

How to Determine Allowable Costs

Sheara Krvaric

Federal Education Group, PLLC

www.fededgroup.com

Introduction

Federal Education Group, PLLC (FEG) is a law and consulting firm that helps states, school districts, and other educational organizations understand federal law so they can use federal money to achieve their goals while maintaining compliance.

FEG's practice areas include all major federal K-12 education programs, including COVID relief programs, ESEA, IDEA, and Perkins, as well as federal grants management requirements, such as the Uniform Grant Guidance.

FEG's co-founders Melissa Junge and Sheara Krvaric previously served as in-house counsel for an SEA and in private practice at an education law firm.

Opportunity in Light of ESSER: Rethinking Uses of Funds Strategically

- Within the constraints of the pandemic, ESSER provides opportunities to rethink parts of K-12 education.
- These opportunities might be limited by misunderstandings about existing ED programs that have incentivized SEAs and LEAs to structure systems in ways they might not feel can be changed.
- This might mean re-examining common misperceptions about ED programs to identify ways systems could change with ESSER support.

Opportunity in Light of ESSER: Rethinking Uses of Funds Strategically (cont.)

- Existing ED programs often have more spending options than SEAs or LEAs realize and could potentially help to sustain some ESSER funded activities.
- Sustaining ESSER funded activities with existing ED funds might require:
 - Rethinking how SEAs and LEAs *currently* spend their funds, and
 - Reexamining existing ED programs to better understand spending options.

Use of Funds Framing Questions

- Is the activity to be supported consistent with a grant program's allowable activities?
- How would the expense affect fiscal tests that apply to a grant program (like supplement not supplant)?
- Is the expense consistent with federal cost principles (for example, is it necessary and reasonable)?
- Are there any other federal spending rules that might affect the analysis?

Allowable Activities

General Considerations

- Each of ED's programs has its own rules for what activities can be carried out as part of the program.
 - Often activities must target specific students, like students with disabilities for IDEA or English learners for Title III.
 - Activities should also generally be consistent with program goals, like improving academic achievement for Title I or supporting effective instruction for Title II.
- Some ED programs are more specific about allowable activities than others.
 - For example, Title II lists 16 examples of allowable activities.
 - Title I and IDEA are not so specific, giving more discretion to implement activities aligned to program goals.

Expanded Opportunities

- Often, ED programs allow for more activities than many realize.
 - For example, Title I schools tend to spend Title I funds on reading and math interventions. Title I can also support other subjects (like science, engineering, history, languages, arts, PE and CTE), as well as non-academic supports (like counseling, mentoring, social and emotional learning, and mental health).
 - LEA tend to spend Title II funds on short-term teacher professional development. Title II can also support professional development for principals and other school leaders, recruitment and retention, professional advancement opportunities, feedback mechanisms to improve working conditions, and more.

Title I, Part A of the Elementary and Secondary Education Act (ESEA)

- <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/title-i-part-a-program/>
- Key takeaways:
 - Districts can provide centrally-managed supports to Title I schools.
 - Higher-poverty Title I schools can operate schoolwide programs that allow for whole school initiatives, like common professional development for grade level teams, collaborative planning time, mentoring, coaching, etc.
 - New Title I supplement not supplant rules support more spending options.

Summary of Title I Spending Options

- LEAs and schools that receive Title I funds can use the funds to help participating students meet state academic standards.
 - This can include providing students with a well-rounded education, and
 - Improving non-academic skills that contribute to academic success through counseling, school-based mental health programs, and more.
- Participating students include:
 - All students who attend a Title I school that operates a schoolwide program.
 - Academically at-risk students identified by a Title I school that operates a targeted assistance program.

