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### Introduction to Title III

The U.S. Department of Education’s (USED’s) Title III, Part A grant provides supplemental funds to help support English learners (ELs) and immigrant students. Title III funds are not intended to be the sole source of financial support for EL and immigrant students. Local education agencies (LEAs) are expected to use state and local funds to meet their civil rights obligations to EL and immigrant students, but Title III funds can provide additional support to help such students learn English and meet state academic standards. LEAs may also use funds from other federal programs, such as Title I, to support EL and immigrant students.

Title III includes two types of subgrants to LEAs:

1. “Formula” subgrants available to LEAs (or a consortium of districts and/or charters) that generate at least \$10,000 under a formula in the Title III law.
2. “Targeted” or “Immigrant Increase” subgrants to LEAs that experience a significant increase in immigrant children and youth.

LEAs are encouraged to contact the Delaware Department of Education (DDOE) for more information about this guidance, Title III in general, or to request individualized technical assistance. Please contact Maria Paxson at 302-735-4097 or [Maria.Paxson@doe.k12.de.us](mailto:Maria.Paxson@doe.k12.de.us).

### Required Subgrantee Activities for Title III, Part A

*Title III funds must be used to support identified English Learner (EL) students. An EL student is a student:*

- Who is aged 3 through 21;
- Who is enrolled or preparing to enroll in an elementary school or secondary school;
- Who meets one of the following three criteria:

- Was not born in the United States or whose native language is a language other than English;
- Is a Native American or an Alaska Native, or a native resident of the outlying areas; and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency (ELP); or
- Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
  - The ability to meet the challenging state academic standards;
  - The ability to successfully achieve in classrooms where the language of instruction is English; or
  - The opportunity to participate fully in society (Elementary and Secondary Education Act (ESEA) Section 8101(20)).

LEAs must use Title III funds for effective approaches and methodologies for teaching EL and immigrant students (ESEA Section 3115(a)). LEAs that receive Title III, Part A funds must spend those funds on the following three activities:

1. To increase the ELP of ELs by **providing effective language instruction educational programs that meet the needs of ELs** and demonstrate success in increasing:
  - a. English language proficiency; and
  - b. Student academic achievement (ESEA Section 3115(c)(1)).
2. To provide **effective professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs)**, principals, administrators, and other school or community-based organizational personnel, that is:
  - a. Designed to improve the instruction and assessment of ELs;
  - b. Designed to enhance the ability of such teachers, principals, and other school leaders to understand and implement curricula, assessment practices and measures, and instruction strategies for ELs;
  - c. Effective in increasing children's ELP or substantially increasing the subject-matter knowledge, teaching knowledge, and teaching skills of such teachers; and
  - d. Of sufficient intensity and duration, which shall not include activities such as one-day or short term workshops and conferences, to have a positive and lasting impact on the teachers' performance (ESEA Section 3115(c)(2)).
3. To provide and implement **other effective activities and strategies that enhance or supplement language instruction educational programs for English learners**, which:
  - a. Shall include parent, family, and community engagement activities; and
  - b. May include strategies that serve to coordinate and align related programs (ESEA Section 3115(c)(3)).

### **Authorized Subgrantee Activities for Title III, Part A**

In addition to expenditures for the **required** three activities above, LEAs may use Title III, Part A funds on other supplemental activities, including:

1. Upgrading program objectives and effective instructional strategies.
2. Improving the instructional program for ELs by identifying, acquiring, and upgrading curricula, instructional materials, educational software, and assessment procedures.
3. Providing to ELs:
  - a. Tutorials and academic or career and technical education; and

- b. Intensified instruction, which may include materials in a language that the student can understand, interpreters, and translators.
4. Developing and implementing effective preschool, elementary school, or secondary school language instructional educational programs that are coordinated with other relevant programs and services.
5. Improving the ELP and academic achievement of ELs.
6. Providing community participation programs, family literacy services, and parent and family outreach and training activities to ELs and their families:
  - a. To improve the English language skills of ELs; and
  - b. To assist parents in helping their children to improve their academic achievement and becoming active participants in the education of their children.
7. Improving the instruction of ELs, which may include ELs with a disability, by providing for:
  - a. The acquisition or development of educational technology or instructional materials;
  - b. Access to and participation in electronic networks for materials, training, and communication; and
  - c. Incorporation of the resources described above into curricula and programs.
8. Offering early college high school or dual or concurrent enrollment programs or courses designed to help ELs achieve success in postsecondary education.
9. Carrying out other activities consistent with the purposes of this section.

