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CHAPTER V
Funds Allocation

5.1.0 General Statement

In 1965, Congress enacted the Elementary and Secondary Education Act commonly known as ESEA. The largest funded component of this act was Title I, designed to provide financial assistance in order to meet the particular educational needs of children who were educationally deprived and who resided in areas having high concentrations of children from low-income families. While Title I ESEA has since been amended, the basic "declaration of policy" remains the same, as most recently stated in the Education Amendments of 1978 (P.L. 95-561):

In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United states to provide financial assistance (as set forth in the following parts of this title) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children (Sec. 101).

Each of the key words or phrases in the declaration of policy expresses the intent of Congress.

- Support of Adequate Educational Programs to Meet Special Educational Needs: Most financing of local educational agencies (LEAs) comes from local or state revenues. However, LEAs with high concentrations of low-income families may not be able to support adequate educational programs. Hence, financial
assistance is provided by the Department of Education to states on the basis of incidence of low-income families and, in turn, to counties, and to LEAs. Applications from LEAs have to be approved by the State Educational Agencies (SEAs). LEAs, however, may not use such Title I funds for "general aid." Rather, these funds must provide for adequate educational programs which meet the particular educational needs of educationally deprived children from areas with concentrations of low-income families. The words "special educational needs" in Title I ESEA should not be confused with the phrase "special education" as it is commonly used to describe the instructional programs available to handicapped students.

- Expand and Improve: Title I funds must be used by LEAs to expand and improve educational programs and services for students eligible to be served under Title I ESEA. While LEAs must provide all children with their basic educational program, Title I funds can only be used to provide extra or supplemental services to meet the particular educational needs of educationally deprived children who are otherwise eligible. Title I ESEA funds must also be used to improve the quality of educational programs for educationally deprived children through proper planning and program design.

- Educational Programs: The supplemental educational programs funded under Title I must be designed to meet the specific educational needs of children selected for participation in the program. The programs must be of sufficient size, scope, and quality with stated performance objectives for each project, based upon an assessment of the needs of eligible students. Supportive services may be provided if they are clearly related to the educational needs of children being served and are not available from other funding sources.

- Educationally Deprived Children In Areas with Concentrations of Children from Low-Income Families: The intended beneficiaries of Title I ESEA are educationally deprived children who reside in school attendance areas with high concentrations of children from low-income families. Eligible school attendance areas are identified and ranked on the basis of family income level or directly-related information. With a few exceptions, those eligible attendance areas or schools with the highest percentage or numbers of children from low-income families are selected for Title I ESEA funding. Individual children within an eligible attendance area or a school are eligible to receive Title I services if they are educationally deprived. Those with the greatest needs actually participate in the Title I program.
5.2.0 Basic Concepts for Funds Allocation

In this chapter, four basic funds allocation concepts are covered. These concepts and their interrelationships are briefly highlighted below.

- **Maintenance of Effort:** Before it can receive title I funds, an LEA must demonstrate that it has maintained its level of fiscal effort from state and local funds from one year to the next.

- **Comparability of Services:** Before it can receive title I funds, an LEA must demonstrate that it uses state and local funds to provide services in title I project areas which, taken as a whole, are at least comparable to the services provided with state and local funds in schools which serve attendance areas that are not receiving title I assistance. In other words, before it can receive its title I allocation, the LEA must show that it treats its title I schools at least as well as its non-title I schools with regard to the distribution of its regular educational expenditures.

- **Excess Cost:** An LEA may use its title I funds only to pay for the excess costs of services, that is, those costs directly attributable to the title I project that exceed the LEA's average per pupil expenditure for the grades included in the title I project.

- **Supplement not Supplant:** An LEA may use title I funds only to supplement the level of funds that would, in the absence of title I funds, be made available for the education of those children actually participating in title I projects in certain cases and those children not only participating but also residing in eligible (albeit not served) attendance areas in certain other cases. Conversely, under no conditions may an LEA use title I funds to supplant these normally available funds.

All four of these concepts work together to ensure that an LEA does not use title I funds to reduce its basic educational spending. In other words, these concepts -- maintenance of effort, comparability, excess costs, and supplement not supplant -- are key control mechanisms in making certain that LEAs use their title I funds "to expand and improve their educational programs" and address the "special educational needs" of appropriate children.
These four concepts or provisions are closely related. As Illustration 5.1 depicts, taken together they cover LEA spending from the district level to the child level.

5.3.0 General Requirements for Funds Allocation

Title I, ESEA, Secs. 126(a), 126(e)
CFR 116.91, 116.92, 116.94
CFR 116a.110-125, 116a.130-143

The Title I ESEA Declaration of Policy provides that title I funds are to be used to expand and improve educational programs and to meet the special educational needs of educationally deprived children. Therefore, title I funds must not replace state and local funds used to provide for the free public education of children but must be spent only for the “extras,” that is, those services which are over and above those regularly or normally provided.

The proper spending of both regular or “normal” state and local funds and Title I funds is guided by four primary statutory criteria. First, an LEA must maintain effort, or demonstrate that it has not reduced state and local spending from year to year. Second, the LEA must show that its distribution of regular state and local funds to title I project areas or schools is comparable to its distribution of these funds to non-project areas or schools. Third, the LEA may use Title I funds only to pay for the excess costs of a service. Fourth, the LEA must use title I funds only to supplement, not supplant state and local funds.

Each of these four requirements is discussed in detail in the following sections of this chapter.
ILLUSTRATION 5.1
Relationships Among Funds Allocation Provisions

- Maintenance of Effort
- District Level
- Comparability of Services
- Project Area (or school) Level
- Excess Costs and Supplement Not Supplant
- Child (or Program) Level
5.4.0 Specific Requirements for Funds Allocation

5.4.1 Maintenance of Effort (Sec. 126(a); CFR 116.91, 116.92)

Many federal laws contain maintenance of effort provisions to ensure that state and local funds are not reduced from year to year because of the availability of federal funds. The maintenance of effort requirement has been part of title I since its inception and has been modified very little over the years. The requirement is essential in ensuring the supplemental nature of title I at the district level; hence, it is strictly applied. However, it is not inflexible and does allow for some relief in extraordinary circumstances.

In essence, the maintenance of effort requirement specifies that the SEA may not approve an LEA's title I application for any fiscal year unless either:

1. The LEA demonstrates in its annual application to the SEA that the combined fiscal effort— as measured by either the average per student (per child included in Average Daily Attendance) expenditure or the aggregate expenditures—of the LEA and the State for the provision of free public education in the LEA has not been reduced by two percent or more over the two fiscal years immediately preceding the application fiscal year (116.91(a)(b)(f)).

OR

2. The Secretary of Education, at the written request of the LEA or SEA, rules that the LEA is in "substantial compliance" with the requirement, that is, any decrease in expenditures did not result in any decrease in the level of services (116.91(g)).

The maintenance of effort requirement is relaxed only in very special cases where the Secretary grants a waiver for one fiscal year only, due to "exceptional and unforeseen circumstances" (116.92(a)). Criteria for the Secretary to use in making the judgment to grant a waiver are specified by the regulations and include both examples of exceptional and unforeseen
circumstances (e.g., a natural disaster or a major and unforeseen decline in State or local financial resources) and the requirement that the agency requesting the waiver use every opportunity available to maintain effort before making the request (116.92(c)).

If an LEA fails to either meet the maintenance of effort requirement or to secure a waiver from the Secretary, the SEA may not approve any expenditures of title I funds by the LEA for the fiscal year under consideration. For example, if an LEA is making application for its 1980-81 title I grant and fails to either establish or waive maintenance of effort from fiscal 1977-78 to fiscal 1978-79, the two years preceding the year in which the application is filed, then it will not be authorized to obligate any title I funds in fiscal 1980-81. This includes funds the LEA may have carried over into 1980-81 from previous years when it was in compliance with maintenance of effort.

In essence, all title I funds which would otherwise be available to the LEA during the violation year, including carry-over, must be considered as available for redistribution to other LEAs (ESEA Title I Program Directive A101-8, June 1, 1979). If, after losing title I funds for a year, the LEA wishes to again apply for a title I grant, it may do so.

Finally, the maintenance of effort requirement must be met on an annual basis. Where LEAs file multi-year applications, they must nevertheless file annual updates of their maintenance of effort, showing that they have met the requirement each year.

In meeting the maintenance of effort requirement, LEA's generally move through the sequence of procedural steps and decisions shown in Illustration 5.2. Each of these steps is discussed in detail in the following sections.
A Possible Sequence of Steps for Meeting the Maintenance of Effort Requirement

1. Gather Data Required to Compute Maintenance of Effort

2. Determine if Requirement is met through usual computation formula or through "substantial compliance"

3. YES
   - Submit proof to SEA in Annual Application

4. NO
   - Request Waiver
   - Lose Funds
Data Required to Compute Maintenance of Effort

As noted above, the LEA may measure combined fiscal effort by either average per student expenditure or aggregate expenditures. Where average per student expenditures are used, the pupil base must be determined by using the actual average daily attendance, not the actual average daily enrollment (116.91(b)).

The specific expenditures to be considered in the combined fiscal effort are those that are defined by law and regulation as expenditures for free public education (Sec. 198(a)(6); 116.91(c)). These include:

1. State and local expenditures for administration, instruction attendance, health services, pupil transportation, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. In calculating the combined fiscal effort as reflected in these State and local expenditures, the LEA must be sure to include all funds provided under any State or local special program and any State phase-in program. (As discussed in Sections 5.4.2 and 5.4.3 of this Manual, under certain conditions funds for State and local special programs and State phase-in programs may be excluded from the supplement not supplant and comparability requirements Nevertheless, they are always included in maintenance of effort.)

2. Federal expenditures for free public education for which the LEA is not accountable to the federal government. Currently, Impact Aid funds are the only federal funds that fall into this category.

Certain other expenditures are specifically excluded by the law and regulations from the maintenance of effort requirement (Sec. 198(a)(6); 116.91(d)).

1. State and local expenditures for community services, capital outlay, and debt services.
2. Federal expenditures for which the LEA is accountable to the federal government, such as: funds granted under Title I or parts B and C of Title IV, Emergency School Aid Act (ESAA) funds, Johnson-O'Malley funds, Economic Opportunity Act of 1964 funds, and Forest and Grazing Lands funds.

Determining If the Requirement Is Met

The basic computation of maintenance of effort is quite straightforward. Using either the average per student expenditure or the aggregate expenditures measure—both of which will include and exclude the specific expenditures described above—the LEA simply subtracts the level of effort in the first year preceding the fiscal year in which it is making application from that in the second preceding year (116.91(e)).

In performing this computation, the LEA may round off expenditures. If it is using the average per student measure, the expenditures per pupil for each of the fiscal years being compared may be rounded to the nearest 10 dollars. If it is using the aggregate expenditures measure, the aggregate expenditures for each of the fiscal years being compared may be rounded to the nearest one hundred dollars (116.91(e)).

Title I regulations permit a small decrease of less than two percent from the second to the first preceding fiscal year (116.91(f)). In other words, if the expenditure difference between the second and first preceding fiscal year does not equal or exceed two percent of the second preceding year's expenditure, the LEA is in compliance with maintenance of effort requirements.

This is expressed computationally by the following formula:

\[
\frac{\text{second year expenditures} - \text{first year expenditures}}{\text{second year expenditures}} \geq 0.98 \text{ second year}
\]
The only problematic aspect of the maintenance of effort computation is the proper identification of the first and second preceding fiscal years. This selection varies depending on which of three situations prevails for an LEA. These possible situations are:

1. In ordinary cases, the LEA computes maintenance of effort "as usual," that is, there have not been any compliance problems in preceding years.

2. The LEA computes maintenance of effort after failing to meet the requirement or to secure a waiver and consequently losing its title I funds for a year or

3. The LEA computes maintenance of effort after failing to meet the requirement but receiving a waiver for a year.

In the first two instances, the LEA must show that maintenance of effort has not declined over the two fiscal years immediately preceding the application fiscal year. As the following tables show, the application fiscal year precedes the actual funding or project fiscal year one by one. The SEA in each state determines the beginning and ending dates of the twelve month period comprising the fiscal year. Hence, the calendar span of this period may vary from state to state. The application fiscal year is used as the base rather than the actual project year to avoid reliance on expenditure estimates.

### In the Ordinary Case

<table>
<thead>
<tr>
<th>Project Fiscal Year</th>
<th>Application Fiscal Year</th>
<th>First Preceding Fiscal Year</th>
<th>Second Preceding Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>79-80</td>
<td>78-79</td>
<td>77-78</td>
<td>76-77</td>
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<tr>
<td>80-81</td>
<td>79-80</td>
<td>78-79</td>
<td>77-78</td>
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<tr>
<td>81-82</td>
<td>80-81</td>
<td>79-80</td>
<td>78-79</td>
</tr>
</tbody>
</table>
In the Case Where Funds Have Been Lost

<table>
<thead>
<tr>
<th>Post-Violation Project Fiscal Year</th>
<th>Violation/ Application Fiscal Year</th>
<th>First Preceding Fiscal Year</th>
<th>Second Preceding Fiscal Year</th>
<th>Original (for violation) Preceding Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>81-82</td>
<td>80-81</td>
<td>79-80</td>
<td>78-79</td>
<td>77-78</td>
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<td>82-83</td>
<td>81-82</td>
<td>80-81</td>
<td>79-80</td>
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<td>83-84</td>
<td>82-83</td>
<td>81-82</td>
<td>80-81</td>
<td>79-80</td>
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In the case where funds have been lost, the procedure allows the LEA to drop the problematic, original second preceding year (e.g., 1977-78) and proceed from the lower level of effort established in the original first (but now second) preceding year (e.g., 1978-79). However, the LEA has paid a severe penalty in the loss of all title I funds, including often substantial amounts of carry-over, and the consequent disruption of its title I program during the violation year.

In contrast, when the LEA prepares its application for the fiscal year following a year in which it received a waiver, it cannot consider the waiver year in its calculation of maintenance of effort. It must instead use the same time periods that applied when the waiver year was the project fiscal year. In essence, the waiver year drops out of the calculation, and the combined fiscal effort is computed on the funding base that would have been required had the waiver not been granted (116.92(d)).

For example, an LEA requests and receives a waiver as shown by the following table:

In The Case Where Waiver Was Granted

<table>
<thead>
<tr>
<th>Waiver Fiscal Year</th>
<th>Application Fiscal Year</th>
<th>First Preceding Fiscal Year</th>
<th>Second Preceding Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>80-81</td>
<td>79-80</td>
<td>78-79</td>
<td>77-78</td>
</tr>
</tbody>
</table>
When it applies for its fiscal 1981-82 allocation, the LEA must calculate its maintenance of effort as though the waiver year had not happened, and again use 1978-79 as the first preceding fiscal year and 1977-78 as the second preceding fiscal year. The rationale behind this procedure is simply that it prevents the LEA from significantly reducing effort without paying any penalty.

