

Title III Spending Guidance

Understanding Supplement, Not Supplant

The Office of English Language Acquisition Services (OELAS) has compiled this guidance to assist Arizona LEAs to better understand the supplement, not supplant (SNS) requirement as it pertains to Title III funds. While this guidance is not all-inclusive, it provides LEAs useful information when considering the permissibility of supplemental programs and services for English learners (ELs). Additionally, this guidance is intended to increase LEAs' awareness of their legal obligations to English learners and their families under Title III and other Federal and State laws. It is important to remember that programs and services required under other laws are not eligible for Title III funding.

Title III's strict supplement, not supplant requirement is different than the SNS requirement for other Federal funds. This helps to protect the students for whom these funds are intended to support by ensuring they have access to all programs and services made available to non-English learners and at the same time providing them additional opportunities to meet their unique educational needs as an English learner. The availability of these additional funds helps to increase their rate of success in language development and overall academic achievement.

The Title III supplement, not supplant requirement is also discussed in further detail in the document *Spending Guidance For ESSA Programs*, found [here](#) on the OELAS website. Determining allowability of requests in the Title III funding application is situation specific for each LEA. This further emphasizes the importance of all stakeholders' input in the development of the LEA Comprehensive Needs Assessment (CNA) and LEA Integrated Action Plan (LIAP). An awareness of all available programs and funding sources within an LEA is critical when determining if potential Title III funding requests are compliant with the Title III supplement, not supplant requirement. In addition to input from LEA stakeholders, the Title III Fiscal Specialist and Title III Regional Specialists in OELAS are critical partners in the process of developing and implementing effective and compliant Title III programs.

As explained in paragraph one of this guidance document, any legal obligations an LEA has under other laws are not eligible to be funded using Title III funds. Pages two through six of this guidance outline some key Federal requirements impacting Title III and the permissibility of funding.

Office of English Language Acquisition Services
602.542.0753
<http://www.azed.gov/oelas/>

What is the Title III Supplement, Not Supplant Requirement?

Title III Part A SEC. 3115. [20 U.S.C. 6825] SUBGRANTS TO ELIGIBLE ENTITIES.

(g) SUPPLEMENT, NOT SUPPLANT.—Federal funds made available under this subpart shall be used so as to supplement the level of **Federal, State, and local** public funds that, in the absence of such availability, would have been expended for programs for English learners and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.

What Does Supplement, Not Supplant Mean in Practice?

At its most basic, supplement, not supplant (SNS) requires Title III funds to add to (supplement) and not replace (supplant) other federal, state, and local funds. Whether a cost complies with SNS is situation specific, but in general there are three issues to consider:

1. Compliance with SNS is tested using two “presumptions,”
2. An LEA may not use Title III funds to meet its civil rights obligations to EL students, and
3. In some circumstances, an LEA may use Title III funds to pay for EL-related activities under Title I, Part A.

Issue 1: Compliance with SNS is tested using two “presumptions”

The federal government presumes Title III supplanting in the following two situations:

1. An LEA uses Title III funds to provide services the LEA is required to make available under other laws, or
2. An LEA uses Title III funds to provide services the LEA paid for with state or local funds the prior year.

These presumptions can be “rebutted” (disputed with evidence) and possibly overcome if the LEA can show it could not have provided the services in question with state or local funds.

Example: Presumed Supplanting Violation

Paying for an interventionist that provides intensive small-group interventions outside of the required instructional time to EL students with Title III funds would violate the second presumption of supplanting if the LEA paid for this interventionist with local funds the prior year.

NOTE: The LEA may be able to rebut this presumption of supplanting if it can show it did not have local funds available to pay for the interventionist.

Issue 2: An LEA may not use Title III funds to meet its civil rights obligations to EL students

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. U.S. Department of Education (ED) guidance explains that to meet these civil rights obligations to EL students LEAs must:

- Identify and assess all potential EL students in a timely, valid, and reliable manner,
- Provide EL students with a language assistance program that is educationally sound and proven successful, consistent with *Castañeda v. Pickard* and the U.S. Supreme Court decision in *Lau v. Nichols*,

- Provide sufficiently well prepared and trained staff and support the language assistance programs for EL students,
- Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities,
- Avoid unnecessary segregation of EL students,
- Ensure that EL students who have or are suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 are identified, located, and evaluated in a timely manner and that the language needs of students who need special education and disability related services because of their disability are considered in evaluations and delivery of services,
- Meet the needs of EL students who opt out of language assistance programs,
- Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level content knowledge, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied,
- Evaluate the effectiveness of a school district's language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program is reasonably calculated to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time, and
- Ensure meaningful communication with limited English proficient (LEP) parents.

