

Technical Assistance Regarding the Use of Subpart 2 Funds In the Absence of a Supplement/Not Supplant Clause

While Subpart 2 does not include a supplement, not supplant clause like Subpart 1, ED strongly encourages the supplemental use of Subpart 2 funds. If, as the SEA, you are hesitant to approve one or more of the applications because you determined a proposed uses of funds would supplant the regular program of instruction but are not sure how to justify that inclination, here are a few points of information that may help:

- There is nothing in the statute, Nonregulatory Guidance, or regulations that state it is allowable for an LEA to use Title I, Part D, Subpart 2, to partially or fully fund a regular program of instruction/basic education of locally operated correctional facilities.
- Many State Constitutions include that the SEAs and/or LEAs shall provide for the education of its students. This reflects how the provision of education is primarily a State and local responsibility (see <http://www.ed.gov/about/overview/fed/role.html>).
- Title I is supplemental in nature. For example, the purpose of Title I as described in [Section 1001 of the statute](#); the program requirements for Subpart 2 outlined in [Section 1425 of the statute](#); and the Title I, Part D, outcomes programs must measure to demonstrate gains are not directly related to a regular program of instruction. Rather, they speak to aiding or assisting LEAs as they collaborate with locally-operated correctional facilities to meet the purpose of Subpart 2 as outlined in [Section 1421 of the statute](#).
- USED would hope that SEAs and LEAs encourage innovative, supplemental program uses for Title I, Part D, Subpart 2, funds, demonstrating increases in the outcome measures as a result. To do so, as the SEA, you:
 - Can set your State's Subpart 2 program priorities in the LEA application to be supplemental in nature and use corresponding criteria to review them once submitted;
 - Use your discretion during application and monitoring processes to determine whether a) an LEA is meeting the uses of funds requirements outlined in [Section 1424 of the statute](#) and b) funded activities meet the stated purpose of the program (again, [Sections 1001 and 1421](#) of the Statute) and are therefore allocable ([OMB A-87](#)); and
 - Consider several options for administering the Subpart 2 program, including administering a discretionary grant program, reducing funds for underperforming programs, or using other data/establishing other criteria for awarding discretionary or formula grants.
- Thus, the onus really is on the LEA (and locally-operated correctional facilities) to propose activities that are not simply supplanting a regular program of instruction. If the facility cannot or will not do that, the LEA should keep the funds and operate its own program, providing services through its own staff to students in the facility or transitioning from the facility.