If an LEA completes its maintenance of effort computations as described above and finds that it has failed to fall within the allowed deviation of less than two percent, it may still be able to meet the requirement by successfully petitioning the Secretary of Education to rule that it is in substantial compliance. In essence, substantial compliance means that an LEA's decrease in expenditures from the second to the first preceding fiscal year did not result in any decrease in the level of services (116.91(g)).

For example, a change in staffing may result in a lower paid employee's providing the same level of service in terms of group size, pupil/teacher ratio, materials, etc., that was previously provided by a more senior and higher paid employee. In such an instance—and especially if there were special circumstances for the staffing change—the Secretary may rule substantial compliance.

It must be strongly emphasized that a ruling of substantial compliance is given in only the most unusual circumstances. Further, the LEA and/or SEA must go to considerable lengths to demonstrate and fully substantiate that services indeed have not been reduced. The agency must submit a written request to the Secretary that clearly and exhaustively documents and demonstrates its case for a positive ruling. After review of the case, the Secretary then may issue a written determination that the LEA and/or the SEA is indeed in substantial compliance with maintenance of effort.
Waiver of Maintenance of Effort

Under certain circumstances, the Secretary may waive the maintenance of effort requirement for one fiscal year only (116.92). The decision to waive is made by the Secretary and is based on a ruling that an LEA's reduction of effort is due to "exceptional and unforeseen circumstances" and that the LEA has exhausted all opportunity under state and local law to maintain effort in spite of these circumstances.

Exactly what constitutes exceptional and unforeseen circumstances must be ruled by the Secretary on a case by case basis. However, the regulations (116.92(c)) and the legislative history have established some strong guidelines. Currently, exceptional and unforeseen circumstances included as examples in the regulations are:

1. A natural disaster

2. A major and unforeseen decline in state or local financial resources

3. A major and unforeseen decline in federal funds that are used for free public education and for which the LEA or SEA is not accountable to the federal government (e.g., Impact Aid funds)

4. A change in staffing at the LEA which results in a lower paid employee's providing the same level of service previously provided by a senior and higher paid employee. (The Secretary may also rule substantial compliance in this instance).

5. An extended strike (which may affect the revenue base in a number of ways)

6. Other exceptional and unforeseen circumstances, rather than acts of voters, state legislatures, school boards, or other governmental bodies.
It is extremely important to understand that these situations do not by their very nature constitute sufficient cause for granting a waiver. The guiding principle (which is summed up by the last condition) is that neither the state nor the local legislative or governmental body may undertake voluntary and controllable acts—even in the face of natural disasters and the like—to reduce educational effort.

For example, a natural disaster such as a hurricane might destroy substantial amounts of property in a community. As the valuation of this property plummets, the community's revenue base may also drop sharply. As a consequence, there may be significantly less money available for all community services, including schools, although the fiscal distribution formula itself has not changed. Hence, the level of effort may decline beyond the allowable deviation.

In such a case, the Secretary would likely grant a waiver. If, however, the disaster-struck community decided to redistribute its diminished funds in such a way that the education allocation was substantially reduced—perhaps using school dollars to pay for emergency police and fire services—a waiver would possibly be denied.

This principle becomes even more salient in considering waivers under the "major and unforeseen decline in state or local financial resources" condition. This condition covers such circumstances as a decrease in the community revenue base due to the departure of a major industrial or commercial facility or a sudden collapse of the market for major agricultural products. In contrast, the decision of a state or local legislature to cut the education budget is not considered to be a major and unforeseen decline. The rationale is simply that a state or local legislature's budget actions are "voluntary and controllable acts," and hence are "in effect, a refusal to use revenue resources which are available" (H. Rept. 95-1137).
This rationale historically has been extended to include voter defeats of school levies, on the grounds that the community—like legislatures—is making an essentially "voluntary and controllable" decision in rejecting the levy. Recently, the application of this principle to the school levy situation has been adjusted somewhat to allow for a waiver to the maintenance of effort requirements under the very special circumstances of a double levy failure where levies provide substantial portions of school operating budgets and double failure means that the school district cannot hold another levy during that school year.

To request a waiver, an LEA or SEA must prepare a written request and submit it to the Secretary (116.92(b)). The request must include at least the following information:

1. A statement of the relevant expenditures for the two fiscal years in question.

2. A statement of the decrease in maintenance of effort in question.

3. A description of the circumstances that the LEA or SEA considers to be exceptional and unforeseen.

4. A description of all efforts the LEA has made to maintain effort despite these circumstances (ESEA Title I Program Directive A101-8).

Upon review of the LEA's request, the Secretary either grants or denies the waiver. If the waiver is denied, the LEA loses all authority to obligate title I funds during the fiscal year under consideration, including carry-over funds.

If the waiver is granted, the LEA receives a portion of its regular title I allocation for the fiscal year in question. Specifically, the LEA's regular allocation for the waiver year is reduced by the same percentage as the percentage by which it failed to maintain its fiscal effort (116.92(d) (1)).
For example, if the LEA failed to maintain effort by 10 percent and is granted a waiver, its regular allocation for the waiver year will be reduced by 10 percent. Its carry-over will not be affected. The waiver may not extend beyond one fiscal year.

The limitation of the waiver to one fiscal year emphasizes the fundamental meaning of the waiver authority. The purpose of the waiver is not to allow an LEA to permanently reduce level of effort, but simply to provide a grace period, during which time the LEA can find ways of maintaining effort in spite of the special circumstances that allow a waiver. For example, the LEA might pass a special school levy to maintain its school budget in the face of a sudden reduction in the tax base due to the departure of a major industry. Similarly, a community might reallocate funds from some other source to make up educational operating costs that could not be secured through a successful levy.

5.4.2 Comparability of Services (Sec. 126(e); 116a.112-125)

As noted previously, comparability of services is a key provision in Title I ESEA. It has been a part of the law and regulations since the early 1970s and serves to guarantee the supplemental nature of title I funds at the project area (or school) level. In most instances, project areas and schools are coterminous. Hence, the terms school and project area are used synonymously throughout this section of the Manual. The rare instance where schools and project areas are not coterminous does not present any special problem in comparability determinations, and is discussed in this section. Comparability means that an LEA may receive its annual allocation of title I funds only if it uses state and local funds to provide services in title I project areas which, as a whole, are comparable to the services provided
with state and local funds in schools which serve attendance areas that are
not receiving title I assistance (116a.112(a)). In other words, an LEA
cannot shortchange its title I schools in favor of its non-Title I schools
and then use title I funds to make up the difference. It must equalize the
distribution of its regular resources before title I funds come into the
picture.

This principle of equalization of services pertains even where all of an
LEA's schools are title I schools. In this case, an LEA may receive title
I funds only if it uses state and local funds to provide services which,
taken as a whole, are substantially comparable across all schools in the LEA
(116a.112(b)). Once again, the LEA cannot shortchange some of its schools in
favor of others, even though all are receiving title I funds.

Under certain conditions, LEAs are allowed to exclude particular state
and local funds from comparability determinations. Where an LEA is using
state and local funds on its own initiative to provide compensatory, bilin-
gual, and special education programs, and/or is using state funds to provide
a State phase-in program, it does not have to consider these funds as part of
the "regular" state and local funds which, under comparability, must be
equalized across title I and non-title I schools (116.118(a)). These same
funds do not have to be considered in meeting excess costs requirements (see
Chapter 5.4.3).

Finally, comparability of services must be demonstrated annually by
means of a comparability report submitted to the SEA on or before December 1
of each fiscal year. With some very specific exceptions, all LEAs receiving
title I funds are required to demonstrate comparability by submitting a
comparability report (116a.113(a)). LEAs that are out of compliance with
the requirement on December 1 are subject to loss of significant portions of
their title I funds for the fiscal year in question (116a.123-124).

In spite of the simplicity of the basic requirement, comparability in
its execution is complex. Department of Education regulations require that
LEAs meet stringent reporting requirements on a tightly specified time schedule. This section of the manual discusses these issues in detail. To facilitate understanding of what many consider to be the most operationally difficult of the title I funds allocation provisions, the discussion of comparability is organized around the flow chart in Illustration 5.3. It depicts the basic decision making and procedural steps that an LEA goes through in demonstrating comparability of services.

Submission of Comparability Reports, Comparability Criteria, and the Reporting Cycle

As the first step in addressing the comparability requirement, an LEA might ask three basic questions:

1. Who must submit a comparability report?

2. What are the criteria for meeting the comparability requirement?

3. What is the comparability reporting cycle?

The answers to these questions will form the basis for full understanding of the comparability requirement and the care with which it must be addressed.

Submission of Comparability Reports

Each LEA that receives title I funds—except those LEAs specified below—must submit an annual report to the SEA demonstrating its compliance with the comparability requirement (116a.113).

Exception: LEAs Not Required to Submit a Report

LEAs that meet any of the following criteria are not required to submit a comparability report (116a.113(b)):
ILLUSTRATION 5.3
Flow Chart For Meeting Comparability Requirements

1. Determine Which LEAs Must Demonstrate Comparability
   - Understand the Criteria for Demonstrating Comparability
   - Understand the Comparability Reporting Cycle
   - Identify and Group Schools for Comparability Reporting
     - Gather Data and Compute Comparability
     - Maintain Proper Records
1. Those that receive 95 percent or more of their funds for education from federal sources.

2. Those that operate only one school serving children in the grade levels to which Title I services are provided.

3. Those that were not required to file a comparability report by December 1, 1978, and--under the regulations in effect at that time--would not have been required to report on the comparability of services in Title I schools.

Criteria for Meeting the Comparability Requirement

When an LEA has both Title I and non-Title I schools, it meets the comparability requirement if it demonstrates that, for schools serving corresponding grade levels,(In demonstrating comparability, LEAs must group their schools into grade-span categories.):

1. The number of children enrolled per instructional staff member for each Title I school is not more than 105 percent of the number of children enrolled per instructional staff member in the non-Title I schools in the LEA; and

2. The per child expenditure of state and local funds for instructional staff salaries (excluding longevity) in each Title I school is not less than 95 percent of such expenditures in the non-Title I schools (116a.116(a)).

In other words, within a given grade span, an LEA compares each individual Title I school with the group of non-Title I schools. The pupil/instructional staff ratio for each Title I school may not exceed 105 percent of the average non-Title I ratio. Similarly, the pupil/instructional staff salary ratio for each Title I school may not drop below 95 percent of the average non-Title I ratio.
When an LEA has only title I schools, it meets the comparability requirement if it demonstrates that, for schools serving corresponding grade levels:

1. The number of children enrolled per instructional staff member for each school is not less than 95 percent of the number of children enrolled per instructional staff member in the group of schools serving the lowest percentages or numbers of children from low income families. This group may not include more than 50 percent of all the schools in the LEA; and

2. The per child expenditure of state and local funds for instructional staff salaries (exclusive of longevity) in each school is not less than 95 percent of such expenditures in the group of schools serving the lowest percentages or numbers of children from low income families. This group may not include more than 50 percent of all the schools in the LEA. (116a.116(b)).

In other words, where all schools in an LEA are title I schools, the LEA must split its schools into two groups for the purpose of the comparability comparison. One group will consist of those title I schools that are the lowest ranked, that is, have the smallest percentages or numbers of children from low-income families. This lowest ranked group is analogous to the non-title I schools in LEAs with both type of schools and is used as the baseline. Up to 50 percent of the lowest ranked schools in a grade span may be placed in this baseline group. The other group of schools consists simply of all schools not included in this lowest ranked set. The LEA then demonstrates comparability by comparing each title I school with the average of the lowest ranked schools on the two measures.

Finally, during the school year LEAs must periodically determine whether they are maintaining comparability and make whatever adjustments are necessary to maintain compliance (116a.120). The exact dates or time periods for making these periodic determinations are set by the SEAs, which vary in the maintenance reporting requirements they have established. For example, many SEAs require that their LEAs file a formal maintenance of comparability
report at two or three points during the school year. Others require that LEAs simply update their comparability records on a monthly or a quarterly basis, and then these records are reviewed during the SEA's on-site monitoring visits.

The Comparability Reporting Cycle

Department of Education regulations and policies establish a well defined comparability reporting schedule for both SEAs and LEAs. The schedule covers a span of several months—July 1 through March 1—and is designed to provide LEAs with ample time and opportunity to identify problems, make necessary adjustments, and report the effect of these adjustments.

The cycle has five key dates: July 1, November 1, December 1, March 1, and May 1. The first four essentially constitute opportunities for an LEA to first assure and then demonstrate comparability. The fifth is an SEA reporting date. Within this basic framework, however, SEAs can and generally do establish their own reporting dates and requirements. These, of course, vary from SEA to SEA. However, they do not absolve either the SEA or the LEA from the federal reporting schedule, which is discussed below.

July 1: Submitting an Assurance of Comparability

On or before July 1, every LEA that is required to demonstrate comparability must submit as part of its annual title I application (or annual update, if it files a multi-year application) an assurance that it will maintain comparability in the schools that were served by its Title I project during the preceding fiscal year (116a.119).

The particular format of this assurance is determined by each SEA and specified in the application forms that its LEAs must use. The formats vary from state to state, but all are equally binding for the LEAs.
November 1: The Last Possible Original "Date Certain"

November 1 is not a date on which a report or assurance must be submitted. However, it is a critical date in the comparability timetable, for it is, by regulation, the last possible date certain that an SEA may establish for its LEAs' original comparability reports (116a.115).

All comparability reports—whether the original, i.e., first, report or the revised, i.e., subsequent, report(s) filed to show that violations found in the original were corrected—have a date certain. This date is simply the date on which comparability data are collected. All data that an LEA uses in a given comparability report must be as of the same date, that is, the date certain (116a.121).

For the original comparability report, the SEA establishes the date certain. (The date for subsequent or revised reports is essentially determined by the length of time it takes the LEA to correct the violations found in the original report.) This original date may be any date up to and including November 1, but it may not be any later than November 1 (116a.115).

SEAs often choose an original date certain that coincides with major intrastate data collection and reporting requirements. For example, many states require LEAs to report student FTE counts soon after school opens for the purpose of distributing state education funds. To avoid excessive reporting burdens, many of these states establish an original date certain that coincides with the FTE count date. However, there is no federal requirement that SEAs adopt this or any other approach.

