Title III, Part A Program for English Learners (ELs) and Immigrant Students

 Fiscal and Programmatic Handbook

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Overview

This document provides general guidance on how local educational agencies (LEAs) may spend funds under the Every Student Succeeds Act (ESSA). ESSA is the most recent version of the Elementary and Secondary Education Act (ESEA) which was signed into law on December 10, 2015. The version of the ESEA prior to ESSA was most recently known as the No Child Left Behind Act (NCLB).

ESSA went into effect on July 1, 2017. More information about ESSA and the transition from NCLB is available on the [USED’s website](file:///%5C%5Ceedjnugb-na2%5Cgroups%5CESEA%5CTitle%20IIIA%20English%20Language%20Proficiency%20LEP%5CGuidance%5CState%20Guidance%20documents%5CNEW%20-%20Fiscal%20and%20Programmatic%20Handbook%5CUSED%27s%20website), https://www2.ed.gov/policy/elsec/leg/essa/index.html.

This guidance addresses the following formula program:

**Title III, Part A (English Language Acquisition and Language Enhancement)**

For references to the **ED 2016 Title III, Part A Guidance**, please see USED’s [Non-Regulatory Guidance](https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguidenglishlearners92016.pdf), https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguidenglishlearners92016.pdf.

General Spending Considerations

Under Title III, Part A, there are three general issues that affect LEA spending discussed in this handbook.

First, all costs charged to ED grants must be necessary and reasonable considering the amount of money being spent and the needs of the program.[[1]](#footnote-1) This requirement comes from a set of federal regulations known as the Uniform Grant Guidance (UGG), which applies to all federal grants including ED grants.[[2]](#footnote-2)

The UGG affects ED grant spending in a number of ways. It:

* Lists costs that may never be paid for with federal funds.[[3]](#footnote-3) For example, federal funds can never pay for alcohol[[4]](#footnote-4) and typically cannot pay for lobbying.[[5]](#footnote-5)
* Lists general criteria all costs supported with federal funds must satisfy.[[6]](#footnote-6) For example, federal funds can only pay for costs that are allocable to the relevant grant.[[7]](#footnote-7)
* Sets additional requirements for certain costs supported with federal funds.[[8]](#footnote-8) For example, LEAs that use federal funds for employee salaries and benefits must keep records documenting how much time the employees spent on grant activities.[[9]](#footnote-9)
* Sets rules for how LEAs procure goods and services with federal funds,[[10]](#footnote-10) how they track items paid for with federal funds,[[11]](#footnote-11) and the kinds of records they must keep about their grant spending.[[12]](#footnote-12)

Second, activities supported by ED funds must be consistent with the LEA’s applicationfor funds approved by the SEA.[[13]](#footnote-13)

Third, some ESSA programs require LEAs to spend on activities that are supported by evidence, are demonstrated to be effective, or that are consistent with a formal needs assessment. Even where this is not required, ED grant spending has the most impact when LEAs spend federal funds on effective activities designed to meet program goals. To do this, LEAs are encouraged to:

* Carefully consider the needs of students, educators, and other relevant stakeholders,
* Determine which activities are most likely to effectively address those needs, and
* Prioritize those activities when deciding what costs to support with ESSA funds (unless those activities are being paid for by other funding sources).

# A

## Access for ELLs

All identified ELs must be assessed annually for English language proficiency in four domains: listening, speaking, reading, and writing. Once a student is identified as an English Learner, that student is required to be assessed on the English Language Proficiency (ELP) assessment[[14]](#footnote-14) each year until the student meets the exit criteria, even if the parents have refused Title III, Part A or other language support services for the student. Alaska’s English Learners in grades 1-12 will take ACCESS for ELLs (Assessing Comprehension and Communication in English State-to-State for English Language Learners). ACCESS for ELLs can be administered in a paper or online format. Alaska English Learners in Kindergarten are administered the Kindergarten ACCESS for ELLs. More information can be obtained through the [WIDA website](http://www.wida.us).