Title II, Part A of ESEA

- <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/instruction-state-grants-title-ii-part-a/>
- Key takeaways:
 - Title II can provide many more professional learning opportunities than is commonly realized, including coaching, mentoring, job embedded supports, improving instructional supports from school library programs, training to support improved school conditions for learning, and more.
 - There is more flexibility for one-time trainings than is commonly realized.
 - Title II can collaborate with other programs like Title I and IDEA to amplify support for struggling learners.

Summary of Title II Spending Options

- LEAs that receive Title II funds can use the funds on a variety of activities to support Title II's purposes and address the learning needs of all students.
- This includes any of the activities enumerated in [ESEA, Section 2101\(b\)\(3\)\(A\)-\(O\)](#) and other evidence-based activities to meet LEA needs as described in [ESEA, Section 2101\(b\)\(3\)\(P\)](#).
- LEAs must prioritize the needs of low-performing high-poverty schools.

Part B of the Individuals with Disabilities Education Act (IDEA)

- <https://sites.ed.gov/idea/>
- Key takeaways:
 - IDEA can offer support for any educator who works with students with disabilities including general education teachers. For example:
 - An LEA could use IDEA funds to train general education teachers on how to adapt instruction to meet the needs of students with disabilities in their classrooms.
 - An LEA could use IDEA funds support collaboration between general and special educators.
 - IDEA coordinates well with other funding sources.

Summary of IDEA, Part B Spending Options

- LEAs may spend IDEA, Part B funds on any reasonable cost to deliver special education and related services to eligible students with disabilities.
- This includes things like:
 - Special education teachers and administrators,
 - Related services providers (speech therapists, psychologists, etc.),
 - Materials and supplies for use with children with disabilities,
 - Professional development for special education personnel,
 - Professional development for regular education teachers who teach children with disabilities, and
 - Specialized equipment or devices to assist children with disabilities.

Summary of IDEA, Part B

Spending Options (cont.)

- It also includes:
 - Access to high-quality teachers and supports for teachers who work with students with disabilities, certification programs, induction programs, mentoring, etc.
 - Increasing the use of technology to improve outcomes for students with disabilities, including hardware and software to increase access to the general education curriculum,
 - Providing assistive technology,
 - Implementing Universal Design for Learning approaches to meet the needs of diverse learners in the same learning environment,
 - Supporting RTI/MTSS approaches,
 - Positive behavioral supports,
 - Social and emotional learning, and
 - Improving data systems.

Fiscal Tests

Supplement not Supplant

- Supplement not supplant (SNS) means LEAs must use federal funds to “add to” state/local funding for education, not replace state/local funding.
- Each federal program has its own way of testing for SNS compliance.
- SNS has been a historical barrier to effective spending because of perception that “extra” means different.

Title I, Part A Supplement not Supplant

- **The three presumptions no longer apply.** LEAs do not have to show individual costs paid with Title I funds are supplemental.
- Instead, LEAs must demonstrate the “**methodology used to allocate State and local funds** to each school receiving assistance under [Title I, Part A] ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under [Title I, Part A].”
- In other words, LEAs must allocate (budget) state and local funds (or state/locally-funded resources) in ways that do not deprive Title I schools of money or resources they would have received if they did not participate in Title I.

Title II, Part A and Title IV, Part A Supplement not Supplant

- **Supplanting is presumed if an LEA uses Title II or Title IV:**
 - For an activity the LEA or school is legally required to carry out.
 - For an activity the LEA or school funded with state or local money last year.
- **Exception:** An LEA may overcome the second presumption of supplanting if it can demonstrate it cannot continue to support an activity with state or local funds because of state or local funding reductions.

Title III, Part A Supplement not Supplant

- Three considerations:
 - Compliance with SNS is tested using two presumptions.
 - An LEA may not use Title III funds to meet its civil rights obligations to EL students.
 - In some circumstances, an LEA may use Title III funds to pay for EL-related activities under Title I, Part A.
- Supplanting is presumed if an LEA uses Title III:
 - For an activity the LEA or school is legally required to carry out.
 - For an activity the LEA or school funded with state or local money last year.
- Same exception as noted on prior slide applies.