December 1: Demonstrating Comparability

On or before December 1, LEAs must submit a report to the SEA that demonstrates compliance with the comparability requirement (116a.113(a)).
If an LEA is out of compliance after December 1, it may be severely penalized. The penalties for failing to meet the comparability of services requirement are discussed later in this chapter.

Since the original date certain may be no later than November 1 and the comparability demonstration date itself is December 1, LEAs have at least a month to discover and correct compliance problems. For example, an LEA may prepare and submit its original comparability report as of November 1, only to discover that it is out of compliance with the requirement. If it corrects the problem by December 1 and files a revised report with the SEA showing that the problem has indeed been corrected, it meets the requirement and faces no penalty.

To facilitate the compliance process, many SEAs designate an original date certain sometime in early October. This gives LEAs more time to assess their situation and come into compliance by December 1. Some SEAs even encourage their LEAs to do dry runs of their comparability reports before the original date certain, if possible. This helps to anticipate and correct problems even more in advance of the final date.

March 1: The Cutoff Date for Correcting Violations Unresolved on December 1

If an LEA was out of compliance on December 1, it has up until March 1 to correct the violation(s) and come into full compliance. This does not mean that the LEA is free of all liability or penalty until March 1. Quite the contrary, the LEA may be liable for penalties from December 1 until it corrects the violation, whether that correction comes on December 2 or February 28 or any date between.

As of March 1, however, no further leniency is extended to the LEA. If it is not in compliance by this date, it is considered in violation for the fiscal year in question, and appropriate penalty actions are taken by the SEA.
May 1: SEA Report to the Secretary

On or before May 1, each SEA must submit a report to the Secretary (116a.125). This report summarizes the comparability situation within the state and must enumerate the following:

1. The number of LEAs that are operating title I projects.

2. The number of LEAs that submitted comparability reports.

3. The number of LEAs that were required to submit revised comparability reports.

4. Any actions that the SEA has taken with regard to LEAs that were out of compliance on December 1.

5. Any reallocation the SEA has made of the unobligated title I funds of LEAs that were still out of compliance by March 1.

6. Any refunds of title I funds used to operate non-comparable schools that the SEA has made or will make to the Department.

Identify and Group Schools (or Project Areas) for Which Comparability Must be Reported

As the second step in addressing the comparability requirement, an LEA might ask two more questions:

1. For which schools (or project areas) must we demonstrate comparability of services?

2. How are schools to be grouped for purposes of comparison?

The answers to these questions will form the basis for the LEA's actual calculation of comparability of services, and hence are of considerable importance.
Identification of Schools (or Project Areas)

With the exception discussed below, an LEA must demonstrate comparability of services for all of its schools (or project areas) which receive Title I services. As noted previously, in most cases schools and project areas will be contiguous. Occasionally, however, the situation arises where this is not the case, as illustrated by the examples discussed below. This does not present any problem in demonstrating comparability; the basic requirement holds, and the LEA simply takes care to gather and compare data at the project area rather than the school building level.

Schools whose enrollment is equal to or less than 100 students may be excluded from comparability reports, regardless of whether or not such units are served by Title I. However, if such schools are excluded, the LEA must submit an assurance to the SEA that it will allocate state and locally funded staff to these units without regard to the availability of Title I funds (116a.114(d)).

Examples: Non-contiguous Schools and Project Areas

One recent instance of non-contiguous schools and project areas involved an LEA where a Title I school burned down shortly after the school year began. The students and staff from the burned school were dispersed to three other nearby schools until a new plant could be built the next spring. When the LEA filed its fall comparability report, however, the dispersed students and faculty were not treated as residing in the three host schools, but rather as residing in the attendance area that was served by the burned school. In accordance with the statute, comparability was demonstrated for this attendance area, which still continued to receive Title I services, although these services were temporarily delivered in the three host schools.

Hypothetically, another instance might arise from a sudden increase in enrollment in a particular attendance area. The school serving this
area might not be able to house the overflow of students, thereby forcing the LEA to rent space temporarily in nearby churches or community centers, or to house students and staff in schools outside the attendance area. These various schools and centers would not be treated as separate attendance areas, but rather as multiple campuses for the single attendance area in question. Comparability would be demonstrated for the total area, encompassing all the schools and centers involved.

Grouping Schools for Comparability Comparisons

As discussed in Section 5.4.2, title I regulations require that title I schools be comparable to non-title I schools where an LEA has both types of schools. Where an LEA has only title I schools, services in each school must be comparable to average of the lowest ranked (those schools with the lowest numbers or percentages of children from low-income families).

These comparisons are done within corresponding grade levels, and, if the LEA desires and is eligible to do so, by enrollment size categories within each corresponding grade span. In other words, title I schools are compared with non-title I or lowest ranked schools of similar grade span and (possibly) enrollment size. The exception to this general rule is if a Title I school is the only, or single school in a particular grade span or grade/size category, there is no school or set of schools with which it can be compared. Hence, the LEA is not required to demonstrate comparability for such a school.

Thus, an LEA may go through two or three grouping steps to develop its final comparison categories. First, it must group all of its schools by grade span, regardless of whether or not title I services are provided in a particular grade. Second, within a grade span, it may group schools by enrollment size if it is eligible for and chooses to make this further grouping. Third, within each grade span or grade span/size category, it must group schools according to Title I/non-Title I status if both types are
present in the LEA, or by highest ranked/lowest ranked status if only title I
schools are present in the LEA. Each of these grouping steps is discussed
below.

**Grouping by Grade Span**

For grouping schools by grade spans, the regulations provide consider-
able flexibility (116a.117(a)). An LEA is constrained only with regard to
the maximum number of groups allowed and the placement of those individual
schools which serve grades in more than one of its chosen grouping cate-
gories.

Specifically, with the exceptions detailed below, an LEA may group all
of its schools by corresponding grade levels in up to three groups. If an
LEA has a school that serves grades in more than one of its chosen groups,
the LEA must place this school in the group with which it has the most grade
levels in common. In the event that the school has the same number of grade
levels in common with two or more of the LEA's chosen groups, the LEA must
place the school in the group that encompasses the lower grade levels
(116a.117(d)(4)). There are two exceptions to these rules.

**Exception No. 1: LEAs that may not have up to three
grade groupings of schools**

LEAs which have certain limited grade spans may not have up to three
groups of schools for comparability purposes, but rather must adhere to
certain grouping constraints. Specifically,

1. LEAs serving seven or less grade levels above kindergarten are
   limited to one group.

2. LEAs serving eight or nine grade levels above kindergarten are
   limited to two groups.
3. LEAs serving any levels from grades six through twelve—but only these levels—are limited to:

a. two groups if the LEA serves five or more grade levels,

b. one group if the LEA serves four or less grade levels.

Exception No. 2: LEAs that may have more than the allotted number of grade groupings

The second exception applies to an LEA which has schools that serve eight or more grades above kindergarten (as do many rural schools). This LEA may choose to place these schools in a group of their own. This group may, if the LEA desires, constitute an additional group which is over and above the number of groups to which it is ordinarily limited.

In other words, if the LEA is eligible for and has elected to have three groups of schools, its schools that serve eight or more grades above kindergarten may be treated as a fourth group. Similarly, if the LEA is constrained, as specified in first exception, in the number of grade groupings it may have, its schools that serve eight or more grades above kindergarten may still be treated as an additional group over and above the number of grade groupings to which the LEA is ordinarily limited.

There are any number of ways that an LEA might group its schools when it has the option of using more than one grade grouping. The following table illustrates a few possibilities. It is easy to see that even for these hypothetical LEAs, the grouping choices might be different than those illustrated.
<table>
<thead>
<tr>
<th>LEA</th>
<th>Possible LEA Grade Span Organizations</th>
<th>Maximum number of Groups Allowed by Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>K-6 7-8 9-12</td>
<td>3</td>
</tr>
<tr>
<td>B</td>
<td>K-3 4-6 7-12</td>
<td>3</td>
</tr>
<tr>
<td>C</td>
<td>K-5 6-8 9-12</td>
<td>3</td>
</tr>
<tr>
<td>D</td>
<td>K-8 9-12</td>
<td>3</td>
</tr>
<tr>
<td>E</td>
<td>K-6 7-12</td>
<td>3</td>
</tr>
<tr>
<td>F</td>
<td>K-6 7-8 9-12 K-8</td>
<td>4*</td>
</tr>
<tr>
<td>LEA G</td>
<td>K-6 7-8 or 9</td>
<td>2</td>
</tr>
<tr>
<td>H</td>
<td>K-4 5-6, 7-8 or 9</td>
<td>2</td>
</tr>
<tr>
<td>I</td>
<td>K-6, 7-8 or 9</td>
<td>2</td>
</tr>
<tr>
<td>J</td>
<td>K-6 7-8 or 9 K-8</td>
<td>3*</td>
</tr>
<tr>
<td>LEA K</td>
<td>6-8 9-12</td>
<td>2</td>
</tr>
<tr>
<td>L</td>
<td>7-8 9-12</td>
<td>2</td>
</tr>
<tr>
<td>M</td>
<td>8-9 10-12</td>
<td>2</td>
</tr>
<tr>
<td>N</td>
<td>6-8, 9-12</td>
<td>2</td>
</tr>
<tr>
<td>O</td>
<td>6-8 9-12 1-8</td>
<td>3*</td>
</tr>
</tbody>
</table>

*Where there are schools that serve eight or more grades above kindergarten.
Grouping by Enrollment Size Within Grade Span

If an LEA is eligible and desires to do so, it may further group schools within grade span categories by size of enrollment. An LEA is eligible to divide the schools within a grade span into two groups according to size of enrollment if the largest school’s enrollment is at least twice that of the smallest school (116a.117(c)). The division can come at any point on the continuum from the smallest to the largest school and is made without regard to title I/non-title I or highest ranked/lowest ranked status.

The following table illustrates a hypothetical size split within one grade grouping, K-6.

<table>
<thead>
<tr>
<th>K-6 GRADE SPAN</th>
<th>STUDENT FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group #1</td>
<td></td>
</tr>
<tr>
<td>Smaller Schools</td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>125</td>
</tr>
<tr>
<td>B</td>
<td>175</td>
</tr>
<tr>
<td>C</td>
<td>250</td>
</tr>
<tr>
<td>Group #2</td>
<td></td>
</tr>
<tr>
<td>Larger Schools</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>390</td>
</tr>
<tr>
<td>E</td>
<td>420</td>
</tr>
<tr>
<td>F</td>
<td>500</td>
</tr>
</tbody>
</table>

This grade span group qualifies for the size split because school F is at least twice as large as school A. In this illustration, the LEA has elected to split at the middle of the continuum.

Alternately, the LEA might have elected to split between schools D and E, thus creating a group of smaller schools to include schools A-D, and a larger group to include schools E-F. Obviously, the choice of the split point is of considerable importance to LEAs eligible for and electing this grouping procedure. The size groupings may be established so as to be of the
greatest benefit to the LEA in demonstrating comparability. Further, they may be changed on revised or maintenance comparability reports if it is to the LEA's benefit.

**Grouping by Title I Status Within Grade and Grade/Size Groupings**

After grade and grade/size categories are established, an LEA must group the schools in each category according to their status as title I or non-title I schools if both types of schools are present in the LEA. If only title I schools are present, the LEA must group the schools in each category into the lowest and highest ranked categories.

Grouping into title I and non-title I schools where both types are present is very straightforward. The title I category includes any schools receiving title I services. Those schools that are eligible for title I services but without a title I program because the district did not receive its full allocation are counted as non-title I schools. Also counted as non-Title I schools are those eligible schools that are ranked highly enough to fall into the targeted range but have been skipped, usually because they are being fully served by some other program (refer to Chapter 1.4.3, Services of the Same Scope and Nature Option).

Grouping into the lowest and highest ranked schools where only title I schools are present in the LEA as a whole is also very straightforward. Lowest and highest ranked sets are developed as described in Section 5.4.2. To briefly review, the LEA simply groups together the schools that have the smallest percentages or numbers of children from low-income families. Up to 50 percent of the lowest ranked schools in a grade or grade/size category may be placed in this group. The highest ranked group then consists of all schools not placed in the lowest ranked set.

Where the LEA as a whole has both title I and non-title I schools but finds that the grade or grade/size category in question has been developed
in such a way as to contain only title I schools, the same procedure for defining the lowest and highest ranked categories may be followed. However, in this case (where the LEA has both types of schools except in a particular grouping), the LEA does not have to follow this procedure; it is optional.

It may, if it chooses, use some other comparative method "that meets the requirement of the statute" (ESEA Title I Program Directive INST. L209.6). It is important to understand that LEAs that have only title I schools in the district as a whole are not allowed this flexibility but must use the procedure described above.

The following table illustrates hypothetical school status groupings within grade/size categories.

<table>
<thead>
<tr>
<th>K-6 Grade Span</th>
<th>Student FTE</th>
<th>School Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smaller Schools</td>
<td>A</td>
<td>125</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>175</td>
</tr>
<tr>
<td></td>
<td>C</td>
<td>250</td>
</tr>
<tr>
<td>Larger Schools</td>
<td>D</td>
<td>390</td>
</tr>
<tr>
<td></td>
<td>E</td>
<td>420</td>
</tr>
<tr>
<td></td>
<td>F</td>
<td>500</td>
</tr>
</tbody>
</table>

In this illustration, the LEA has both title I and non-title I schools in the district as a whole and even in the K-6 grade span. However, it is eligible for further grouping by enrollment size within the K-6 span, since school F's enrollment is at least twice as large as school A's. The LEA elected to use this further grouping and split the schools into larger and smaller groups in the middle of the size continuum. This caused it to have both title I and non-title I schools in the smaller group but only title I
schools in the larger group. The LEA might have elected another size split option which would have altered this outcome.

For the larger school group, it chose to use the lowest ranked/highest ranked method of grouping the schools. Since this method specifies that up to but not exceeding 50 percent of the lowest ranked schools may be placed in the lowest group, and since there are only three schools in the total ranking, the LEA ends up with only one school in the lowest ranked category.

Calculations and Reporting Determinations of Comparability and Maintaining Proper Records

As the third step in addressing the comparability requirement, an LEA might ask two more questions:

1. What data are required for a comparability determination?

2. What calculations of these data must be performed and reported, and what sorts of records must be maintained?

The answers to these questions will form a sort of step-by-step process for actually preparing a comparability report.

Data Required For A Comparability Determination

LEAs are required to gather and maintain comparability data on a school-by-school basis for all schools within a grade or grade/size grouping for which a determination of comparability is required (116a.114). A comparability determination is required for each grouping that contains both title I and non-title I schools or more than one title I school where only this type is present. Comparability determinations are not required for schools with enrollments of 100 children or less.