* An LEA generally *may not* use Title III subgrant funds to administer the annual English language proficiency assessment (*e.g*., to pay for substitute teachers or materials or for the cost of scoring State English language proficiency assessments). Under Title VI and the EEOA, States and LEAs must monitor EL students’ progress in achieving English language proficiency to ensure that EL students are making appropriate progress with respect to acquiring English. States and LEAs generally use the annual English language proficiency assessments to meet these obligations, and, therefore, the use of Title III funds to administer annual English language proficiency assessments is not permitted because it would violate the supplement-not-supplant provision in ESEA Section 3115(g).

## Administrative Expenses

LEAs may use up to two percent of their Title III, Part A funds for direct administrative costs.[[15]](#footnote-15) Indirect costs are not part of the two percent cap.[[16]](#footnote-16)

Administrative costs are associated with the overall project management and administration of the Title III, Part A program. An LEA may use no more than 2 percent of its LEA funds for administrative costs. However, as a result of the ESSA changes, any funds the LEA reserves for administrative costs may be used only for *direct* administrative costs. This provides an LEA with flexibility to apply its restricted indirect cost rate to the portion of its subgrant that it does not reserve for administrative costs.

* Direct costs generally include –
	+ Salaries and wages (including vacations, holidays, sick leave, and other excused absences of employees working specifically on objectives of a grant or contract – ie., direct labor costs);
	+ Other employee fringe benefits allocable on direct labor employees;
	+ Consultant services contracted to accomplish specific grant objectives;
	+ Travel of employees;
	+ Materials, supplies, and equipment purchased directly for use on a specific grant or contract; and
	+ Communication costs such as long distance telephone calls identifiable with a specific award or activity.

For more FAQs, visit [*USDE Office of the Chief Financial Officer* (OCFO),](http://www2.ed.gov/about/offices/list/ocfo/fipao/abouticg.html) http://www2.ed.gov/about/offices/list/ocfo/fipao/abouticg.html.

## Allocations

ED awards Title III, Part A funds to state educational agencies (SEAs), which then subgrant funds to LEAs. Federal Title III, Part A funds are distributed annually by July 1 to the Alaska Department of Education & Early Development. Under Title III, Part A[[17]](#footnote-17), an SEA shall not award a subgrant from an allocation made under Section 3114(a) if the amount of the subgrant would be less than $10,000. States shall not reserve more than 15 percent of the agency’s allotment under section 3111(c)(3) to award an Immigrant Children and Youth subgrant[[18]](#footnote-18).

## Authorized Use of Funds

In addition to spending on the required three activities, LEAs may spend their Title III, Part A funds on other supplemental activities, including:

* Upgrading program objectives and effective instructional strategies,[[19]](#footnote-19)
* Improving the instructional program for ELs by identifying, acquiring, and upgrading curricula, instructional materials, educational software, and assessment procedures,[[20]](#footnote-20)
* Providing to ELs tutorials and academic or career and technical education, and intensified instruction, which may include materials in a language that the student can understand, interpreters, and translators,[[21]](#footnote-21)
* Developing and implementing effective preschool,[[22]](#footnote-22) elementary school, or secondary school language instruction educational programs that are coordinated with other relevant programs and services,[[23]](#footnote-23)
* Improving the English language proficiency and academic achievement of ELs,[[24]](#footnote-24)
* Providing community participation programs, family literacy services, and parent and family outreach and training activities to ELs and their families to improve the English language skills of ELs, and to assist parents and families in helping their children to improve their academic achievement and becoming active participants in the education of their children,[[25]](#footnote-25)
* Improving the instruction of ELs, which may include ELs with a disability, by providing for: the acquisition or development of educational technology or instructional materials; access to, and participation in, electronic networks for materials, training, and communication; and incorporation of these resources into curricula and programs,[[26]](#footnote-26)
* Offering early college high school or dual or concurrent enrollment programs or courses designed to help ELs achieve success in postsecondary education,[[27]](#footnote-27) and
* Carrying out other activities that are consistent with the purposes of Title III subgrants.[[28]](#footnote-28)

If an LEA uses its Title III, Part A funds for one of the above authorized activities, it must ensure the funds are supplemental, including the requirement that the funds not be used to meet its civil rights obligations under Title VI of the Civil Rights Act and the EEOA.