Title III, Part A Supplement not Supplant (cont.)

- Under the first presumption of supplanting an LEA may not use Title III funds to meet the requirements of federal, state, or local law.
- Under federal law, specifically Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA), LEAs have legal obligations to ensure that ELs can meaningfully and equally participate in educational programs and services
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

Title III, Part A Supplement not Supplant (cont.)

- For example, an LEA may not use Title III funds to identify EL students because identifying EL students is a civil rights obligation under Title VI and the EEOA.
- An LEA that meets its civil rights obligations on staffing may use Title III funds to hire extra staff.
 - For example, ED guidance says an LEA may use Title III funds to hire a specialist on EL students with interrupted formal education or English learners with disabilities to provide supplemental support to these unique populations.
 - An LEA could also use Title III funds to hire staff that would provide supplemental LEA-wide instructional support to teachers of ELs.

IDEA, Part B

- **The three traditional presumptions of supplanting do not apply.**
- An LEA that meets maintenance of effort obligations satisfies supplement not supplant as well.
- IDEA's excess cost test is often confused with supplement not supplant leading some SEAs and LEAs to mistakenly apply certain presumptions to determine if costs are "excess." This is not required by federal law and is inconsistent with IDEA's excess cost rules. (See next slide.)

IDEA, Part B Excess Cost Test

- IDEA, Part B funds can only pay for the excess cost of providing special education and related services.
- The excess cost of providing special education and related services is calculated through a process that looks at an LEA's aggregated spending, not individual expenses.
- This means LEAs do not have to show each cost supported with IDEA funds is “excess.”

Federal Cost Principles

Introducing Federal Cost Principles

- Federal grants, including ED grants, are subject to a set of federal regulations called the [Uniform Grant Guidance](#) (UGG).
- The UGG has:
 - **Administrative rules**, like how to procure and manage items purchased with federal funds, financial management standards, state oversight responsibilities, and more.
 - **Spending rules**, known as federal cost principles, including general criteria all costs paid with federal funds must satisfy, costs that may never be paid with federal funds, and special rules for certain types of costs.
 - **Audit rules** for single audits.

General Criteria All Costs Must Meet

- Necessary and reasonable for the performance of the federal award,
- Allocable,
- Conform with any federal rules limiting costs (like Perkins's cap on administrative costs),
- Consistent with policies and procedures recipients apply uniformly to both federally and non-federally funded spending,
- Accorded consistent treatment, which means a cost usually cannot be charged as a direct cost sometimes and as an indirect cost other times,
- Consistent with generally accepted accounting principles,
- Separate from any cost sharing or matching requirement,
- Adequately documented, and
- Incurred during the approved budget period. [2 CFR § 200.403](#)

Necessary and Reasonable

- A cost is considered reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. [2 CFR § 200.404](#)
- In other words, would an objective observer would understand the decision to spend funds considering the amount of money being spent, the needs of the program, and other relevant circumstances?

Factors to Consider When Assessing Necessary and Reasonable

- Whether the cost is needed to carry out the grant program properly and efficiently,
- Whether the entity followed sound business practices,
- The cost of the good, service, or activity being supported and whether the cost is consistent with market prices,
- Whether the entity acted prudently considering its responsibilities to itself, its students, the public, and the federal government, and
- Whether the entity generally followed its internal practices and policies. [2 CFR § 200.404](#)

Allocable

- In general, allocable means a federal program only pays for a cost in proportion to the benefit the program receives. [2 CFR § 200.405](#)
- For example:
 - If Perkins pays for a teacher's entire salary, that teacher must spend all their time working on Perkins activities.
 - If the teacher only spends 20% of their time on Perkins activities, Perkins can only pay 20% of the teacher's salary.