As of the date certain of the particular comparability determination being made, five pieces of data are required for each school involved in
order to determine whether or not the requirement has been met. These are:

1. The number of children actually enrolled

2. The number of full-time equivalent instructional staff who are regularly assigned to the school and paid with state and local funds

3. The total amount of the annual salaries for these instructional staff minus the amount of these salaries that is based on length of service (longevity)

4. The number of children actually enrolled divided by the number of full time equivalent instructional staff who are regularly assigned to the school and paid with state and local funds (#1/#2).

5. The total amount of the annual instructional staff salaries (minus longevity) divided by the number of children actually enrolled (#3/#1).

In determining the number of pupils enrolled in a school, the LEA may count children in less than full-day kindergarten programs on a full-time equivalency basis. In addition, if the SEA approves, the LEA may increase or decrease the number of children enrolled by weighting the actual enrollment according to weighting factors which are used in state and/or local educational finance plans to determine allocations of funds for the education of children in various educational categories, age groups or grade levels.

Instructional staff are defined as staff members who render direct and personal services which are in the nature of teaching or for the purpose of improving the teaching-learning environment. The term includes (116a.4(b)):

- Teachers, including part-time and itinerant staff who regularly serve the school;
• Principals, assistant principals and other personnel performing the function of a principal;

• Consultants;

• Supervisors of instruction;

• Librarians;

• Audio-visual personnel and television instructional personnel;

• Guidance and psychological personnel;

• Secretarial and clerical staff at the local building level who directly assist the instructional staff; and

• Aides and paraprofessional personnel.

Certain other staff are specifically excluded from the instructional staff category, for the purpose of determining comparability. These are:

• Kitchen workers;

• Janitorial staff;

• Nurses;

• District-wide supervisors who are not prorated;

• Title I employees; and

• Attendance workers.
In computing the annual salaries for the instructional staff, the LEA must exclude longevity pay. However, supplemental pay for extra instructional services should be included. Examples of acceptable supplements are stipends for serving as an instructional department head or a class chairperson or in certain geographical locations or schools. Examples of unacceptable supplements include pay for extracurricular activities and student club advisorships.

Exclusion No. 1: Data (or funds) that are to be excluded from comparability determinations

As for maintenance of effort, federal funds for which the LEA is required to account to the federal government directly or indirectly through the SEA are excluded from comparability requirements. Such programs include (116.91(d):

1. Funds granted under Title I or parts B and C of Title IV,

2. Emergency School Aid Act (ESAA) funds,

3. Johnson–O'Malley funds,

4. Economic opportunity Act of 1964 funds, and

5. Forest and Grazing Lands funds.

Exclusion No. 2: Data (or funds) that may be excluded from comparability (116a.118)

If an LEA desires, it may also exclude certain state and local funds from determinations of comparability (116a.118(b). Such exclusions include:

1. State and local funds spent in carrying out a special program, that is,
• a state compensatory education program that is similar
to title I, or, if not similar, permits LEAs to design
and operate (during fiscal year in question) a compensatory
education program that is similar to title I

• a local compensatory program that is similar to Title I;

• a bilingual education program for children of limited
English proficiency

• a special education program for handicapped children.

2. State funds spent in carrying out a state phase-in program (116a.118(c)).

The regulations very carefully spell out the stringent requirements
that programs must meet in order to be considered special or phase-in pro-
grams. These requirements include (116a.118(c): authorization and account-
ability under state law; purpose is to provide for the comprehensive and
systematic restructuring of the total educational environment of individual
schools; based on objectives related to educational achievement and evaluated
in accordance with such objectives; parental and school staff involvement in
planning, implementing and evaluating the program; benefits for all children
in a particular school or grade span within the school; and provision for 50
percent of the participating schools during the phase-in period be schools
serving project areas with the greatest number of concentration of educa-
tionally deprived children from low-income families. The regulations require
that before an LEA can exclude these program funds from comparability, the
Secretary and/or the SEA must review the situation thoroughly and determine
in advance that the programs in question indeed meet the definitional re-
quirements.

LEAs that are considering these exclusions should study these regula-
tions very carefully, and confer with their SEAs.
Calculating and Reporting Determinations of Comparability and Maintaining Proper Records

While all five pieces of data on page V-36 above must be collected for each school involved in order to arrive at a determination of whether or not the comparability requirement has been met, Department of Education regulations do not require that the comparability reports themselves contain all of these data for each school. Where an LEA has both title I and non-title I schools, the regulations specify that comparability reports must include the data for each title I school and for the group of non-title I schools with which each title I school is being compared. (116a.114)

This means that all five pieces of comparability data must be reported for each title I school. However, for the non-Title I schools that serve as the comparison group, only the group average of the two ratios—pupil/instructional staff and pupil/instructional staff salaries—need be reported. In sum, school-level comparability data need not be reported for the schools in the non-Title I comparison group.

Where there are only title I schools in a grade or grade/size span or in the LEA as a whole, the regulations require that all the comparability data for each school must be included in the report. If the LEA as a whole has only title I schools, it must develop also lowest and highest ranked groups for comparison purposes and compute and report the average of the comparison group as the standard against which schools are judged in determining that the comparability requirement is met.

Where the LEA as a whole has both title I and non-title I schools, but only Title I schools are found in the particular grade or grade/size grouping for which a determination is being made, the LEA may elect to use the lowest/highest comparison method. If it does, it must report the averages for the lowest ranked group as the comparative standard. If the LEA chooses some
other method of comparison, it must report whatever data are necessary to make the argument that the alternative method is appropriate.

Finally, the regulations require that LEAs must keep comprehensive and accessible records (116a.122). Specifically, an LEA must keep all records and documents from which it derived the data included in each comparability report and determination. Further, the LEA must make these records and documents available to SEA and federal officials and auditors upon request.

Aside from this minimal framework, the regulations permit SEAS to set additional reporting requirements for their LEAs. In fact, the regulations specify that comparability report formats shall be prescribed by the SEA, so long as reports contain the information the SEA needs to make a determination and include the data specified above for the appropriate schools. Hence, it is to be expected that comparability reporting formats and requirements will vary across SEAs.

Regardless of the variation that may exist, there are many aspects of comparability determinations and reporting that are standard. For example, the basic conceptual and arithmetical processes of computing ratios and determining school-by-school compliance are standard. In addition, the record-keeping and accessibility requirements apply to all LEAs. Therefore, included in the following discussions are some models of report forms and procedures that may be useful to SEAs and LEAs in establishing efficient and orderly systems for gathering, manipulating, and maintaining comparability data. These models are synthesized from a number of comparability guides and manuals that have been developed by several SEAs for the purpose of directing and assisting their LEAs. Special recognition and thanks are due to the State of Florida, which made available to us its very comprehensive comparability procedures manual. Many of our models are based heavily on the forms contained in this document.

Model No. 1: A Comparability Report Format

Illustrations 5.4 and 5.5 show report formats which the Department of
Education required LEAs to use in specifying grade and grade/size groupings and school-by-school comparability computations. The form shown in 5.5 was completed for each grade or grade/size span declared on the form shown in Figure 5.4. While the use of these or any other comparability report format is no longer mandatory, LEAs may nevertheless find some version of these models useful in preparing comparability determinations, perhaps as in-house worksheets.

Generally, the model forms are self-explanatory. Figure 5.4 is, of course, completed according to the grouping options discussed in this chapter. Figure 5.5 is completed in accordance with the comparability criteria and the data requirements.

For example, Column 1 of 5.5 contains the name of each title I school in the grade or grade/size span under consideration. Columns 3, 4, and 5 contain the basic data on numbers of students, instructional staff, and instructional staff salaries for each title I school listed (as required by title I regulations). Columns 6 and 7 contain the two comparability ratios for each title I school. At the bottom of the form, corresponding columns are provided for non-title I school averages and for the computed comparability criteria based on these non-title I averages. Finally, Column 8 allows the LEA (or SEA) to clearly check those title I schools whose comparability ratios (displayed in columns 6 and 7) do not meet the criteria (displayed in columns 6A and 6B).

Model No. 2: School-Level Comparability Worksheet

Illustration 5.5 (or any equivalent report form) must be backed up by a school-level worksheet which must be prepared for both title I and non-title I schools and kept on file by the LEA. Illustration 5.6 shows a sample of such a worksheet for determining numbers of instructional staff and instructional staff salaries. Again, this model is self-explanatory. Note that it is keyed to the grade or grade/size groupings and allows the LEA to record staffing data by individual staff members. (Program Directive INST. L209.7, July 7, 1980.)
### GENERAL INFORMATION

<table>
<thead>
<tr>
<th>IDENTIFICATION</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME OF DISTRICT</td>
<td>ADDRESS (City or town, county, state and zip code)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RESPONSIBLE OFFICIAL</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SIGNATURE</td>
<td>DATE COMPLETED</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TYPED NAME</th>
<th>TELEPHONE NUMBER (Include Area Code)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>GRADE SPANS</th>
<th>Enrollment Size Range</th>
<th>Number of Schools</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Title I</td>
</tr>
<tr>
<td>A=</td>
<td>smaller</td>
<td></td>
</tr>
<tr>
<td></td>
<td>larger</td>
<td></td>
</tr>
<tr>
<td>B=</td>
<td>smaller</td>
<td></td>
</tr>
<tr>
<td></td>
<td>larger</td>
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</tr>
<tr>
<td>C=</td>
<td>smaller</td>
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<tr>
<td>X=</td>
<td>smaller</td>
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<tr>
<td></td>
<td>larger</td>
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</tr>
</tbody>
</table>

**TOTALS**

### PURPOSE OF REPORT ON OE 4524-B

1. □ Original submission as of the Fall date designated by the State Educational Agency

2. □ Revised submission following reallocation of resources.

3. □ Special Report to verify that the comparability previously demonstrated is being maintained as of a date specified by the Commissioner of Education or the State Educational Agency.

4. □ To demonstrate the comparability of schools serving attendance areas not previously designated for projects.

OE FORM 4524-A, 1/18 (FM Control No. 30-A)
**DETAILED SCHOOL DATA**  
*(ESEA Title I Comparability Report)*

Do not include any portion of salaries paid from Federal funds, other than funds for which the LEA is not required to give accounting to the Federal Government.

<table>
<thead>
<tr>
<th>NAME OF DISTRICT</th>
<th>FORM APPROVED</th>
</tr>
</thead>
<tbody>
<tr>
<td>This sheet is only for grade span ( A, B, C, X ) with enrollment group either ( \square ) larger or ( \square ) smaller</td>
<td>OMB 51-RC991</td>
</tr>
<tr>
<td>Sheet _ _ of _ _</td>
<td></td>
</tr>
</tbody>
</table>

**NOTE:** If more than one sheet is required for this grade span and size grouping, use another copy of this form and repeat the non-project school data.

<table>
<thead>
<tr>
<th>NAMES OF PROJECT SCHOOLS</th>
<th>ACTUAL GRADE SPAN</th>
<th>PUPILS ENROLLED</th>
<th>FTE STAFF</th>
<th>SALARIES EXCLUDING LONGEVITY</th>
<th>COLUMN 3 + COLUMN 4</th>
<th>COL. 5 + COL. 3</th>
<th>IF NOT COMPARABLE MARK &quot;X&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
<td>(7)</td>
<td>(8)</td>
</tr>
<tr>
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<td></td>
<td></td>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**AVERAGES FOR NON-PROJECT SCHOOLS IN THIS GRADE SPAN AND SIZE GROUPING.**

<table>
<thead>
<tr>
<th>AVERAGE</th>
<th>AVERAGE</th>
<th>AVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6A</th>
<th>7A</th>
</tr>
</thead>
<tbody>
<tr>
<td>6B</td>
<td>7B</td>
</tr>
</tbody>
</table>

Enter here 95% of Box 7A

OE FORM 4524-B, 3/78 *(FM Control No. 30-8)*
# School-Level Comparability Worksheet

**Illustration 5.6**

<table>
<thead>
<tr>
<th>Date Certain</th>
<th>LEA Code</th>
<th>SCC</th>
<th>Principal's Certification</th>
<th>R.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less Special Education FTE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less Bilingual Education FTE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Comparability FTE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Restrictions:**
1. List alphabetically staff included in comparability computations and totals.
2. List alphabetically staff excluded in comparability computations and totals.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Classification</td>
<td>Position</td>
<td>Base</td>
<td>Pay</td>
<td>Reporting Days</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(7)</th>
<th>(8)</th>
<th>(9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Pay Longevity</td>
<td>Annualized Longevity</td>
<td>Total Annual Pay</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(10)</th>
<th>(11)</th>
</tr>
</thead>
</table>
| Total Salary (Col. 10) | Total FTE (

**Note:** This worksheet must be used with revised reports.

---

**V**

-45-
Model No. 3: LEA Comparability Report Checklist

Given the number of steps, decisions, and documents involved in a comparability determination, LEAs and SEAs may find it useful to develop a checklist such as that shown in Illustration 5.7. This sample is keyed to the forms displayed in 5.4 and 5.5, and helps an LEA (or SEA) to review its report in order to make sure that all the necessary bases have been covered.

Model No. 4: Error Checklist

Given the complexity of comparability reporting, it is easy to make errors. Since any errors, when corrected, may result in an LEA's being found in violation, careful checking is important. This is especially the case when the timetable has become tight or when a revised report is being submitted.

Figure 5.8 is a checklist of common errors made in comparability determinations and reports. LEAs and SEAs might use this or some other version of an error checklist to quickly check for very common errors.
Illustration 5.7
LEA COMPARABILITY REPORT CHECKLIST

1. Review of Figure 5.4, most recent fall report:

   a. Data reported were of the date certain set by the SEA?
   b. Computations and comparisons of title I and non-title I averages are accurate and acceptable?
   c. Does Figure 5.4 reflect accurately the groupings of corresponding grade level and building sizes according to the regulations? (Confirm the information on this form with the list of buildings in the program location section of the approved LEA application.)
   d. Were eligible schools served in rank order without skipping?

2. On-site check of comparability report source data:

   a. Are comparability reports and documents available for inspection by SEA, LEA, and the public?
   b. Are source records and worksheets for comparability compiled on an individual school building basis, including non-title I schools?
   c. Were all and only those schools served included in the calculation of students, staff and FTE/Membership for title I schools?
   d. Do attendance records of individual schools for the date on which data were gathered correspond to the FTE/Membership entered in the report form? (ADA figures were not used.)
   e. Were bilingual or special education students/instructors properly excluded?
   f. Were state or local compensatory education programs and/or state phase-in programs properly excluded?
   g. Do staffing worksheets show that the following categories were properly excluded: kitchen workers; janitorial staff; nurses; district-wide supervisors. (not pro-rated); Title I employees; attendance workers; special education and bilingual teachers; vacant positions; others?
   h. Are staffing and salary data correct, i.e., FTE used, longevity salary payments excluded, appropriate instructional supplemental pay included?
Figure 5.7 (Continued)

i. Is a copy of the comparability assurance form for buildings with less than 100 FTE on file?

j. Is a copy of the application comparability assurance form on file?

k. Is a copy of the current fiscal year comparability report on file?

l. Are arithmetical computations accurate?

m. Does each project school ratio compare favorably to the averages of the non-project schools within the 5% allowances?