# C

## Carryover

There is no limitation of the unexpended balance of Title III, Part A funds to be carried over to the next fiscal year. Once the prior fiscal year grant is closed, the DEED grants administrator determines the actual amount of carryover available for the new fiscal year. The grants administrator includes the carryover amount in the new fiscal year grant award, or amends the new fiscal year grant award as applicable.

# E

## English Language Proficiency (ELP) Assessments

(see **Access for ELLs 2.0**)

## Equal Educational Opportunities Act of 1974

The Equal Educational Opportunities Act of 1974 prohibits state and local educational agencies from denying an individual an equal educational opportunity on the basis of race, color, sex, and national origin in several ways, including failing to take appropriate action to overcome language barriers that impede students’ equal participation in instructional programs. (EEOA), [20 U.S.C. § 1703 (f)].

# I

## Immigrant Children and Youth Subgrant

A State must reserve at least enough funds to make one subgrant to an eligible LEA to serve immigrant students that is of sufficient size and scope to carry out a program that is effective in meeting the purposes of Title III[[29]](#footnote-29). Each State must award these funds to one or more LEAs that have experienced a significant increase in the percentage or number of immigrant children and youth, as compared to the two preceding fiscal years[[30]](#footnote-30). While a State may choose whether to use an increase in the percentage or number of immigrant children and youth in awarding funds to LEAs, US ED encourages States to consider both increases in the percentage and in the number of immigrant children and youth in order to ensure an equitable allocation of funds across LEAs of various sizes. A State may define the “significant increase” criteria used to determine eligibility of LEAs for this subgrant. If a State’s definition is not sufficient to allow at least one LEA to meet the definition and permit at least one immigrant subgrant to be made, the State may change its definition. Defining “significant increase” may provide a State the opportunity to award an immigrant subgrant to an LEA that, while it has experienced a significant increase in immigrant students, still does not have enough EL students to qualify for the minimum formula subgrant award of $10,000[[31]](#footnote-31).

In order to ensure that immigrant subgrant awards are used for meaningful activities that improve outcomes for immigrant children and youth, US ED encourages States to provide awards of an adequate size (*i.e.*, making fewer, larger awards) so that each LEA can use these funds for a high-quality program. In awarding these subgrants, a State must equally consider LEAs that have limited or no experience in serving immigrant children and youth. States must also consider the quality of the local plans that the LEAs submit under Section 3116[[32]](#footnote-32). In order to make at least one immigrant subgrant, a State has discretion with respect to:

1. The size and scope of the award;

2. Whether to make such awards on a discretionary or formula basis;

3. Whether to make awards multi-year or for a single year; and

4. The definition of “significant increase.”

LEAs that have experienced a significant increase in immigrant children and youth might receive an “immigrant subgrant” from their SEA. These Title III immigrant funds must be used to pay for activities that provide enhanced instructional opportunities for immigrant children and youth, and may include:

* Family literacy, parent and family outreach, and training activities designed to assist parents and families to become active participants in the education of their children,
* Recruitment of and support for personnel, including teachers and paraprofessionals who have been specifically trained, or are being trained, to provide services to immigrant children and youth,
* Provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth,
* Identification, development, and acquisition of curricular materials, educational software, and technologies to be used in the program,
* Basic instruction services that are directly attributable to the presence of immigrant children and youth in the LEA, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instruction services,
* Other instruction services that are designed to assist immigrant children and youth to achieve in elementary and secondary schools in the U.S., such as programs of introduction to the educational system and civics education, and
* Activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise in working with immigrants, to assist parents and families of immigrant children and youth by offering comprehensive community services.[[33]](#footnote-33)

It is strongly encouraged that an LEA receiving Title III immigrant subgrant funds to prioritize activities that will meet the unique needs of the immigrant children and youth enrolled in the LEA, as well as parents and families of these students. Conducting a needs assessment and measuring the impact of activities provided using Title III funds may help to ensure that these funds are used meaningfully and that LEAs are able to successfully support immigrant children and youth.