Because Title III funds may not be used to meet legal obligations, including civil rights obligations, Title III may not be used to meet the obligations in the above list.

Example: Impermissible Title III Spending on Civil Rights Obligations

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.

Example: Permissible Title III Supplemental Spending

An LEA that meets its civil rights obligations on staffing may use Title III funds to hire extra staff. For example, ED guidance states that 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. ED guidance also notes that determinations about the supplement not supplant requirement in Title III are always fact-specific.

Issue 3: *In some circumstances, an LEA may use Title III funds to pay for EL-related activities under Title I*

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 No Child Left Behind (NCLB), this meant LEAs could not use Title III funds to pay for Title I, Part A's EL-related requirements. Under ESSA, however, certain requirements that were previously part of the Title III program have moved to Title I, Part A. Because of this, ED guidance permits LEAs to use Title III funds to pay for activities that were in Title III under NCLB, but are now part of Title I, Part A in ESSA such as:

- EL parental notification regarding language instruction educational programs (LIEPs) and related information (ESEA Section 1112(e)(3)) [see page five of this document],

- Parental participation (e.g., regular EL parent meetings) (ESEA Section 1116(f)) [see page six of this document], and
- Reporting to the State on the number and percentage of ELs achieving English language proficiency (ESEA Section 1111(h)(2)) [see page six of this document].

ED's guidance states that LEAs may only use Title III funds for activities that moved from Title III to Title I *if* they ensure that:

1. The activity being supported is consistent with the purposes of Title III and meets federal guidelines for "reasonable and necessary costs,"
2. The activity being supported is supplemental to the LEA's civil rights obligations to ELs under Title VI of the Civil Rights Act and the EEOA, and
3. The LEA can demonstrate it is also using Title III funds to conduct activities required under Title III.

Please note LEAs may not use Title III funds for Title I, Part A activities that are also used to meet civil rights obligations. For example, under Title VI of the Civil Rights Act of 1964 and the EEOA, LEAs must track EL student progress in achieving English language proficiency. LEAs often use the annual English language proficiency (ELP) assessment, which is now required under Title I, to meet this civil rights obligation. If an LEA uses the annual ELP assessment to meet its civil rights obligations, Title III funds could not be used to pay for costs related to administering the ELP assessment.

Where Can An LEA Find More Information About Civil Rights Obligations to English Learners?

The following links include materials and information for students and parents, Office of Civil Rights (OCR) guidance and resources for education officials about their obligations to EL students and LEP parents. Fact Sheets are available in English and multiple other languages to assist LEAs with sharing this information with their school communities. In addition to finding this information on the U.S. Department of Education website at the links below, pdf versions of these fact sheets are also available [here](#) under the *Title III Funding Guidance* menu on the OELAS website.

U.S. Department of Education/Office for Civil Rights

<https://www2.ed.gov/about/offices/list/ocr/ellresources.html>

Fact Sheet, Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs (Jan. 2015)

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>

Fact Sheet, Information for Limited English Proficient Parents and for Schools and School Districts that Communicate with Them (Jan. 2015)

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>

What are some Title I Requirements Which Relate to Parents of English Learners?

As Amended Through P.L. 114-95, Enacted December 10, 2015

As stated on page one of this guidance document, this document is not all-inclusive of every scenario possible to determine if programs and services are eligible for Title III funding. It is intended to serve more as a starting point for looking at all programming an LEA must provide - or is providing - in order to determine how to use Title III funds to enhance programs and services already in existence within the LEA to further meet the needs of English learners and their parents. Being knowledgeable of Title I requirements will also assist LEAs when making determinations for

supplemental activities permissible to be funded by Title III. The three examples below address some Title I requirements as they relate to obligations to parents of ELs.