1) The number of students per staff member in column 6 must be equal to or less than the number in box 6B.

2) The salary expense per student in column 7 must be equal to or greater than the amount in box 7B.

3. Advisable cross check activities:

a. Check the Title I project schools and the number of such schools on the comparability report against the project application as officially amended.
Figure 5.8
Comparability Error Checklist

1. Inaccurate addition, subtraction and multiplication operations.

2. Inclusion of title I paid personnel or other personnel who should have been excluded (for example, CETA and Community School personnel).

3. Inclusion of non-reportable staff members and salaries paid from State and local funds. (for example, State Compensatory personnel, janitorial or security staff).

4. Inclusion of vacant positions in the report data.

5. Exclusion of properly reportable itinerate staff members and their salaries.

6. Improper exclusion or exclusion of special education and bilingual education students and staff members and salaries.

7. Use of a per person count instead of a full-time equivalent (FTE) number for staff and/or students.

8. Inclusion of the amount paid for length of service (longevity).

9. Improper grouping of schools in grade span and size groups; and failure to group all schools in the district, regardless of whether or not a particular grouping contain title I schools.

10. Inclusion of schools as title I project schools which were ineligible or, while eligible, did not actually receive title I funds.

11. Exclusion of schools from the list of title I project schools which were served with title I funds.

12. Supplemental pay for instructional purposes not reported.

13. Payroll data not current (for example, recent staff changes in classifications or transfers not recorded).

14. Using incorrect data, for example, failure to research and validate source worksheets.

15. Failure to use annual salary computations (total salaries should be used regardless of number of months worked).
Failing to Meet the Comparability Requirement

As the last step in addressing the comparability of services requirement, an LEA might ask two final questions:

1. What are the penalties for failing to demonstrate comparability on December 1 of a given fiscal year when the violation is caught by the SEA in its review of the fall report?

2. What are the penalties for failing to demonstrate comparability when the violation is missed by the SEA in its review of the December 1 report but caught at some later time in a post-expendi-ture audit?

OE regulations distinguish between these two penalty situations, and it is important for LEAs and SEAs to understand both.

Penalties When Violations in the December 1 Report are Caught by the SEA Immediately

Most instances of violation will become evident to the SEA as it reviews an LEA's fall report. If this report has been filed before December 1 of the fiscal year in question, the SEA notifies the LEA of the violation and the need for corrective action (116a.123). If the LEA is able to correct the problem and file a revised report with the SEA that shows full compliance as of a date not later than December 1, no penalty action is taken.

If, however, the LEA was not able to correct and file by December 1, or if the original report showing a violation was filed on rather than before December 1, the SEA must take penalty action. In other words, regardless of the date of the original fall report, if an LEA is not in full compliance by December 1, it is subject to penalty.
Within 30 days of discovering a violation—but not later than January 1 of the fiscal year in question—the SEA must initiate either of two possible penalty actions.

As one option, the SEA may choose to enter into a compliance agreement with the LEA, as specifically discussed in Chapter 7.4.11 of this manual (166.210). The specifics of the compliance agreement, as well as the decision to enter into the agreement, are negotiated between the SEA and the LEA on a case-by-case basis. While the compliance agreement does not reduce or relieve the LEA's responsibility for the violation, it may reduce or relieve the actual fiscal penalties paid by the LEA, depending on the terms.

However, the LEA is still subject to suspension of approval of its application from December 1 until the date the compliance agreement comes into effect. Further, the SEA must ensure that none of the fiscal obligations incurred by the LEA in operating its title I program from December 1 until the date the agreement takes effect are charged to title I. In other words, the LEA must either shut down its Title I program during this period or pay operating costs out of the regular budget.

As another penalty option, the SEA may choose to initiate an immediate withholding proceeding against the LEA, as specified in CFR 116.200 and also discussed in Chapter VII. This action means that approval of the LEA's application is suspended from December 1 until the LEA corrects the violations and comes into full compliance. The SEA actually withholds funds for this period of time and must ensure that none of the fiscal obligations incurred by the LEA to operate the title I program during the non-compliance period are actually charged to title I funds. Again, the LEA must either shut down its Title I program or pay operating costs out of its regular budget.
Regardless of which penalty action (compliance agreement or withholding) is in effect, an LEA must achieve full compliance by March 1 of the fiscal year in question. If it fails to demonstrate full compliance by this date, the SEA, after providing the LEA with an opportunity for a hearing, must finally disapprove the LEA's application. This means that the LEA forfeits the balance of its unobligated title I funds, including carry-over. In other words, the LEA loses the portion of its regular title I allocation and its carry-over that had not been spent as of December 1. In its turn, the SEA reallocates these forfeited funds to other LEAs in the state that are in full compliance (116a.123(d)).

Penalties When Violations are Caught in Post-Expenditure Audits (116a.124)

On occasion, an SEA may fail to find a violation in an LEA's December 1 report. This is particularly possible where arithmetical errors mask the violation. Such errors and violations will very likely be caught in a subsequent federal or SEA audit. When this happens, the LEA is still responsible for its failure to meet the comparability of services requirement.

As soon as the violation is identified, the SEA (and the LEA) must refund to the Department of Education the total amount of title I funds spent to operate the Title I program in each non-comparable school during the period of non-comparability (116a.124). In other words, the LEA is not required to forfeit all of its title I monies as it possibly would be had the violation been caught by the SEA in its review of the December 1 report. Rather, the LEA has a more limited liability to refund the title I funds actually used to operate the program in the non-comparable schools themselves. However, the LEA must repay title I money already spent in non-comparable schools out of the local school budget.
Title I regulations specify that the amount returned for each non-comparable school involved must include:

1. All of the title I expenditures directly attributable to the title I project, that is, all direct costs such as salaries, fringe benefits, materials and supplies, equipment and transportation.

2. The prorated share of all title I expenditures that are made on a shared basis with other schools serving project areas.

3. The prorated share of all the LEA's districtwide title I costs, that is, costs not directly attributable to any particular school, including expenditures for supervision of instructional and supportive components, monitoring, evaluation, and training.

4. The prorated share of all the indirect costs attributable to the project.

The regulations also specify the computational procedures for calculating the various prorated shares (116a.124(b)). Where schools share expenditures for title I services, the amount of the shared costs that is to be charged to an individual school must be based on the ratio of the school's direct title I costs to the total amount of direct costs for all the schools involved in the shared aspect(s) of the project.

In prorating a school's share of the LEA's districtwide title I costs and of all indirect costs attributable to the project, both the school's direct and shared title I costs must be taken into account. In other words, a school's share of the districtwide costs will be based on the ratio of its direct plus shared costs to the total direct plus shared costs for all project locations. Similarly, a school's share of all indirect costs will be based on this same ratio. These computational procedures are further clarified in the following examples.
Example No. 1: Prorating Expenditures Made on a Shared Basis

Schools A and B share a title I service that costs $10,000. School A is found non-comparable in a post-expenditure audit. At issue is how much of the shared service is to be charged to school A for refund penalty purposes.

Examination of direct title I costs reveals that school A has direct title I costs of $30,000, while school B has direct costs of $20,000. Thus the total direct title I costs of all schools involved in the shared service is $50,000.

School A's proportionate share of this total is 60 percent, or,

\[
\frac{\text{School A}}{\text{Total}} = \frac{30,000}{50,000} = \frac{3}{5} = 60\%.
\]

Therefore, School A is charged with 60 percent of the shared service, or,

\[
60\% \times 10,000 = 6,000
\]

(School B of course, is charged with 40 percent, or $4000.)

Hence, at this point, The LEA is required to refund for School A:

\[
\text{Direct Title I costs} \quad 30,000
\]

\[
\text{Prorated Shared Costs} = 6,000
\]

\[
\text{Subtotal} \quad 36,000.
\]

The LEA will also be required to refund School A's prorated shares of district-wide title I costs and all indirect costs, as outlined in the next examples.
Example No. 2: Prorating District-wide Expenditures

As illustrated above, school A has direct and shared title I costs of $36,000. If the total and shared costs for all project locations in the LEA is $500,000, school A's proportionate share of this total is 7.2 percent, or,

\[
\text{School A} = \frac{36,000}{500,000} = 7.2\%
\]

If the LEA spends $100,000 on district-wide expenditures such as supervision, evaluation, etc., school A will be charged with $7200, or,

\[7.2\% \times 100,000 = 7200.\]

Hence, school A at this point must refund:

\[
\begin{array}{ll}
\text{Direct Title I Costs} & 30,000 \\
\text{Prorated Shared Costs} & 6,000 \\
\text{Prorated District Exp.} & 7,200 \\
\text{Subtotal} & 43,200 \\
\end{array}
\]

Example No. 3: Prorating Indirect Project Costs

As illustrated above, school A's proportionate share of direct plus shared costs for all project locations is 7.2%. If the district spends $50,000 for all indirect Title I costs, school A will be charged $3,600 for indirects, or,

\[7.2\% \times 50,000 = 3600\]

V-55-
Thus, school A is finally required to refund a grand total of:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Title I Costs</td>
<td>$30,000</td>
</tr>
<tr>
<td>Prorated Shared Costs</td>
<td>$6,000</td>
</tr>
<tr>
<td>Prorated District. Exp.</td>
<td>$7,200</td>
</tr>
<tr>
<td>Prorated Project Indirects</td>
<td>$3,600</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>$46,800</strong></td>
</tr>
</tbody>
</table>
Excess Costs and Supplement Not Supplant

Like maintenance of effort and comparability, excess costs and supplement not supplant are key requirements for ensuring that title I funds are used for supplemental services to participants, that is above and beyond the services the children would normally receive from state and local funds. The excess costs and supplement not supplant requirements touch every type of service delivered under title I, whether these are instructional services, health services, or testing and evaluation services. Hence, the excess costs and supplement not supplant provisions must be given full consideration by program designers, as discussed in Chapter III of this Manual.

Excess costs and supplement not supplant are inextricably interwoven, and each requirement serves to elaborate and reinforce the other. Roughly speaking, the two can be distinguished in terms of which set of funds -- non-title I or title I -- each addresses most heavily. Basically, the excess costs requirement focuses on how LEAs must spend title I funds. In comparison, the supplement not supplant requirement focuses on how LEAs must spend non-title I funds.

The key to both requirements lies in the most basic meaning of the excess costs provision. The fundamental concept is simply that title I funds be used to pay only for the excess costs of services (116a.111). The term excess costs means those costs directly attributable to a title I project that exceed the LEA's average per pupil expenditure, by grade level, for the grades included in the LEA's title I project (116.94(b)). In other words, title I funds may be used only to pay for services that are over and above what an LEA would normally provide with its state and local funds (with certain exceptions), even where those state and local funds are used for compensatory services.
Illustration 5.9
The Concept of Excess Costs

LEA's ave. per pupil cost for service

{ LEA Title I funds
  LEA regular funds
}

Title I Program

{ Title I funds
  LEA compensatory funds
  LEA regular funds
}

Title I Program
This basic concept is depicted by Illustration 5.9. In this example, both LEA A and B are operating comprehensive programs for title I children. LEA A, which has no state or local compensatory funds, pays for this program from two sources—its regular funds and its title I funds. However, the LEA may use its title I monies to pay for only those program costs that are over and above its normal per pupil expenditure. LEA B has special compensatory funds at its disposal but must follow the same logic. First it exhausts its regular funds; then it exhausts its compensatory funds (on a fair share per pupil expenditure basis). Only at this point may it use its title I funds.

Expanding on this fundamental principle of excess costs, the regulations directly address the corollary use of state and local funds in the supplement not supplant requirement (116.93). This requirement deals specifically and in considerable detail with two broad (and inclusive) categories of State and local funds:

1. Regular state and local funds and state and local funds used for state phase-in programs. (See the discussion of phase-in programs on page C-20.)

2. State and local funds used for special programs such as compensatory education, bilingual education, and handicapped education.

In the case of regular and phase-in funds, the supplement not supplant requirement means that the LEA may use title I funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of title I funds, be made available for the education of children actually participating in title I projects (116a.133(a)). In the case of special funds, the requirement has the same basic meaning but is expanded to include educationally deprived children in the aggregate, that is, both those children actually participating in title I projects and those children in eligible (although not served) attendance areas or schools (116a.136(a)).

In other words, an LEA must use its regular, phase-in, special compensatory, bilingual, or handicapped funds as though it had no title I funds.
available. Once it has distributed these funds equitably across all children -- including both those children actually participating in title I projects and those attending eligible but unserved schools -- the LEA may use its title I funds to buy extra services for its title I children.

Title I regulations do not require that LEAs demonstrate and report their compliance with excess costs and supplement not supplant requirements in the same way that they must document and report their compliance with maintenance of effort and comparability. Instead, when an LEA submits its title I application, it must include an assurance that its use of title I funds will not result in a decrease for title I children in those state and local funds which, in the absence of a title I grant, would be available for their education. Further, the LEA must assure that title I children will not be penalized in the application of State and local funds because of their involvement in a title I program. Finally, the LEA must assure that title I funds will be used to supplement and, to the extent practical, increase the level of state and local funds that would be available for the education of title I children and that in no case will title I funds be used to supplant state and local funds available for the education of these children.

Because it is difficult to determine what "would have been available" and because records are not kept for expenditures for each title I child, determining whether or not these assurances have been met in practice can be difficult. Hence, the Department of Education has established various indicators and presumptions to be used to determine compliance. These indicators, included in the regulations, are generally referred to as the "tests of supplanting." These are:

1. Substitution of services test (116.94(c)).


3. Provision of services required by law test (116a.135 and 116.a139-143).
Strictly speaking, the substitution of services test is applied most under the excess cost requirement, while the equitable distribution of services and provision of services required by law tests are applied under the supplement not supplant requirement. The application of these latter two also varies in some important respects depending on which type of funds are involved (regular or phase-in versus special). Each of these tests is discussed in greater detail in subsequent sections of this chapter.