Examples of Costs that May Not be Charged

- Advertising and public relations costs (with limited exceptions)
- Advisory councils unless permitted by the grant or federal awarding agency
- Alcoholic beverages
- Bad debts
- Contributions and donations
- Entertainment except where there is a programmatic purpose and costs are authorized either in the approved grant or by the federal awarding agency
- Fines, penalties, damages and other settlements (with limited exceptions)
- Fund raising and investment management costs (with limited exceptions)
- General costs of government
- Goods or services for personal use
- Lobbying
- Organizing activities in connection with establishment or reorganization of an organization, except with prior approval
- Selling and marketing
- Student activity costs (like costs for intramural activities, student publications, student clubs, and other student activities) unless specifically allowed under the grant

Examples of Other Spending Considerations

Prior Approval for Capital Expenditures, Including Equipment 2 CFR § 200.439

- Capital expenditures are “expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.”
- Capital assets are “tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [generally accepted accounting procedures],” including land, buildings (facilities), equipment, intellectual property (including software), and certain kinds of leases, as well as improvements and modifications to those assets.
- Equipment is tangible personal property (including information technology systems) with a useful life of more than one year and a per-unit acquisition cost at or above the LEA’s capitalization level or \$5,000, whichever is less.

Support for Employee Compensation

- LEAs that use federal funds to pay employees must maintain records that reflect the work employees performed. [2 CFR § 200.430\(i\)](#)
- These records help to verify the employee worked on the program(s) supporting their compensation.
- For example, if an LEA charges an employee's entire salary to Title I, Part A, the SEA must have records demonstrating the employee spent their time working on Title I activities.

Employee Compensation Records Must:

- Be supported by a system of internal control that provides reasonable assurance employee compensation charges are accurate, allowable, and properly allocated.
- Be incorporated into the entity's official records.
- Reasonably reflect the total activity for which the employee is compensated.
- Encompass both federal grant-related activities and any other activities an employee works on.
- Comply with the entity's established accounting policies and practices.
- Support the distribution of the employee's salary or wages among the specific activities or cost objectives the employee works on.

Record Keeping Policies

- ED guidance suggests SEAs and LEAs should have written time and effort policies and procedures as an internal control.
- ED expects time and effort policies and procedures to address:
 - How to report employee time,
 - How the reports are approved,
 - How employee compensation is charged to federal grants, and
 - The system of controls an entity has in place to ensure charges are accurate.
- According to ED, “generally, the information should be in sufficient detail to permit an understanding of how the system will operate from the point the time worked to the point the time is recorded in the accounting records and charged to federal awards.”

Putting it Together: Spending Scenarios

Could We Fund This?

- During a planning meeting, a staff member proposes to use Title I funds to buy washers and dryers for a school district's highest-poverty Title I schools that operate schoolwide programs.
- The proposal is based on research showing laundry programs can help improve attendance and student wellbeing for high-poverty students.
- How should the district go about analyzing the expense?

Analyzing Spending with an Eye on Sustainability

- Many of an LEA's students with disabilities have specific learning disabilities in reading.
- These students tend to receive pull-out interventions delivered by special educators (often, paraprofessionals) paid with IDEA funds.
- The LEA uses ESSER funds to invest in a new K-2 reading structured literacy curriculum that provides explicit instruction in phonemic awareness, systematic phonics, sound-symbol association, among other components.
- If that helps to lower costs because many student needs can now be met in the regular classroom, the LEA can repurpose existing ED grants to sustain the initiative (see next slide).

Sustainability (cont.)

- The LEA could use IDEA and Title II funds to provide ongoing professional development to teachers on meeting the needs of diverse learners in the general classroom.
- The LEA could repurpose IDEA funds for students with disabilities who need extra supports beyond the new curriculum.
- The LEA could use/repurpose IDEA CEIS funds to meet the needs of students without disabilities who need extra supports beyond the new curriculum.
- The LEA could use Title I funds to meet the needs of struggling students in Title I schools who need extra supports beyond the new curriculum.

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