# L

## Lau V. Nichols, 1974

 “In 1974, the Supreme Court ruled in Lau v. Nichols that school districts must provide special services to English Language Learners so that they have equal educational opportunity. In its ruling, the Court noted:

There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he/she must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.” [414 U.S. 563 (1974)]

* Stands as the most basic and fundamental ruling about service requirements for ELs in all public schools.
* Basis for the Lau Memorandum from the Office for Civil Rights.
* School districts must help ELs overcome linguistic barriers in order to access instruction.

## LEA CPR

Districts must complete the Title III-A portion of the LEA Consolidated Performance Report (CPR) for any fiscal year in which they receive a Title III-A grant. There are three (3) data elements that Title III-A districts must report on:

* An estimate of the number of *additional* certified teachers needed for the district’s Title III language instruction education programs (LIEPs) in the next five (5) years.
* The types of language instruction educational programs (LIEPs) the district provides its English learners (and, for dual language/bilingual programs, what other languages of instruction are used).
* The count of English learners, by grade, who are served by each LIEP the district provides.

The LEA CPR is collected annually, and districts complete this report based on the previous school year (Ex: On the LEA CPR that is collected in SY22/23, districts will report on their EL data from SY21/22). This report is typically due in early November. DEED will annually provide appropriate districts with the necessary requirements, timelines, etc. for this data collection.

# M

## Maintenance of Effort

LEAs that receive Title III funds must comply with a maintenance of effort requirement.[[34]](#footnote-34) In short, maintenance of effort ensures districts maintain a consistent floor of state and local funding for free public education from year-to-year.[[35]](#footnote-35)

# N

## Native American and Alaska Native Children In School (NAM)

The Native American and Alaska Native Children in School (NAM) Program under Title III, Part A Section 3112 of the ESEA provides competitive grants to eligible entities who serve English Learners (EL) who are American Indian or Alaska Native (AI/AN). The purpose of the Native American and Alaska Native Children in School (NAM) program is to award grants to eligible entities to develop and enhance capacity to provide effective instruction and support to Native American Students, including Alaska Native, Native Hawaiian, and Native American Pacific Islander children, who are identified as English learners (ELs). The goal is to develop English proficiency and proficiency in Native American languages while enabling them to achieve the same challenging State academic content and achievement standards for all students. Under section 3112(c) of the ESEA, an entity that is funded for a NAM program is ineligible to receive Title III, Part A formula subgrant funding under section 3114 from its SEA for AI/AN EL students served under a NAM grant. A school district receiving NAM grant funds to serve AI/AN students may receive funds under the Title III, Part A formula grant program to serve other ELs in the district, but the ELs participating in the NAM program must not be included in the count of ELs used as the basis for the Title III, Part A formula subgrant.

# P

## Parent, Family, and Community Engagement

The US Department of Education has numerous resources available to support States and LEAs in conducting meaningful parent, family, and community engagement. These resources include:

* The [Dual Capacity Building Framework](https://www2.ed.gov/documents/family-community/frameworks-resources.pdf), https://www2.ed.gov/documents/family-community/frameworks-resources.pdf, which focuses on building the capacity of educators and families to work collaboratively to support positive outcomes for all students;
* Chapter 10 of the [EL Tool Kit](https://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf), https://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf, which provides tools and resources to ensure meaningful communication with parents of English learners;
* The [Resource Guide: Supporting Undocumented Youth](https://www2.ed.gov/about/overview/focus/supporting-undocumented-youth.pdf), https://www2.ed.gov/about/overview/focus/supporting-undocumented-youth.pdf, which is designed to help secondary schools, institutions of higher education, teachers, and other personnel support the college and career success of undocumented youth in secondary and postsecondary settings;
* The [White House Task Force for New Americans Webinar Series](https://www2.ed.gov/about/offices/list/oela/webinars/new-americans/index.html), https://www2.ed.gov/about/offices/list/oela/webinars/new-americans/index.html, which focused on the educational and linguistic integration of immigrants and refugees, including engaging with immigrant parents and families; and
* The [Newcomer Tool Kit](https://www2.ed.gov/about/offices/list/oela/newcomers-toolkit/index.html), https://www2.ed.gov/about/offices/list/oela/newcomers-toolkit/index.html, which provides educators and others who work directly with immigrant students—including asylees and refugees—and their families with tools, strategies, and examples of effective classroom and schoolwide practices.