To apply the tests, an SEA or federal official looks for certain program practices during a monitoring and review visit or a program audit, and, if possible, for facts which may rebut the indicators of violations if found. (Obviously, an LEA might also apply these tests to its program in the design phase and thus make sure that it is not unwittingly committing a violation or, conversely, being excessively rigid and restrictive in designing its program.) If an indicator is found, that is, if one or more of the tests is positive, the LEA involved must be given a fair and timely opportunity to provide rebuttal information. If it fails to present evidence which successfully rebuts the presumption of violation, the Department will ordinarily demand a monetary refund of the amount of title I funds which were used in violation of the requirements. The LEA of course has the opportunity to appeal the finding.

Illustration 5.10 reflects the questions an LEA might move through in addressing the excess costs and supplement not supplant requirements.

**Excess Costs**

In addressing the excess costs requirement, an LEA might ask three questions:

1. Which funds are included in the excess costs requirement?
Illustration 5.10
Excess Costs and Supplement Not Supplant Flow Chart

Excess Costs

Funds eligible for exclusion?

Yes

Program meets replacement of funding/substitution or services test(s)?

No

Supplement Not Supplant

Special State & local funds for compensatory, bilingual, handicapped programs

Regular State & local funds/state & local phase-in funds

Use meets equitable distribution/services required by law test(s)?

Use meets equitable distribution/services required by law test(s)?

Implications for certain program practices (e.g., pull-out vs. mainstreaming TI children, high school projects)
2. What are the presumptive tests that are applied to determine compliance with the excess costs requirement?

3. How can compliance be demonstrated when an LEA fails the presumptive tests, or rather, fails to meet the presumptive standards?

The answers to these questions provide a comprehensive understanding of the excess costs provision.

Funds That Are Included in Excess Costs

As noted previously, the excess costs provision requires that LEAs use title I funds only for the excess costs of a title I project. The term excess costs means costs directly attributable to a title I project that exceed the LEA's average per pupil expenditure, by grade level, for pupils in the grades included in the LEA's title I project (116.94 (b)).

In determining its average per pupil expenditure, the LEA takes into account all the funds that it provides for the support of any educational program. However, the LEA, if it is eligible for and chooses to do so, may exclude certain types of state and local funds.

The funds that may be excluded from excess costs are carefully and clearly defined in 116a.118 and may also be excluded from comparability determinations (as discussed in Section 5.4.2). Specifically, if an LEA chooses, it may exclude:

1. State and local funds spent in carrying out a special program, that is:

   - a state compensatory education program that is similar to title I, or, if not similar, permits LEAs to design and operate (during the fiscal year in question) a compensatory education program that is similar to title I,
• a local compensatory program that is similar to title I,

• a bilingual education program for children of limited English proficiency,

• a special education program for handicapped children;

2. State funds spent in carrying out a State phase-in program.

The regulations very carefully spell out the stringent requirements that programs must meet in order to be considered special or phase-in programs. Further, the regulations require that before an LEA can exclude these program funds from excess costs determinations, the Secretary and/or the SEA must review the situation thoroughly and determine in advance that the program in question indeed meets the requirements. Hence, LEAs that are considering these exclusions should study these regulations very carefully and confer with their SEAs.

It is extremely important to understand that the fact that special and phase-in funds meeting l16a.118 definitions may be excluded from excess costs does not mean that they also may be excluded from the supplement not supplant requirement. In fact with one very limited exception, quite the opposite is true. The supplement not supplant regulations specify in exhaustive detail exactly how l16a.118 phase-in and special funds are to be used to satisfy supplement not supplant considerations.

**Substitution of Services Test**

To determine whether an LEA is in compliance with the excess costs requirement, the SEA uses the substitution of services test.
The substitution of services test is applied both presumptively and as a demonstration of actual compliance when an LEA has failed to meet the presumptive standard. Presumptively, the test means that an LEA is presumed to be in compliance with the excess cost requirements if title I services do not constitute more than 20 percent of the time -- computed on a per day, per week, per month, or per year basis -- that any child would, in the absence of title I funds, spend receiving instructional services provided by a particular teacher with non-title I funds (116.94(c)).

This test is based on the principle that all children are entitled to certain instructional services at state and local expense. The children receiving a title I instructional service that substitutes for a state or locally funded service are still entitled to their "fair share" of the instructional services provided with state and local resources. Unless this "fair share" is provided, the level of expenditure of state and local funds for those particular children would be reduced.

This particular test is most likely to come into play in situations where children receive a title I instructional service outside of their regular class or receive all of their instruction within their regular class from a title I teacher. In such cases, the presumptive substitution of instructional services test applies if the title I instructional service is provided as a substitute for an instructional service which would, in the absence of title I funds, be provided for the title I participating children with State or local funds.

An example of this type of situation is a title I reading program in which the title I children receive reading instruction from a reading teacher funded by title I in lieu of their regular classroom reading instruction. If a child misses the daily regular reading class only one day a week, receiving title I reading services instead, the 20 percent presumptive standard (one out of five days) is met.
If an LEA fails to meet the substitution of services test (i.e., the "20 percent rule"), it must take either one of two steps.

The LEA may maintain records actually demonstrating that all costs directly attributable to its title I project in fact exceed its average per pupil expenditure, by grade level, for pupils in the grades included in its title I project (116.94(d)(1)). In other words, an LEA must actually document and demonstrate that its title I funds are used only to pay excess costs.

Alternatively, the LEA may maintain records showing that it meets what is essentially an extension of the substitution of services test. These records must demonstrate that the LEA has contributed to the title I project either the full-time equivalent number of non-title I funded staff that -- in the absence of the title I service -- would have been used to provide the service that is replaced by title I or the amount of non-title I funds required to provide this non-title I staff. The LEA may disregard a fraction of a full-time equivalent staff member in determining the level of local effort that must be provided (116.94(d)(2)). For instance, if the full-time equivalent number of non-title I staff is 2.7, the LEA is only required to provide the equivalent of two non-title I staff members.

In other words, the LEA must either assign a certain number of State and locally funded staff to work with title I funded staff in providing the title I service or use an equivalent amount of State and local funds to pay part of the cost of providing the Title I service. By providing the state or locally funded staff or funds which would in the absence of title I funds, be required to provide the service to the title I participating children, the LEA limits its use of title I funds to paying for the excess costs of the title I service.
For example, if 120 elementary school children spend one-half of their school time receiving title I services from four teachers and the LEA pupil/teacher ratio is 30:1, then the salaries of two full-time equivalent (FTE) Title I teachers must be paid with state and local funds \( \frac{120 \div 30 = 2}{2} \).

Similarly, if 120 secondary school children are receiving all of their mathematics instruction from title I project staff and 120 is the average number of children served daily by the mathematics teacher employed by the LEA, then the salary of one FTE title I teacher must be paid with state and local funds. \( \frac{120 \div 120 = 1}{1} \).

Finally, if the local FTE input required is 3.7, then this input may be reduced to not less than 3.0. Similarly, if the FTE local input required is .8, then this input may be reduced to 0.

Supplement Not Supplant

In addressing the supplement not supplant requirement, an LEA might ask five basic questions:

1. What are the specific procedures governing how regular state and local funds and state and local funds for state phase-in program are to be spent?

2. What are the presumptive tests that are applied to determine compliance with the supplement not supplant requirement when regular and phase-in funds are under consideration?
3. What are the specific procedures governing how special state and local funds for compensatory, bilingual or handicapped programs are to be spent?

4. What are the presumptive tests that are applied to determine compliance with the supplement not supplant requirement when special state and local funds are under consideration?

5. Given the especially complex requirements for proper use of special funds, how can Title I projects be coordinated with state and local special programs?

The answers to these questions provide a comprehensive understanding of the supplement not supplant requirement.

Regular and Phase-in Funds: Procedures for Use

An LEA is required to use Title I ESEA funds only to supplement regular and phase-in funds that would, in the absence of title I funds, be made available for children who actually participate in title I projects. In no case may the LEA use Title I funds to supplant such regular and phase-in funds. The LEA must also distribute regular and phase-in funds in a way that does not discriminate against children who participate in title I. In sum, children who are actually served by title I must nevertheless receive their fair share of regular and phase-in funds.

Title I regulations specifically define regular funds as those state and local funds that an LEA provides for the support of any educational program, with the exception of funds for State phase-in programs, and funds for special programs such as compensatory, bilingual, or handicapped education programs (116a.131(e)).

Both types of non-regular funds, phase-in and special, are defined with great specificity by 116a.118 and have been covered in the previous discussions of comparability and excess cost requirements. If State and
locally funded programs do not meet the very stringent requirements of 116a.118, they must be treated as regular funds.

Regular and Phase-in Funds: Presumptive Tests for Determining Compliance With Supplement Not Supplant

Two tests are applied presumptively in determining whether or not an LEA is in compliance with the supplement not supplant requirement when regular and phase-in funds are under consideration. These are: the equitable distribution of funds test, and the services required by law test. Each of these is discussed below.

Equitable Distribution of Funds Test

For the application of the equitable distribution of funds test, OE regulations specify that an LEA is presumed to have violated the supplement not supplant requirement for regular and phase-in funds if it does any of the following (116a.134(b)):

1. Uses Title I funds to pay more than the excess cost of a Title I service, as specified by the excess cost requirement. (See Chapter 5.4.3.)

2. Systematically uses higher pupil-teacher ratios for classrooms that include children who are receiving Title I services.

3. Denies children who receive Title I services opportunities to receive regular or phase-in funds (or services) on the same basis as non Title I children.

The key to this test is the last point, that is, denial of title I children's opportunity to receive regular or phase-in services on the same basis as non-title I children. The essence of the equitable provision of services test is simply that this opportunity must not be denied.
Potentially problematic situations range from those in which particular regular and phase-in services are available to all students in all schools to situations in which regular and phase-in services are available to only a few selected children. Regardless of the particular situation, the critical element in meeting the test is that students receiving title I services be treated fairly and not be penalized or otherwise discriminated against in the distribution of these regular and phase-in efforts, either deliberately or inadvertently.

Specific questions have arisen concerning the application of this test to state and local compensatory education funds that do not meet the criteria for treatment as "special" programs. Under the basic definitions of regular and non-regular funds, those funds that do not meet the 116a.118 criteria are classified as regular funds.

Under the equitable distribution of funds test, an indication of regular and phase-in supplanting may be rebutted by evidence that:

1. Any disparity in the distribution of regular and phase-in funds of services is a result of application of criteria which do not take the availability of title I funds into account (e.g., educational test score criteria); or

2. Total regular or phase-in spending for services provided to title I students is equivalent to or greater than total regular or phase in spending provided to non-title I students.

Examples: Applying the Equitable Distribution of Services Test

If an LEA uses regular or phase-in funds to provide services exclusively for children in schools not served by title I projects, but provides the same services to title I children with title I funds, the LEA is clearly in violation of the requirements which prohibit the supplanting of regular and phase-in funds. For example, an LEA might use regular funds to pay for kindergarten programs in all of its non-title I schools, and at the same time
use title I funds to pay for kindergarten programs in its title I schools. This is an unquestionable violation of the supplanting regulations.

Similarly, if an LEA uses regular or phase-in funds to buy a limited service exclusively for non-title I children but provides this same service to title I children with title I funds, the LEA is in violation. For example, an LEA might use regular funds to pay for a remedial reading program for two-thirds of its non-title I children who need such services and at the same time use title I funds to pay for remedial reading for all of its title I children. Again, this is an unquestionable violation of supplanting regulations.

In both of these instances, to avoid the presumptive violation the LEA would have to make certain that title I children receive their fair share of the regular or phase-in funds in question. If the LEA provides kindergartens in all of its non-title I schools, it must provide kindergarten for all children in its title I schools. If it then wishes to use title I funds to further enhance the title I kindergartens with more staff or materials, it may do so.

Similarly, if the LEA provides remedial reading for some of its non-title I children, it must provide title I children with their proportional share of the remedial reading instruction with regular funds. In other words, if two-thirds of those non-title I children who need remedial reading receive it from the LEA, then two-thirds of the title I children in need of such services must also receive the program without using title I funds. If the LEA then wishes to further enhance the title I children's remedial reading experience, or to provide the program to the remaining one-third of the title I children, or both, it may do so, using title I funds.

Services Required By Law Test

For the application of the services required by law test, title I
regulations specify that an LEA is presumed to have violated the supplement not supplant requirement for regular and phase-in funds if it uses title I funds to provide services that it is required to make available under federal, state or local law or under a court order (116a.135 (b)).

Example: Application of the Services Required By Law Test

The most common application of this test is the case where an LEA has come under court order to transport children for purposes of racial integration. In such a situation, the regulations clearly specify that the LEA may not use any title I funds to transport students (116a.135(b)(2)). This principle holds regardless of whether transported children are title I participants or not.

Special State and Local Funds for Compensatory, Bilingual or Handicapped Education Programs: Procedures for Use

The proper relationship between special funds for compensatory, bilingual or handicapped education programs (116/118(b)) and title I funds is an extension of the "fair share" philosophy. Title I children must receive their "fair share" of State and local compensatory, bilingual or handicapped education funds.

An LEA may use title I funds only to supplement and, to the extent practical, increase the level of special funds that would, in the absence of title I, be made available for the education of educationally deprived children in the aggregate in title I eligible attendance areas and schools (116a.136(a)). In other words, the special funds must be used equitably not only for those children who actually receive title I services but also for educationally deprived children who attend those title I eligible schools that are not selected as project area (see Chapter I). Further, in no case may an LEA use Title I funds to supplant these special funds (116a.136(b)).
This basic rule is strengthened by an equal opportunity requirement that directly addresses handicapped and bilingual children. Title I regulations state that "An LEA may not, on the basis of race, sex, national origin, or handicap, exclude a child from participation in services provided with title I funds," and, further, "An LEA shall ensure that all children participating in a title I project -- including handicapped children and children with limited proficiency in the English language -- are provided an equal opportunity to benefit from that project." (116a.132(a))

In essence, the equal opportunity and supplement not supplant requirements mean that an LEA must use title I funds, as necessary, to provide the assistance and materials needed to ensure that all children have an equal opportunity to participate in and benefit from Title I services. However, this title I assistance must be in addition to the assistance the LEA would otherwise be required to provide to enable handicapped children to participate in non-title I activities (116a.132(b)(1)(i)(2)).

Similarly, the regulations require that, in providing title I services, an LEA must use title I funds, as necessary, to provide children with limited proficiency in the English language with an equal opportunity to participate in and benefit from title I services (116a.132(c)(i)).