TITLE I PART A SEC. 1112. (e) PARENTS RIGHT-TO-KNOW.—

(3) LANGUAGE INSTRUCTION.—

(A) NOTICE.—Each local educational agency using funds under this part or Title III to provide a language instruction educational program as determined under Title III shall, not later than 30 days after the beginning of the school year, inform parents of an English learner identified for participation or participating in such a program, of—

(i) the reasons for the identification of their child as an English learner and in need of placement in a language instruction educational program;

(ii) the child’s level of English proficiency, how such level was assessed, and the status of the child’s academic achievement;

(iii) the methods of instruction used in the program in which their child is, or will be, participating and the methods of instruction used in other available programs, including how such programs differ in content, instructional goals, and the use of English and a native language in instruction;

(iv) how the program in which their child is, or will be, participating will meet the educational strengths and needs of their child;

(v) how such program will specifically help their child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation;

(vi) the specific exit requirements for the program, including the expected rate of transition from such program into classrooms that are not tailored for English learners, and the expected rate of graduation from high school (including four-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates for such program) if funds under this part are used for children in high schools;

(vii) in the case of a child with a disability, how such program meets the objectives of the individualized education program of the child, as described in section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)); and

(viii) information pertaining to parental rights that includes written guidance—

(I) detailing the right that parents have to have their child immediately removed from such program upon their request;

(II) detailing the options that parents have to decline to enroll their child in such program or to

(III) assisting parents in selecting among various programs and methods of instruction, if more than 1 program or method is offered by the eligible entity.

(B) SPECIAL RULE APPLICABLE DURING THE SCHOOL YEAR.—For those children who have not been identified as English learners prior to the beginning of the school year but are identified as English learners during such school year, the local educational agency shall notify the children’s parents during the first 2 weeks of the child being placed in a language instruction educational program consistent with subparagraph (A).

(C) PARENTAL PARTICIPATION.—^[11]_{SEP}

(i) IN GENERAL.—Each local educational agency receiving funds under this part shall implement an effective means of outreach to parents of English learners to inform the parents regarding how the parents can—

(I) be involved in the education of their children; and

(II) be active participants in assisting their children to—

(aa) attain English proficiency;

(bb) achieve at high levels within a well- rounded education; and

(cc) meet the challenging State academic standards expected of all students.

(ii) REGULAR MEETINGS.—Implementing an effective means of outreach to parents under clause (i) shall include holding, and sending notice of opportunities for, regular meetings for the purpose of formulating and responding to recommendations from parents of students assisted under this part or title III.

(D) BASIS FOR ADMISSION OR EXCLUSION.—A student shall not be admitted to, or excluded from, any federally assisted education program on the basis of a surname or language-minority status.

(4) NOTICE AND FORMAT.—The notice and information provided to parents under this subsection shall be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.

TITLE I PART A SEC. 1116. (f) PARENT AND FAMILY ENGAGEMENT.-

ACCESSIBILITY.—In carrying out the parent and family engagement requirements of this part [see SEC. 1116. (a) – (g)] local educational agencies and schools, to the extent practicable, shall provide opportunities for the informed participation of parents and family members (including parents and family members who have limited English proficiency, parents and family members with disabilities, and parents and family members of migratory children), including providing information and school reports required under section 1111 in a format and, to the extent practicable, in a language such parents understand.

TITLE I PART A SEC. 1111. (h) REPORTS.—

(2) ANNUAL LOCAL EDUCATIONAL AGENCY REPORT CARDS.—

(A) PREPARATION AND DISSEMINATION.—A local educational agency that receives assistance under this part shall prepare and disseminate an annual local educational agency report card that includes information on such agency as a whole and each school served by the agency.

(B) IMPLEMENTATION.—Each local educational agency report card shall be—

(i) concise;

(ii) presented in an understandable and uniform format, and to the extent practicable, in a language that parents can understand; and

(iii) accessible to the public, which shall include—

(I) placing such report card on the website of the local educational agency; and

(II) in any case in which a local educational agency does not operate a website, providing the information to the public in another manner determined by the local educational agency.

(C) MINIMUM REQUIREMENTS.—The State educational agency shall ensure that each local educational agency collects appropriate data and includes in the local educational agency's annual report the information described in paragraph (1)(C), disaggregated in the same manner as required under such paragraph, except for clause (xii) of such paragraph, as applied to the local educational agency and each school served by the local educational agency, including—

(i) in the case of a local educational agency, information that shows how students served by the local educational agency achieved on the academic assessments described in subsection (b)(2) compared to students in the State as a whole;

(ii) in the case of a school, information that shows how the school's students' achievement on the academic assessments described in subsection (b)(2) compared to students served by the local educational agency and the State as a whole; and

(iii) any other information that the local educational agency determines is appropriate and will best provide parents, students, and other members of the public with information regarding the progress of each public school served by the local educational agency, whether or not such information is included in the annual State report card.

(D) ADDITIONAL INFORMATION.—In the case of a local educational agency that issues a report card for all students, the local educational agency may include the information under this section as part of such report.