

**Georgia Department of Education
Documentation Guidance**

**(Supplement not Supplant) Precipitous Decline for Title I and
Use of IDEA Funds to Reduce State and Local Effort**

Title I:

The “supplement, not supplant” requirements in sections 1120A(b) and (d) and 1114(a)(2)(B) of the Elementary and Secondary Education Act (ESEA) apply to Title I, Part A ARRA funds.

The U.S. Department of Education addresses the supplanting issue in the Title I, Part A Recovery Funds for Grants to Local Educational Agencies guidance released on April 1, 2009. The issue is addressed on pages 28-29 in question C-8 and C-9. The full text of the response is located at the end of this document and can also be found at www.ed.gov.

The short answer to questions about precipitous decline is “it depends” based on the following two factors:

- 1) The ability of the local school district to show that an exceptional or uncontrollable circumstance, such as a natural disaster; or
- 2) The ability of the local school district to show a precipitous decline (sharp decrease) in state and/or local resources.

The extreme nature of the current state budget cuts can qualify as a precipitous decline in financial resources. The Georgia Department of Education (GaDOE) can clearly document the decline of financial resources at the state level. The GaDOE will provide local school districts with a listing by district of the reduction in QBE funds for FY 2009 and FY 2010. A local school district can further make the case by reviewing the FY 2010 cut to equalization (the amount calculated by formula and the amount funded).

In addition to the documentation available from the GaDOE, a local school district will also need to document its individual circumstances. The steps below can assist a local school district in documenting its individual decline in local resources:

- As part of the General Fund budget process for FY 2010, a local school district must show how the general fund is being affected by the loss of state and local dollars. The first step is to show the listing of budget cuts being proposed in the absence of stabilization funds. An example of such a circumstance could include an increase of student-to-teacher ratio. The State Board of Education exercised its waiver authority and waived Rule [160-5-1-.08](#) to allow for an increase in the state-required maximum class sizes. The waiver allows for an increase to the maximum class sizes in certain areas and grade levels. Even if the local school district is not utilizing the maximum number of students in the class, the district may still utilize the waiver as long as the district has or would have increased their class sizes in the absence of federal funds.

The documentation must show

- The student-to-teacher ratio for FY 2009, including the number of teachers allotted by school (and by grade) and
- The proposed FY 2010 student-to-teacher ratios including the number of teachers by school and grade.

The difference between the two is eligible to be funded by federal funds.

- Positions eliminated in ways other than through an increase in student-to-teacher ratio, such as the elimination of a program, may also be paid for through federal funds. Here again, this process will require the level of funding in the FY 2009 budget and a listing of the cuts being proposed to the General Fund for FY2010.
- Other services and materials being affected by the decline in state and local financial resources may also be eligible to be paid from federal funds. The decline is not limited only to personnel. The LEA must be able to document the previous level of support in the FY 2009 budget and a listing of budget cuts being proposed in the FY 2010 budget.

A word of caution to local school districts is appropriate. If a local school district transfers costs as described above and the budgeted fund balance actually increases, the transferred expenditures could be questioned especially if the amount of the increase cannot specifically be attributed to a local tax increase (increase in millage rate).

Please see the attached language extracted directed for the guidance posted on the U.S. Department of Education Website at www.ed.gov.

Language extracted directly from pages 28-29 of the following U.S. Department of Education Website:

GUIDANCE

Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965

Made Available Under

The American Recovery and Reinvestment Act of 2009

Supplement, Not Supplant

C-8. Do the supplement, not supplant requirements in sections 1120A(b) and (d) and 1114(a)(2)(B) of the ESEA apply to Title I, Part A ARRA funds?

Yes.

C-9. May Title I, Part A ARRA funds be used to support activities that were previously supported with non-Federal funds without violating the supplement, not supplant requirement?

It depends. A determination of supplanting necessitates determining what activities an LEA would conduct with non-Federal funds if it had no Title I, Part A funds. Generally, an LEA may not use Title I, Part A funds for activities that it would have conducted in the absence of Title I, Part A funds. Several situations give rise to a presumption of supplanting (*i.e.*, a presumption that the LEA would conduct the activity with non-Federal funds if it had no Title I, Part A funds available): (1) the activity is required by local, State, or other Federal law; (2) the LEA conducted the activity in the prior year with non-Federal funds; or (3) the LEA uses non-Federal funds to provide the same activity for non-Title I students or in non-Title I schools that it provides with Title I, Part A funds for Title I students in Title I schools.