Examples: Services For Handicapped and Bilingual Children

In keeping with the equal opportunity and supplement not supplant requirements, an LEA may follow such practices as using title I funds to provide a visually impaired participant large print books for use in a title I reading class (116a.132(b)(1)(ii)). Similarly, the LEA may use title I funds to provide a participant who has limited proficiency in the English language with a bilingual teacher or bilingual instructional materials for purposes of participation in title I (116a.132(c)(1)).
In contrast, however, if an LEA is required to provide a deaf child -- under the child's individualized education program -- with a sign language interpreter to assist the child in participating in the regular school program, the LEA may not use Title I funds to pay for the interpreter during the child's participation in a Title I class (116a.132(b)(2)(ii)).

Special State and Local Funds for Compensatory, Bilingual or Handicapped Education Programs: Presumptive Tests for Determining Compliance with Supplement Not Supplant

As for regular and phase-in funds, the equitable distribution of funds and services required by law tests are applied to determine compliance with the supplement not supplant requirement when special funds are at issue. The basic standards for these two tests are essentially the same -- albeit not identical -- for both regular or phase-in and special funds. However, the actual application of the tests is somewhat different.

Equitable Distribution of Funds Test

Basically, this test means that an LEA must distribute state and local funds for special programs in a way that does not discriminate against educationally deprived children in Title I eligible areas or attending Title I eligible schools (116a.137(a)). Under certain very specific and limited conditions -- which have the net effect of "fully funding" an LEA's title I program and are discussed later in this section -- the LEA may be exempted from meeting the equitable distribution of funds test (116a.137(c)). However, qualifying for this exemption does not mean that an LEA is relieved of its obligation to meet the services required by law test.

In order to demonstrate that it has indeed satisfied the equitable distribution test, the LEA must meet two requirements (116a.137(b)). First, it must provide the SEA with satisfactory assurances that it equitably distributes state and local funds for each special program in a way that:
- Meets the special needs of educationally deprived children in title I eligible attendance areas and schools, and

- avoids discrimination against educationally deprived children in title I eligible attendance areas and schools.

Second, it must make available to its SEA and others (on request) evidence that it distributes to its title I eligible children a proportionate share of State and local funds for each special program. In the event that the LEA in fact does not distribute this proportionate share, it must make available evidence of the extent to which the proportionate share is actually distributed. Further, it must provide evidence that its failure to provide the full proportionate share is a result of one or more of three situations:

- a disproportionate distribution within the district of children whose handicaps require particularly high expenditures;

- a similar disproportionate distribution of children whose limited English proficiency requires particularly high expenditures;

- the very special and limited "full funding" exemption from the equitable distribution test.

In other words, if an LEA uses state and local special funds for compensatory, handicapped, or bilingual programs, it must make certain that its title I eligible children who have the special needs addressed by these programs get their "fair share" of the funds. The LEA must be careful not to discriminate against the title I eligible children by failing to provide them with this fair share. The only instances in which the fair share demand is relaxed are those cases where the LEA demonstrates that there is a disproportionate distribution of need among the district's handicapped or limited English proficient children, or where the LEA obtains the "full funding" exemption.
The "fair share," or rather, proportionate share, is calculated in a very simple and straightforward manner (116a.138) by using the eligibility criteria established by the particular special program in question. Title I regulations require that the criteria that are used must be "objective criteria [including] any one or combination of the following: direct indicators of educational need; indirect indicators of educational need; level of poverty" (116a.143(a)(2)). An LEA identifies the total number of children in all of its attendance areas (regardless of title I status) who meet these criteria. The LEA identifies the total number of children meeting these criteria in its title I eligible attendance areas. The LEA divides the title I set by the total district set to obtain the percentage or proportionate share of special program (eligible) children residing in title I (eligible) attendance areas. These calculations are expressed by the following formula:

\[
\frac{\text{Number of special program children in title I areas}}{\text{Total number of special program children in District}} = \frac{\text{Proportionate share of special program children in title I attendance areas}}{}
\]

The LEA then applies this percentage to the total amount of funds for each special program that it proposes to distribute (in all attendance areas) during the current fiscal year. This of course yields the title I children's proportionate share of the special funds. The LEA is presumed to have met the equitable distribution of funds test as long as it expends in its title I eligible areas no less than this proportionate share minus the amount equal to the number of special program children in title I areas multiplied by $10 (116a.138(b)). These calculations are expressed by the following formula:

\[
\text{Proportionate share of special program children in title I attendance areas} \times \text{Total Amount of special program funds} - \frac{\text{Number of special program children in title I areas} \times $10}{\text{Proportionate share of special funds for title I eligible children}}
\]
Limited Exemption for "Full Funding"

In some instances LEAs have extraordinarily large amounts of special funds at their disposal. In such cases, it is possible that excessively strict application of the equal distribution test might unfairly penalize educationally disadvantaged children in non-title I eligible attendance areas. To avoid this, a limited exemption from the equitable distribution of funds test is permitted.

Under this exemption, an LEA may use state and local funds for special projects that are solely for educationally deprived children residing in non-title I areas (either not served or not eligible) if:

- The LEA uses special State and local funds to provide a special program (that is a state or locally funded compensatory education program that is similar to title I) that qualifies under 116a.118 for exclusion from comparability and excess costs; and

- The amount of state and local funds provided by this special program in title I eligible attendance areas and schools for a particular fiscal year is sufficient—when added to the title I funds available for that year—to bring the LEA up to a level of "full funding" for its title I program.

In other words, if an LEA uses special funds to bring its title I program up to "full funding," thus providing title I services to all eligible children in all eligible project areas, it may use any additional special funds without regard to the "fair share" principle. The regulations (116a.134(c)(3) provide detailed instruction for the six steps in calculating the exact amount of this limited exemption. LEAs considering this option should study these regulations closely and confer with their SEAs.
Examples: Applications of the Equitable Distribution of Funds Test (116a.138(c))

There are 200 children in an LEA's district who fail to achieve a passing score on a state minimum competency test. Of these children, 150 (75 percent) are in title I eligible attendance areas. In state funds, $40,000 are available to the LEA to provide compensatory education to children who fail to pass the state minimum competency test. The LEA must expend a proportionate share of at least $30,000—that is, 75 percent of $40,000—for the benefit of eligible children in title I eligible areas.

There are 1,000 handicapped children in a school district. Of these children, 600 (60 percent) are in title I eligible attendance areas and schools. The LEA expends $500,000 in state and local funds on special education programs for handicapped children. The LEA must expend a proportionate share of at least $300,000—that is, 60 percent of $500,000—for the benefit of handicapped children in title I eligible attendance areas and schools, unless the LEA can demonstrate that its failure to do so results from a disproportionate distribution, within the district, of children whose handicaps require particularly high expenditures.

There are 800 children with limited proficiency in the English language in a school district. Of these children, 600 (75 percent) are in title I eligible attendance areas and schools and have Spanish as their primary or home language. Of the 200 children who are not in title I eligible areas or schools, 150 have Vietnamese as their primary or home language, and 50, who have just arrived in the United States, have Korean. State and local funds for bilingual programs total $160,000. The LEA must expend a proportionate share of at least $120,000—that is, 75 percent of $160,000—for the benefit of children with limited proficiency in the English language in Title I eligible attendance areas and schools, unless the LEA can demonstrate that the costs of providing instruction to the Vietnamese and Korean children, for example, are disproportionately high.
Services Required by Law Test

The services required by law test basically means that an LEA may not use title I funds to provide handicapped, bilingual, or compensatory educational services that the LEA is "otherwise required to make available under federal, state or local law, and for which [it] is required to pay using state or local funds" (116a.139(a)). Building on this basic requirement, the regulations provide very detailed specifications for each type of special funds—handicapped, bilingual, and compensatory. Each is discussed below.

Handicapped Children

Where handicapped children are concerned, the services required by law test prohibits an LEA from using title I funds to provide services that it is required to make available under any of the following (116a.140(a)):


3. The regulations for either of these statutes.

4. A court order.

The LEA is assumed to be in compliance if it provides title I services with certain characteristics. These characteristics vary somewhat depending on whether the handicapped children are served in a mainstreamed or separate setting. However, there are some characteristics that are common to both situations. Specifically, the LEA must (116a.140(c)):
1. Design its title I project to address special needs resulting from educational deprivation, not from a handicapping condition.

2. Set overall title I project objectives so as not to distinguish between handicapped and non-handicapped participants.

3. Select (through the use of uniform criteria) title I participants on the basis of educational deprivation rather than handicap

4. Select as handicapped participants only those handicapped children who can reasonably be expected to make substantial progress towards the title I project's objectives without the LEA's substantially modifying the level or intensity of instruction.

In other words, regardless of whether it provides title I services to handicapped children in a mainstream or separate setting, the LEA must be careful to design its title I project as a title I effort, not as a handicapped education program. Further, while it must not deny opportunity to those handicapped children who can profit from title I services, it must be careful to maintain the integrity of the title I program.

If the services to handicapped children in a title I program are provided in a mainstreamed setting, which of course will include non-handicapped children, the services may be provided at levels or intensities that "take into account the needs and abilities of individual participants but do not distinguish generally between handicapped and non-handicapped participants" (116a.140(c)(5)). Alternatively, the title I services may be provided "using different levels of intensities of instruction for handicapped and non-handicapped participants [if] the LEA justifies the use of different levels or intensities in order to meet project objectives effectively" (116a.140(e)(2)).
If the title I services are delivered to handicapped children in a separate setting, the LEA must first justify that the use of the separate setting is necessary to meet project objectives effectively. Further, the levels or intensities of the title I services provided in the separate setting either must be comparable to the levels or intensities provided to other participants, or the LEA must demonstrate that its use of different (or non-comparable) levels of intensities of instruction "is attributable to the limited number of participants for whom service in a separate educational setting is justified" (116a.140(e)(1)).

In sum, in providing title I services to handicapped children, LEAs must strike a balance between the right of the handicapped child to equal opportunity and the categorical nature of title I funds. Certainly, handicapped children can and should participate in title I. However, their participation must not jeopardize the integrity of the title I program. Within these constraints, LEAs have considerable flexibility in providing title I services for handicapped children, as the following examples show.

Example No. 1: Providing Title I Services to Handicapped Children in the Mainstreamed Setting (116a.140(c)(6))

An LEA plans a title I project to increase children's reading proficiency by two grade levels. The LEA plans to accomplish this goal through intensified instruction in the form of tutorial assistance given several times a week in hour-long sessions and using specialized instructional materials and additional personnel. Children's eligibility for inclusion in the project is based on their classroom performance and reading achievement test scores.

Of the 100 children selected for participation in the project using these criteria, 10 (10 percent)—a proportion approximately comparable to the percentage of handicapped children in the district's title I eligible
areas -- are handicapped children with learning disabilities who receive special education in a resource room for portions of the school day. Depending on their ability to profit from title I services, the LEA selects all or some of these 10 children to participate in the title I program. The LEA does not select for participation any child who would require substantial modification in the level or intensity of the title I instruction (e.g., halving the pupil-teacher ratio) in order to make substantial progress toward accomplishing the title I project objectives.

None of the small groups in which the title I instruction is provided consists solely of learning disabled children, since it is possible to group those children (by age and instructional needs) with non-handicapped participants. Both handicapped and non-handicapped children who need additional time and attention to assist them to meet project objectives receive more intensified services as part of their tutorial sessions.

In this case, the LEA has designed its project to address special needs resulting from educational deprivation, not handicapping condition, and has established project objectives that do not distinguish between handicapped and non-handicapped children. It has selected children using uniform criteria, and has not selected on the basis of handicap, as is indicated, in part, by the fact that the proportion of handicapped children selected does not substantially exceed the percentage of handicapped children in the district's title I eligible areas. (If the proportion of handicapped participants served substantially exceeded the percentage of handicapped children in the district's title I eligible areas, compliance might be questioned.)

The title I services are provided in a common educational setting, which includes non-handicapped as well as handicapped children. Further, the title I services use levels or intensities of instruction that vary from child to child but that are not substantially different for handicapped and non-handicapped children.
The SEA may thus presume that the LEA has met the services required by law test.

**Example No. 2: Providing Title I Services to Handicapped Children In the Separate Setting (116a.140(f))**

An LEA designs a title I project to teach remedial math skills to children in grades 4 through 6 in order to increase their performance by two grade levels. The LEA uses as a criterion for selection children's performance on a math achievement test.

Of the 100 children selected to participate—that is, those who scored between the 5th and the 16th percentile on the math achievement test—10 are emotionally disturbed and five are educable mentally retarded. The LEA determines that, in order to effectively meet title I project goals, the emotionally disturbed children—who cannot tolerate instruction in a classroom with non-handicapped children at the usual 15-to-1 pupil-teacher ratio—must receive instruction in a different location or at a different time.

The LEA has provided an adequate justification for the instruction of the emotionally disturbed children in a separate educational setting and thus had demonstrated compliance with the services required by law test.

In contrast, had the LEA selected for title I participation all children scoring below the 16th percentile on the math achievement test, including the five children labeled as educable mentally retarded and having mental ages and performance levels of six year olds or first graders, compliance would be questioned. Since these educable mentally retarded children need instruction at a very basic level (including number concepts and basic counting skills) and with a very intense pupil-teacher ratio (3-to-1) in order to make progress toward meeting title I project goals, their inclusion would be inappropriate.
Limited English Proficient Children

Where limited English proficient children are concerned, the services required by law test prohibits an LEA from using title I funds to provide services that it is required to make available under any of the following (116a.141(a):


2. The regulations for that statute.

3. A court order.

Title I regulations (116a.131(c)) define children with limited proficiency in the English language as those children whose primary or home language is other than English and who lack sufficient proficiency in English to allow them to participate effectively in school if the language of instruction is English.

The LEA is in compliance with the services required by law test if it provides title I services with certain characteristics. Also similar to the handicapped situation, these characteristics vary somewhat depending on whether the limited English proficient children are served in a mainstreamed or separate setting.

However, there are some basic characteristics that are common to both situations. Specifically, the LEA is presumed to be in compliance if it meets either of the following conditions (116a.141(c):

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1. The LEA

- has been subject to a court order or has entered into a compliance agreement specifying its obligations under Lau v. Nichols, or

- has been--within the previous five years--the subject of a compliance review and found in compliance with Lau v. Nichols, and

- uses title I funds to provide only services other than those it is required to provide under the court order or compliance agreement, or

- demonstrates that it continues to use non-title I funds to provide services provided at the time of the compliance review.

2. The LEA

- designs its title I project to address special needs resulting from educational deprivation, not from a child's limited English proficiency,

- sets overall title I project objectives so as not to distinguish between English proficient and non-English proficient children,

- selects (through the use of uniform criteria) participants on the basis of educational deprivation rather than English proficiency.

In other words, regardless of whether it provides title I services to limited English proficient children in a mainstream or separate setting, the LEA must be careful to design its title I project as a title I effort.
Further, while it must not deny opportunity to limited English proficient children, it must be careful to maintain the integrity of the title I program.