## Parental Notification

Districts are required to provide the following notifications to parents of ELs*.* Parents must be *annually* notified within 30 days of the start of the school year that their student has been identified as an EL. If a student enrolled after the start of the school year, the notification must be within two weeks after placement in an EL program[[36]](#footnote-36). The notification must include:

* the reasons for identification;
* the level of English proficiency, how it was assessed, and the status of the child’s academic achievement;
* the methods of instruction to be used in the English language acquisition program;
* how the program will meet the educational strengths and needs of the child;
* how the program will help their child learn English and meet academic achievement standards for grade promotion and graduation;
* the exit requirements for the program, the expected rate of transition from the program into classrooms not tailored for English learners, and the expected rate of graduation from secondary school;
* in the case of a child with a disability, how the program meets the objectives of the IEP of the child; and
* information about their parental rights to withdraw their child from the program, to decline to have their child enrolled in the program or to choose another program or method if available, and information to assist parents in selecting among various programs if more than one is available.

LEAs may use Title III, Part A funds for:

* Personnel costs for translating Title III, Part A required parental notifications;
* Postage costs for mailing Title III, Part A required notifications;
* Personnel costs for holding meetings with families, as needed, in order to verbally relay via interpretation information contained in the Title III, Part A required notifications;
* Contract with a translation company that translates these notifications. Title III, Part A funds can only be used for the portion of the contract that pertains to Title III, Part A.

## Private Schools

Title III, Part A funds are subject to an equitable services requirement.[[37]](#footnote-37) In short, this means that the LEA must ensure that eligible private school students, their teachers, and other educational personnel are served by Title III.[[38]](#footnote-38) Title III, Part A does not require LEAs to administer their State’s annual English language proficiency (ELP) assessment for identified ELs in private schools. An LEA must engage in timely and meaningful consultation with private school officials during the design and development of their Title III, Part A programs and prior to making any decision that may affect the participation of private school students, their teachers and/or other educational personnel in the program[[39]](#footnote-39).

Examples of Title III, Part A Services to ELs in Private Schools:

* Administration of English language proficiency (ELP) assessment for identification and/or for the purpose of evaluating the effectiveness of services (test booklets, teacher training, stipends to teachers to administer assessments);
* Participation in district-sponsored professional development (PD), or PD organized specifically to meet the needs of the private school teachers;
* Tutoring for students before, during, or after school hours;
* Participation of private school ELs in summer school;
* Participation of students in a weekend program; and
* Purchase of supplemental instructional materials and supplies.

Title III, Part A funds may notbe used to finance the existing level of instruction in a private school. Services must supplement and not supplant the Federal, state, or local funds the private school would otherwise offer absent the Title III program.

## Professional Development

An eligible entity receiving Title III, Part A funds must use the funds to provideeffective professional developmentto classroom teachers (including teachers in classroom settings that are not the settings of LIEPs), principals and other school leaders, administrators, and other school or community-based organizational personnel, that is:

* Designed to improve the instruction and assessment of ELs,
* Designed to enhance the ability to understand and implement curricula, assessment practices and measures, and instructional strategies for ELs,
* Effective in increasing children’s English language proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers, and
* Of sufficient intensity and duration (which shall not include activities such as 1-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers’ performance in the classroom.[[40]](#footnote-40)

There is no set percentage of professional development defined in federal law.

