA wants to support Title I reading coach program 2009 - 2010

# Rebuttal Example

- LEA must document
  - a. State cut the program
  - b. LEA does not have uncommitted funds available in operating budget to pick up
  - c. LEA would cut the program unless federal funds picked it up
  - d. The expense is allowable under Title I

# Rebuttal Example 2

- LEA pays a reading coach 2008 - 2009
- LEA revenue falls and wants to pay coach with Title I

# Rebuttal Example

- LEA must show
  - a. Reduction in Local funds
    - Budgets, etc.
  - b. Decision to cut based on loss of funds
    - Link salary to reduction
  - c. Absent Title I, LEA would have to cut position
  - d. Position is allowable under Title I

# Supplanting Rebuttal

- No Funds Available vs. Reserve Funds
- Existence of Reserve Fund Does Not Prevent Use of Rebuttal if:
  - Fund is emergency fund
    - Hurricanes, natural disasters, etc.
  - or
  - Fund is Reserve for long term type of capital expenditure
    - Roof wearing out
    - HVAC replacement
  - And – in either case
    - Amount consistent with GAAP or other authority
  - Compare: “Rainy Day Fund” i.e.
    - General discretionary fund – Not Within This Category

# Auditors presume supplanting occurs if . . .

- Title I funds used to provide service to Title I students, and the same service is provided to non-Title I children using non-Title I funds.

# Flexibility

## Exception: 1120A(d)

- 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
- EX: Exclude State Comp Ed funds

**How does supplanting  
apply in a schoolwide  
program?**

# Supplement not Supplant

- Statute 1114(a)(2)(B): Title I must supplement the amount of funds that would, in the absence of Title I, be made available from non-federal sources.
  - E-18 in schoolwide guidance
- The actual service need not be supplemental.

# SNS: NEW!!

- Guidance: School must receive all the state and local funds it would otherwise need to operate in the absence of Federal funds
  - Includes routine operating expenses such as building maintenance and repairs, landscaping and custodial services

**Maintenance of Effort  
(MOE)  
&  
Supplement not Supplant  
In the Stimulus Bill**

# What is MOE?

- Be mindful, Stabilization fund MOE is separate from MOE in ESEA, IDEA, Perkins, AEFLA
- Each must be considered on its own terms



# Supplement Not Supplant - SNS

- Senate Bill authorized modifications to SNS
- Conference Report dropped the authority
- Statute is silent
- Guidance – Secretary cannot waive SNS

# Stabilization MOE

- **MOE**: in each fiscal years '09, '10, and '11 maintain state support for elem. & secondary education and higher education at least at the level of support in FY '06
  - See Sec 14012 Fiscal Relief if unable to meet '06 MOE

# Stabilization MOE Relief

- For the purpose of relieving fiscal burdens on States and LEAs that have
  - experienced a precipitous decline in financial resources,
  - the Sec. of Education may waive or modify any requirement of **this title** (the stabilization title) relating to maintaining fiscal effort.
  - Fiscal relief for stabilization MOE available to LEAs – Why?

# Stabilization MOE Relief

- (b) A waiver modification under this section shall be for any fiscal year 2009, 2010, or 2011.
- (c) Criteria: Secretary shall not grant a waiver or modification unless
  - the state or local educational agency will not provide a smaller % of the total revenues *available* than the amount provided in the preceding fiscal year.
  - It cannot be a smaller percentage!

# Stimulus MOE Relief for Programs

- (d) Maintenance of effort: upon prior approval from the Secretary, a state or LEA that receives funds under this title may treat any portion of such funds *that is used for elementary, secondary, or post secondary education* as nonfederal funds for the purpose of any requirement to maintain fiscal efforts **under any other** program administered by the Secretary.

# Section 14012, fiscal relief

- Notwithstanding (d), the level of effort required by a state or local educational agency for the following fiscal year shall not be reduced.

# MOE IDEA – State and Local

- Treatment of stabilization funds as local for IDEA MOE
- Prior approval of Secretary – Required in Law
  - No application necessary – prior approval granted if criteria are met
- July 1, 2009 Guidance

<http://www.ed.gov/policy/gen/leg/recovery/programs.html>

# Idaho Waiver

- ED Waived the Perkins MOE requirement in 2006 for a recession experienced in 2002-2003



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