If title I services are provided in a mainstreamed setting, which of course will include English proficient children, these services should be provided at levels or intensities that "take into account the needs and abilities of individual participants but that do not distinguish generally between [limited English proficient and English proficient children]" (116a. 141(c)(2)(v)). Failing this, the LEA must justify that the use of different levels or intensities of service is necessary to meet title I project objectives effectively (116a.141(e)(3)(ii)).

If the title I services are delivered to limited English proficient children in a separate setting, the LEA must justify that the use of the separate setting is necessary to meet title I project objectives effectively (116a.141(e)(2)(1)(B)). Further, the levels or intensities of the title I services provided in the separate setting should be comparable to the levels or intensities provided to other participants. Failing this, the LEA must demonstrate that its use of different (or non-comparable) levels or intensities of instruction "is attributable to the limited number of participants for whom service in a separate educational setting is justified" (116a.141 (e) (2)(iii)).

In sum, in providing title I services to limited English proficient children, LEAs must strike a balance between the right of the limited English proficient child to equal opportunity and the categorical nature of title I funds. Certainly, limited English proficient children can and should participate in title I. However, their participation must not jeopardize the integrity of the title I program. Within these constraints, LEAs have considerable flexibility in providing title I services for limited English proficient children, as the following example shows.
Example: Providing Title I Services to Limited English Proficient
Children in the Mainstreamed Setting (116a.141(d)

An LEA designs a project to increase by two grade levels the reading
proficiency of children in grades 3 and 4 who score below the 25th percentile
on reading achievement tests. It selects 200 participants, 120 of whom have
Spanish as their primary or home language and who have varying degrees of
proficiency in English, and 80 of whom have English as their primary or home
language. The proportion within the participant group of children with a
Spanish-language background is approximately comparable to the proportion of
similar children in the district's title I eligible attendance areas.

The LEA provides instruction in a common educational setting that
includes children of both language backgrounds and uses a bilingual education
teacher. All of the children receive individualized attention, as needed, to
assist them to benefit from the instruction.

Since the LEA has designed its project, set common objectives, selected
participants, and provided services in a common educational setting using
children with Spanish and English language backgrounds, the SEA presumes that
the LEA has complied with the services required by law as it affects children
with limited English proficiency.

Similarly, an LEA designs a title I program, setting an overall
project goal of bringing to grade level in mathematics students who score
below the 25th percentile on a math achievement test and selects among the
participants some who are monolingual in Spanish. The LEA serves all partici-
pants in a single classroom. In order to ensure that the students who are
monolingual in Spanish will have an equal opportunity to benefit from the
title I project, as required under 116a.132(a), the LEA provides title I
services using a bilingual teacher.
In addition, the LEA demonstrates that in order to meet project objectives effectively, it is necessary to provide the monolingual Spanish students with more intensive instruction within the classroom to assist them to overcome language-related difficulties in mastering mathematical concepts. The SEA, therefore, concludes that the LEA has demonstrated compliance with the services required by law test.

Compensatory Education Services

Where an LEA is required to make compensatory education (or other) services available under state or local law, the services required by law test means simply that the LEA cannot use title I funds to pay for these legally required services. If the LEA can demonstrate that it is fully meeting its obligations (without the use of title I funds), it may use title I monies to supplement its required expenditures (116.142(a)(b)).

Demonstrating compliance with this test is primarily a matter of providing appropriate assurances and documentation. The LEA demonstrates that it is fully meeting its state obligations if appropriate state and local officials so certify to the SEA and the LEA has supporting documents available for review. Similarly, the LEA demonstrates that it is meeting its local obligations if an appropriate local official so certifies to the SEA and the LEA has supporting documentation available for review (116a.142(c)(d)).

Application of the services required by law test to the state and local compensatory education situation is seldom problematic, as the following example shows.

Example: Providing Compensatory Education Services Required by State or Local Law (116a.142(e))

An LEA designs a title I project to provide intensive reading instruction to children who have failed to pass a state minimum competency test.
State law requires that special compensatory instruction be provided to those children failing the test as part of a program meeting the definition of a special program in 116a.118(b). However, the law does not specify the level or intensity of instruction.

The SEA, on the advice of the State Attorney General, certifies that LEAs within the state may satisfy the requirements of state law by providing the failing children with a one-semester course in remedial English if that course meets at least three times per week and has a pupil-teacher ratio at least as low as the LEA's normal pupil-teacher ratio.

The LEA certifies that this type of special course is being provided for eligible children. The LEA may, therefore, use Title I funds to provide educationally deprived children in Title I eligible areas (who failed the minimum competency test) with additional class periods of remedial reading, or to provide to children selected for participation in Title I instruction using a reduced pupil-teacher ratio.

**Special State and Local Funds for Compensatory, Bilingual or Handicapped Education Programs: Coordination with Title I Projects**

The restrictions placed on the use of special state and local funds are not intended to prohibit LEAs from coordinating such programs with Title I programs. In fact, such coordination is encouraged (116a.143).

To this end, the regulations provide that an LEA may take into account and coordinate state and local special programs with Title I projects if the LEA meets all of the following conditions (116a.143(a)(1)-(3):

1. The LEA must ensure Title I funds are used to supplement and not supplant all relevant state and local funds as specified in 116a.132-116a.142 and discussed previously.
2. The LEA must ensure that it meets the requirements related to skipping schools and children as specified in 116a.65 and 116a.71 and discussed in Chapters I and II.

3. The LEA must ensure that all other applicable federal requirements (e.g., the Education of the Handicapped Act) are met.

4. The LEA must use objective criteria (such as direct or indirect indicators of educational need or level of poverty) to determine which children, schools, grade spans, and school attendance areas are eligible and targeted under the special state and local programs to be coordinated with title I.

5. The LEA must ensure that educationally deprived children who meet the objective criteria for eligibility and targeted by the special program(s) in question actually receive assistance under either title I or the special program before children who do not meet these criteria are served.

These provisions allow LEAs considerable flexibility in coordinating title I and special programs to develop comprehensive services, as the following example illustrates.

**Example: Coordinating Title I and Special State and Local Programs (116a.143(b))**

Under state law special funds are provided for the compensatory education of children from kindergarten through grade 6 who rank in the first quartile in reading achievement. The LEA desires to provide children eligible for assistance under this program with special reading instruction that costs $300 per participants.

There are in the LEA's district four school attendance areas, two of which are eligible for title I assistance and two of which are not. Using the objective criteria specified by state law (reading achievement in the
first quartile), the LEA determines that 200 children in each of the areas eligible for title I and 50 children in each of the areas not eligible for title I are eligible for services under the special state program.

The LEA is allocated $75,000 in state funds under the special state compensatory education program. Since 80 percent of the children eligible for services under the special state program (400 of the 500 total) are in areas that are eligible for Title I, and 20 percent (100 of the 500 total) are in areas that are not eligible for title I, the LEA distributes $60,000 (that is, 80 percent of $75,000) for use in areas that are eligible for title I.

The $60,000 in state funds allocated to provide compensatory education services to children in the title I eligible areas under the special state program is sufficient to allow 200 of the 400 eligible children to participate. These state funds may be distributed in several ways.

For example, they may be used to provide services to 100 children in each title I eligible attendance area, with title I funds used to provide comparable services to the additional 100 eligible children in each area. Alternately, they may be used to provide services to the 200 eligible children in one of the title I eligible area, with title I funds used to provide comparable services to the 200 eligible children in the other title I eligible area.

In each case, the children in the area served using state funds must receive services of the same nature and scope as the services provided under title I. In no case, however, may the LEA use title I funds to pay for this special program of reading instruction for children in areas not eligible for title I.
Program Practices in the Context of Excess Costs and Supplement not Supplant

Historically, there are a number of program design issues that have caused considerable confusion as LEAs sought to develop title I projects that met the excess costs and supplement not supplant requirements. Central among these are the issues of:

- handicapped and bilingual services
- desegregation related issues, for example, busing
- kindergarten switchovers from state and/or local to title I funds
- replacement of regular instructional programs
- pull-out vs. in-class instructions
- non-instructional activities by title I staff, for example, lunchroom and bus duty
- situations in which title I personnel might provide services to non-title I children (e.g., field trips, emergency medical services)
- in-service training
- high-school programs
- non-instructional services such as health, nutrition, etc.

Most of these issues are discussed in either Chapter 3 on program design or previously in this particular chapter on funds allocation. Illustration 5.11 summarizes and cross-references these earlier discussions. Issues that have not previously been covered are discussed below.
## Illustration 5.11

### Summary of Program Design Issues

<table>
<thead>
<tr>
<th>ISSUES</th>
<th>APPROPRIATE PRACTICE</th>
<th>CROSS REFERENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Handicapped and bilingual services</td>
<td>Title I can and should serve handicapped and bilingual children. (In addition, title I children should receive their fair share of state and local funds provided for the handicapped and bilingual programs.) However, in providing these services, the integrity of the title I program must be maintained, that is, the nature, level and intensity of service provided must not be drastically altered.</td>
<td>5.4.3 3.4.1</td>
</tr>
<tr>
<td>Replacement or substitution of regular instruction</td>
<td>Title I instruction may be substituted for regular instruction if the situation meets the substitution of services test under excess costs.</td>
<td>5.4.3</td>
</tr>
<tr>
<td>Non-instructional duties by title I staff, e.g., lunchroom, bus duty</td>
<td>Title I staff may perform those limited, rotating non-instructional duties performed by &quot;similarly situated&quot; personnel. Examples of such duties include hall duty, lunchroom and playground duty, and other commonly shared staff duties.</td>
<td>3.4.1 3.4.4</td>
</tr>
<tr>
<td>Title I services to non-title I children</td>
<td>In certain very limited situations, title I may provide services to non-title I children. This application is provided by the principle of &quot;incidental&quot; benefit, which requires that non-title I children receive only insignificant, non regular and infrequent benefit from title I. For example, the few non-title I children in a largely title I class may be included in a field trip, and a title I paid nurse may provide emergency services to non-title I child.</td>
<td>3.4.4</td>
</tr>
<tr>
<td>ISSUES</td>
<td>APPROPRIATE PRACTICE</td>
<td>CROSS REFERENCE</td>
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<td>In-service training</td>
<td><strong>Title I in-service training may be provided to both title I and regular classroom teachers and aides. The training must directly address and be limited to specific title I program issues and/or the specific needs of title I children.</strong></td>
<td>3.4.1</td>
</tr>
<tr>
<td>Non-instructional services (e.g., health, nutrition, etc.)</td>
<td><strong>Title I may provide non-instructional support services only if such services are necessary and reasonable to meet the objectives of the title I project and the LEA has attempted to locate and utilize other Federal and state programs to provide such services.</strong></td>
<td>3.4.1</td>
</tr>
</tbody>
</table>
**Kindergarten Switchovers**

On occasion, state or local funding for kindergarten is phased out, and an LEA wishes to pick up this services through title I or title I may have kindergarten and now state and local funding is to be provided for this service. The LEA must simply be guided by the excess costs and supplement not supplant provisions.

The most applicable test probably is the equitable distribution of funds test (supplement not supplant). The phase-in of a new kindergarten program or phase-out of an existing program must be equitable with regard to title I children. In other words, title I children must not bear more than their fair share of any reduction in service. Conversely, they are entitled to their fair share of new services.

For example, if an LEA reduces its kindergarten program by half from one year to the next, it cannot pull completely out of title I schools, leaving title I to pick up the program in the project schools. It must reduce service proportionally so that title schools continue to receive their percentage of the remaining kindergartens. The converse would also be true. Where kindergarten is being phased in, it must be phased in proportionally.

**Pull-out vs. In-Class Instruction**

Neither the law nor the regulations specify any particular instructional model. In fact, the intent of Congress is quite clearly the opposite. Hence, LEAs may use either or both the pull-out or in-class model for title I instruction.

In both instances, the LEA must simply make certain that the excess costs and supplement not supplant requirements are met. The most applicable provision is probably excess costs, with substitution of services the critical test.
High School Programs

High school programs are discussed at some length in 3.4.1. However, they are excluded from Figure 5.11 in order to highlight some additional program models focusing on the scheduling problems.

Perhaps the most problematic issue with regard to high school programs in the context of excess costs and supplement not supplant is the issue of scheduling. Unlike elementary school, the high school day is divided up into set periods. Hence, in order to receive title I help, a student clearly must miss some regular instruction. Actually, the situation is no different from elementary school but is perhaps more evident since the high school day is more structured.

Missing regular instructional periods does not present any problems as long as the excess costs and supplement not supplant provisions are met. Again, the most applicable provision is excess costs, with the substitution of services test paramount.

However, pedagogically high school programs do present bigger problems in some ways than elementary programs. At the lower grade levels, title I students are often pulled out in a rotating model, missing spelling one day, science the next. This is much more difficult to do with structured high school day. Hence, students are confronted with the possibility of missing one subject entirely in order to receive title I remediation. This in turn may affect their graduation credits.

There are a number of scheduling options an LEA might elect to avoid this. For example, study hall might be replaced with title I remediation. Seven possible scheduling models are displayed in the Legal Reference Guide, Volume II.
5.5.0 Summary of Funds Allocation Requirements

Title I ESEA legislation requires that title I funds be used to "expand and improve" school programs for educationally deprived children in areas with concentrations of children from low-income families. The funds must be used to meet the "special educational needs" of eligible children.

Thus, the law implies that title I funds must be used in addition to (to expand and improve) the funds normally available for the education of these children from state and local resources and that the funds must be for their special needs, not the everyday instructional needs common to all children and required by state laws.

To ensure that this intent is followed, title I regulations include a number of funding allocation provisions which prohibit consideration of title I funds in the appropriation of state and local monies for education and which require a minimum level of state and local support in attendance areas receiving title I funds. These funding allocation provisions are:

1. Maintenance of effort—Local school districts must maintain their fiscal effort in terms of state and local funds in title I project areas so they do not shift to the federal government—through title I—their ongoing financial responsibility to provide a free public education to all children.

2. Comparability—Services provided with state and local funds, measured in terms of pupil:teacher and expenditure per pupil for instructional salaries ratios, must be approximately equal in title I and non-title I schools.

3. Excess Costs—Title I funds may only be used to pay for "extras," the costs directly attributable to a title I project that exceed the normal per pupil expenditure.

4. Supplement not Supplant—Title I funds must be used in addition to and not in place of state and local funds for education. SEAs may not consider an LEA's title I allocation in determining the distribution of state funds.

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Without these provisions, Title I ESEA could easily become a general aid program, an impact specifically prohibited in the regulations.