### **Title III, Part A Subgrant for Substantial Increases in Immigrant Children and Youth (“Immigrant Increase Funds”)**

These funds can only be spent to support immigrant children and youth who are individuals who:

- Are aged 3 through 21; and
- Were not born in the United States.

LEAs experiencing a substantial increase in immigrant children and youth may be eligible to receive a separate Title III, Part A allocation to serve these students (referred to as “immigrant increase funds”).

LEAs receiving immigrant increase funds *must* use the funds to pay for activities that provide enhanced instructional opportunities for immigrant children and youth, which may include:

1. Family literacy, parent and family outreach, and training activities designed to assist parents to become active participants in the education of their children;
2. Recruitment of and support for personnel, including teacher aides who have been specifically trained or are being trained, to provide services to immigrant children and youth;
3. Provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth;
4. Identification, development, and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with awarded funds;
5. Basic instructional services that are directly attributable to the presence of immigrant children and youth in the LEA involved, including the payment of costs for providing additional classroom supplies, costs of transportation, or other costs that are directly attributable to such additional basic instructional services;
6. Other instructional services that are designed to assist immigrant children and youth to achieve in elementary schools and secondary schools in the United States, such as programs of introduction to the educational system and civics education; and
7. Activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise working with parents of immigrant children and youth by offering comprehensive community services.

## Supplement Not Supplant Provision

Title III, Part A is subject to a strict “supplement not supplant” (SNS) requirement that affects how Title III, Part A funds may be spent.<sup>1</sup> The SNS provision is applicable to both Title III, Part A regular subgrants and Title III Immigrant Increase subgrants. Title III funds may only be used for ELs and/or ELs who meet the definition of immigrant student.

At its most basic, 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 in Title III, Part A is tested using two “presumptions”;
2. An LEA cannot use Title III, Part A funds to meet its civil rights obligations to EL students because that would be a supplanting violation; and
3. In some limited circumstances, an LEA can use Title III, Part A funds to pay for EL-related activities under Title I, Part A without violating supplanting rules.

### Presumptions of Supplanting

In general, it is presumed that supplanting has occurred in Title III, Part A, when:

1. An LEA uses Title III funds to provide services that the entity is required to make available under other laws; or
2. An LEA uses Title III funds to provide services the entity paid for with state or local funds the prior year.<sup>2</sup>

### Eligibility for Title III Funds

1. An LEA may not use Title III funds to support programs or curricula for non-ELs enrolled in similar programs with ELs.
2. An LEA may not use Title III funds to provide instructional services to non-English learners enrolled in similar programs with ELs.

### The Role of Civil Rights Obligations in Supplanting for Title III, Part A

Under the first presumption of supplanting an LEA cannot 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 meaningfully and equally can participate in educational programs and services.<sup>3</sup> USED 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;

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<sup>1</sup> ESEA Section 3115(g).

<sup>2</sup> U.S. Department of Education, *Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) (2016)*, Q&A A-2, <http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiinguidenglishlearners92016.pdf>. (Hereinafter referred to as *ED 2016 Title III, Part A Guidance*).

<sup>3</sup> *ED 2016 Title III, Part A Guidance*, Question A-2 and A-3.

- 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 an LEA'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.<sup>4</sup>

Because Title III funds cannot be used to meet legal obligations, including civil rights obligations, Title III, Part A subgrants cannot be used to meet the obligations in the above list.

### ***In Limited Circumstances, Title III Funds May Support EL-Related Requirements Under Title I, Part A***

Under the first presumption of supplanting, an LEA cannot use Title III funds to meet the requirements of federal, state, or local law. This has meant that LEAs could not use Title III, Part A funds to pay for Title I, Part A's EL-related requirements. Under Every Student Succeeds Act (ESSA), however, certain requirements that were previously part of the Title III program moved to Title I, Part A. Because of this, USED guidance permits LEAs to use Title III, Part A funds to pay for former Title III activities that are now part of Title I, Part A such as:

