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## MEMORANDUM

**DATE:** December 16, 2008

**TO:** District School Superintendents

**FROM:** Linda Champion, Deputy Commissioner, Finance and Operations

**SUBJECT:** Federal Supplement/Not Supplant Requirement and the Differentiated Accountability Plan

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This memorandum provides additional guidance for implementing Florida's Differentiated Accountability Plan (DA) in accordance with the supplement/not supplant requirements for use of federal funds. As stated in the Executive Summary of the proposal approved by the U.S. Department of Education (USED), "Florida's Differentiated Accountability Plan is a consolidation of federal and state accountability systems for the purpose of identifying the lowest performing schools in need of assistance and to classify schools for applying a more nuanced system of support and interventions... [emphasis added]." As such, application of the complex federal supplement/not supplant requirements can be particularly challenging in the implementation of DA.

LINDA CHAMPION  
DEPUTY COMMISSIONER, FINANCE AND OPERATIONS

### **Supplement/Not Supplant Presumptions**

To fully explain the supplement/not supplant implications, it is important to understand the basic requirements. The OMB Circular A-133 Compliance Supplement provides guidance to auditors regarding tests to determine if supplanting has occurred. Auditors will presume supplanting has occurred if any of the following practices has occurred:

- A grantee uses federal funds to provide services that the grantee is required to make available under other federal, state, or local laws; or
- A grantee uses federal funds to provide services that the grantee provided with non-federal funds in the prior year; or
- A grantee uses funds to provide services for participating children that the grantee provides with non-federal funds for nonparticipating children.

**These presumptions may be rebutted only if the grantee can demonstrate to the satisfaction of the auditors that the grantee would not have provided the services in question with non-federal funds, had the federal funds not been available. In other words, the question to be answered is: “What would the grantee have done in the absence of federal funds?”**

### **Supplanting Analysis #1**

Auditors will presume that a recipient of federal funds has violated the supplanting prohibition if the recipient uses federal funds to support a state-mandated activity. A district can overcome this presumption if the district can demonstrate that it could not meet the requirements of the mandate using only non-federal funds. There is no single way to overcome this presumption, and each district’s individual financial situation and educational programming choices will determine whether or not that district will be able to overcome the supplanting presumption. Thus, individual districts will be responsible for providing the necessary documentation to overcome the supplanting prohibition.

If a district cannot meet the state requirement with non-federal funds available to it, then it may be able to use federal funds for this purpose. However, the district must provide **fiscal and programmatic documentation** to demonstrate that non-federal funds are not sufficient to meet the mandates. In recent non-regulatory guidance, the U.S. Department of Education has indicated that districts could use budget information, planning documents, and legislative history to make the case that the district does not have the resources to meet state mandates. Thus, the district must generate and keep this documentation for auditors to review.

### **Supplanting Analysis #2**

The second presumption of supplanting arises when a subgrantee uses federal funds to provide services that the grantee provided with non-federal funds in the prior year. This requirement prohibits shifting non-federal funds from one educational program to another, in anticipation of receipt of federal funds. If, for example, a district plans to use federal funds to support a teaching position previously paid by non-federal funds, an auditor will presume that supplanting has occurred. Thus, to overcome this presumption, we advise districts to identify positions or services that, in the absence of federal funds, it would support through non-federal funds, and the reason for eliminating the non-federal support for this position or service.

### **Supplanting Analysis #3**

A subgrantee uses funds to provide services for participating children that the district provides with non-federal funds for nonparticipating children. An example would be the situation in which students at non-Title I schools receive the services of a reading coach paid for by state/local funds and the reading coaches for Title I schools are paid for by Title I, Part A, funds. This particular situation is perhaps the most challenging situation posed by the supplement/not supplant requirements.

### **Exclusion**

For districts who have both Title I and non-Title I schools identified as Intervene and/or Correct II and/or Prevent II schools, there is an exemption to the supplement/not supplant requirements. This exclusion is specified in 34 CFR 200.79 and further explained in the Non-Regulatory Guidance on Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, Not Supplant; carryover; Consolidating Funds in Schoolwide Programs; Grantback Requirement (Revised February 2008), pages 39-40. Copies of these two document excerpts are attached. In brief, this provision allows districts to “exclude” state and local funds from its supplanting analysis when the funds are used in any school to carry out a program that meets the “intent and purposes of Title I, Part A.” In this instance the “program” in question is the implementation of the DA Plan, which, by virtue of its approval by the USED, ensures that at least one of the conditions for use of this exclusion with non-Title I schools is met. The exclusion may apply only in schools for which one of the following two situations applies:

- Is implemented in a school in which the percentage of children from low-income families is at least 40 percent;
- Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging academic achievement standards that all students are expected to meet;
- Is designed to meet the educational needs of all students in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards; and
- Uses the State's system of assessment under 34 CFR 200.2 to review the effectiveness of the program.

**Or—**

- Serves only students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards;
- Provides supplementary services designed to meet the special educational needs of students who are participating in the program to support their achievement toward meeting the State's student academic achievement standards; and
- Uses the State's system of assessment under 34 CFR 200.2 to review the effectiveness of the program

The first situation is analogous to a Title I school wide program and the second is analogous to a Title I targeted assistance school. It is likely that non-Title I schools identified as Intervene and/or Correct II and/or Prevent II schools will meet one of these two sets of criteria. If a school meets the 40% poverty threshold, it is probable that the school will fall within the first category since the DA Plan and the state's assessment system will meet the remaining criteria. If the school does not meet the 40% threshold, the use of the supplemental state and local funds will need to be targeted to students who are failing or most at risk of failing to meet the state standards.

The final element of this exclusion is that the state or local funds being used to implement the program must be supplemental in nature. The most obvious of the state funds that meet the definition of "supplemental" is the Supplemental Academic Instruction (SAI) appropriation. Other appropriations within the Florida Education Finance Program may also qualify as supplemental depending on how the district has chosen to allocate the funds among the schools in the district. Again, each district will need to assess budget and planning documents as well as district-wide allocation formulas to determine whether or not each category within its state and local funding sources meets the definition of "supplemental."

**Summary**

The supplement not supplant requirement is a complex fiscal determination and violating this requirement can subject a district to serious financial consequences. It is important to keep in

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mind that the Florida Department of Education is the entity charged with resolving all findings resulting from audits conducted under OMB Circular A-133. The Department will follow the guidelines for the three supplanting presumptions and their rebuttals, along with the supplanting exclusion described above in resolving any supplement/not supplant audit findings. If a district carefully analyzes its allocations of state/local and federal funds in relationship to the three presumptions and the exclusion described above, it should be possible to use an appropriate combination of state/local and federal funds to fully implement the Differentiated Accountability Plan.

Questions regarding these guidelines should be directed to Martha K. Asbury, Director, Administrative Services, at (850) 245-0420 or via email at [Martha.Asbury@fldoe.org](mailto:Martha.Asbury@fldoe.org). As questions are received, we will publish them and their answers for use by all districts.

cc: Finance Officers  
Federal Program Contacts