Thus, the use of Title I, Part A ARRA funds for an activity that an LEA provided in the prior year with non-Federal funds generally gives rise to a presumption that the LEA would have continued to use non-Federal funds to conduct the activity this year in the absence of Title I, Part A ARRA funds and, therefore, the use of Title I Part A funds for that activity would constitute supplanting. The LEA may overcome this presumption, however, under the following conditions:

- The LEA can demonstrate that there was a reduction in the amount of non-Federal funds available to the LEA to pay for the activity previously supported by non-Federal funds or the LEA can demonstrate that its educational priorities with respect to its use of non-Federal funds have changed.
- The LEA makes the decision to eliminate the activity without taking into consideration the availability of Title I, Part A funds, as documented by fiscal and programmatic records

confirming that, in the absence of Title I, Part A funds, the LEA would have eliminated the activity. These records, for example, might document the reduction in non-Federal funds or explain what priorities changed to warrant a shift of non-Federal funds away from those priorities and the LEA's reasons for choosing to eliminate non-Federal support for the priorities. Please note that such documentation must be *contemporaneous* with the LEA's decision-making process; it is very difficult to rebut a presumption of supplanting after the fact.

- The activity now paid with Title I, Part A funds is allowable under Title I, Part A and consistent with all Title I fiscal and programmatic requirements. This means, for instance, that a teacher formerly paid from non-Federal funds must be (1) engaged in activities that are allowable under Title I, Part A; (2) meeting the academic needs of Title I students identified through a schoolwide program school's comprehensive needs assessment or providing supplemental services in a targeted assistance school; and (3) conducting activities consistent with the LEA's application approved by the SEA.
- Using Title I, Part A funds for the activity also meets the general standards established in Office of Management and Budget (OMB) Circular A-87 *Cost Principles for State, Local, and Indian Tribal Governments* (OMB Circular A-87). OMB Circular A-87 requires that the use of funds for a specific purpose be necessary and reasonable for the proper and efficient performance and administration of the program and be authorized and not prohibited under State and local laws or regulations.

If an LEA can successfully rebut the presumption of supplanting, the LEA may use Title I, Part A ARRA funds to support an activity that it previously supported with non-Federal funds. On the other hand, if the LEA is unable to rebut this presumption, it may not use Title I, Part A ARRA funds for an activity that it conducted the previous year with non-Federal funds because such use would be inconsistent with the Title I, Part A supplement, not supplant requirements. For additional information on the Title I, Part A supplement, not supplant requirements, see the relevant section in the Title I Fiscal Guidance [available at <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>].

IDEA:

**MODIFICATIONS TO QUESTIONS IN THE
APRIL 2009 GUIDANCE ON THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT, PART B**

**U.S. DEPARTMENT OF EDUCATION
APRIL 13, 2009**

A. Introductory Note

On April 1, 2009, the U.S. Department of Education (Department) released detailed guidance on the program. As a preface to the guidance, the Department indicated that it would provide additional or updated guidance as necessary and invited interested parties to provide comments on the document.

In response to comments received, we are updating answer D-7. This question, with the revised answer, is provided below. The Department intends to periodically incorporate new questions and answers into a revised version of the complete guidance document.

The answer to the question below modifies and supersedes the answer in the initial guidance:

D-7. How can an LEA determine that it is eligible to reduce its state and local effort by up to 50 percent of the increase in its subgrant allocation? (Revised April 13, 2009)

The first step for an LEA that is considering taking advantage of this flexibility is to compare the total Federal subgrant allocation the LEA received under the Part B Grants to States program in FY 2008 with the total subgrant Grants to States allocation they expect to receive in FY 2009 (including both the regular Part B LEA Grants to States subgrant allocation *and* any Part B IDEA Grants to States ARRA funds that the LEA receives). If the total Federal subgrant allocation under the Part B Grants to States program received by an LEA in FY 2009 exceeds the amount received by that LEA in FY 2008 under that program, the LEA may be eligible to reduce the level of local, or state and local, special education expenditures otherwise required, by up to 50 percent of this increase.

There are other provisions of the IDEA that limit whether an LEA may reduce local effort under IDEA section 613(a)(2)(C) (34 CFR §300.205). Under IDEA section 616(a) (34 CFR §300.600(a)(2)), SEAs are required to make determinations annually about the performance of each LEA using the following categories: Meets Requirements, Needs Assistance, Needs Intervention, and Needs Substantial Intervention. Under 616(f) (34 CFR §300.608(a)), if in making its annual determinations, an SEA determines that an LEA is not meeting the requirements of Part B, including meeting targets in the state's performance plan, the SEA

must prohibit that LEA from reducing its MOE under IDEA section 613(a)(2)(C) for any fiscal year. Therefore, an SEA must prohibit an LEA from taking advantage of the MOE reduction under IDEA section 613(a)(2)(C) if the LEA's determination is Needs Assistance, Needs Intervention, or Needs Substantial Intervention.

Also, IDEA section 613(a)(2)(C)(iii) requires an SEA to prohibit an LEA from reducing its MOE if the SEA has taken responsibility for providing a FAPE in the LEA because the LEA is unable to establish and maintain programs of FAPE, or the SEA has taken action against the LEA under IDEA section 616. Finally, an LEA that is required to use 15 percent of its IDEA Part B allocation on CEIS because the SEA identified the LEA as having significant disproportionality under 34 CFR §300.646, will not be able to reduce local MOE under IDEA section 613(a)(2)(C).