- EL parental notification regarding language instruction educational programs (LIEPs) and related information (ESEA Section 1112(e)(3));
- Parental participation—e.g., regular EL parent meetings (ESEA Section 1116(f)); and
- Reporting to the state on the number and percentage of ELs achieving ELP (ESEA Section 1111(h) (2)).<sup>5</sup>

LEAs can only use Title III funds for activities that moved 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 and the EEOA; and
3. The LEA can demonstrate it is also using Title III funds to conduct activities required under Title III (see section above on Required Subgrantee Activities for Formula Funds).<sup>6</sup>

Please note that LEAs cannot use Title III, Part A funds for Title I, Part A activities that are *also* used to meet civil rights obligations. For example, under Title VI and the EEOA, LEAs must track EL student progress in achieving ELP. LEAs often use the annual ELP assessment, which is now required under Title I,<sup>7</sup> to meet this civil rights obligation. If an LEA uses the annual ELP assessment to meet its civil

<sup>4</sup> ED 2016 Title III, Part A Guidance, Question A-3. Additional information about the civil rights obligations to EL students is available in a joint U.S. Department of Education and U.S. Department of Justice Dear Colleague Letter (2015), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

<sup>5</sup> ED 2016 Title III, Part A Guidance, Question A-4.

<sup>6</sup> ED 2016 Title III, Part A Guidance, Question A-4.

<sup>7</sup> Section 1111(b) (2) (G).

rights obligations, Title III, Part A funds could *not* be used to pay for costs related to administering the ELP assessment.<sup>8</sup>

### ***Supplanting and Assessment of EL Students***

Title III funds cannot be used to pay for test proctors, assessors, and substitute teachers. All test administration costs must be paid from other funding sources, including the pay for proctors, assessors, and substitute teachers. This is applicable for Smarter Balanced, DeSSA, DeSSA-Alt, ACCESS, ACCESS-Alt, WIDA Screener, MODEL, or any other state assessment.

### ***Supplanting and Translation and Interpretation***

Title III funds may be used for *supplemental* translation and interpretation activities that are specific to Title III. Translation of documents, parent handbooks, and assessments must be paid for and funded by general funds and not with Title III, Part A funds.

If the LEA or school communicates on a weekly basis with all parents about school activities, it would not be appropriate to use Title III funds to pay for translation or interpretation of these documents or activities as the LEA and school are obligated to provide meaningful access to information and services provided as required by the Office of Civil Rights.

If the LEA or school communicates with all parents about their child's educational progress by mail, it would not be appropriate to use Title III funds to pay for the postage for EL students as this communication is paid for by the LEA or school for all students and is not Title III-specific.

### **LEA-Level Administrative Costs**

LEAs may use up to 2% of their Title III funds for direct administrative costs.<sup>9</sup> Indirect costs are not part of the 2% cap.<sup>10</sup>

### ***Maintenance of Effort***

LEAs that receive Title III funds must comply with a maintenance of effort requirement.<sup>11</sup> In short, maintenance of effort ensures LEAs maintain a consistent floor of state and local funding for free public education from year to year.<sup>12</sup>

### ***Equitable Services***

Title III funds are subject to an equitable services requirement.<sup>13</sup> This means that the district must ensure that eligible private school students, their teachers, and other educational personnel are served by Title III.<sup>14</sup> Equitable share must be calculated twice if a district receives both Title III EL and Title III Immigrant Increase funds.

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<sup>8</sup> ED 2016 Title III, Part A Guidance, Question A-7.

<sup>9</sup> Section 3115(b).

<sup>10</sup> ED 2016 Title III, Part A Guidance, Question A-10.

<sup>11</sup> Section 8521.

<sup>12</sup> ED 2016 Title III, Part A Guidance, Question A-17.

<sup>13</sup> Section 8501(b) (1) (C).

<sup>14</sup> ED 2016 Title III, Part A Guidance, Question C-6.

## **Title III Resources**

- Title III Legislation: <http://www2.ed.gov/programs/sfgp/legislation.html>
- Title III Guidance, Including Supplement, not Supplant:
  - <http://www2.ed.gov/programs/sfgp/supguide.pdf>
- <http://www2.ed.gov/policy/elsec/leg/essa/essatitleiii guidenglishlearners92016.pdf>
- <https://www2.ed.gov/policy/elsec/leg/essa/elandiitleiiiaddendum1219.pdf>