Example of **non-allowable** Title III, Part A activities:

* Legislative training
* Motivational speakers
* Training to administer the W-APT Placement test or the ACCESS for ELLs 2.0 assessment

# R

## Reallocations

Whenever an SEA determines that an amount from an allocation made to an eligible entity for a fiscal year will not be used by the entity for the purpose for which the allocation was made, the agency shall, in accordance with such rules as it determines to be appropriate, reallocate such amount, consistent with this subsection to other eligible entities in the State that the agency determines will use the amount to carry out that purpose[[41]](#footnote-41).

Consistent with Section 3114(c), DEED will use the following criteria to determine which Title III, Part A funds will be reallocated:

Excess Title III, Part A funds available from an LEA that:

* Is not participating in the Title III LEA program;
* Has excess funds for other reasons; or
* Funds that an SEA has recovered after determining that an LEA has failed to spend Title III, Part A funds in accordance with the law.

Reallocated funds will be added to the overall sections 3114(a) formula funds to LEAs and distributed according to the current fiscal year allocation formula.

## Required Use of Funds

LEAs must use Title III EL funds for three activities:

1. Providing **effective language instruction educational programs (LIEPs)** the meet the needs of ELs and demonstrate success in increasing English language proficiency and student academic achievement.[[42]](#footnote-42)
2. Providing **effective professional development** to classroom teachers (including teachers in classroom settings that are not the settings of LIEPs), principals and other school leaders, administrators, and other school or community-based organizational personnel, that is:
	1. Designed to improve the instruction and assessment of ELs,
	2. Designed to enhance the ability to understand and implement curricula, assessment practices and measures, and instructional strategies for ELs,
	3. Effective in increasing children’s English language proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers, and
	4. Of sufficient intensity and duration (which shall not include activities such as 1-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers’ performance in the classroom.[[43]](#footnote-43)
3. Providing and implementing other effective activities and strategies that enhance or supplement language instruction educational programs for ELs, which must include parent, family, and community engagement activities, and may include strategies that serve to coordinate and align related programs.[[44]](#footnote-44)

As with all Title III costs, these three required Title III EL activities – effective LIEPs, effective professional development, and effective parent, family, and community engagement activities – must be supplemental to state and locally funded programming the LEA is delivering to meet its civil rights obligations to EL students.

# S

## Supplement, not supplant

Title III is subject to a strict “supplement not supplant” (SNS) requirement that affects how Title III funds are spent.[[45]](#footnote-45) Because SNS works differently in Title III than other federal programs this section addresses SNS before addressing other Title III spending issues. 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 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.[[46]](#footnote-46)

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.[[47]](#footnote-47)

**Example: Presumed Supplanting Violation**

Paying for an interventionist that provides intensive small-group interventions 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.

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.[[48]](#footnote-48) 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.[[49]](#footnote-49)

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.[[50]](#footnote-50)

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)),
* 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 English language proficiency (ESEA Section 1111(h)(2)).[[51]](#footnote-51)

USED’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,”[[52]](#footnote-52)
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.[[53]](#footnote-53) (See below for more information about required Title III EL activities).

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,[[54]](#footnote-54) to meet this civil rights obligation. If an LEA uses the annual ELP assessment to meet its civil rights obligations, Title III funds may **not** be used to pay for costs related to administering the ELP assessment.[[55]](#footnote-55)

# Frequently Asked Questions

May an LEA use Title III, Part A funds to administer a screening assessment used to identify ELs?

No. The obligation to identify all ELs is part of an LEA’s civil rights obligations under Title VI and the EEOA. Therefore, an LEA may not use Title III funds for purposes relating to identification of ELs, including a screening assessment, home language survey, or other related tools.

A district proposes to use Title III, Part A funds to support the salary of an administrator who, as part of his/her duties, administers the Title III, Part A funded activities. Is this allowable?

This may be allowable, assuming Title III, Part A funds are only utilized to support his/her duties that are Title III, Part A related, however, this portion of his/her salary should be assigned to the 2% administrative cost under Title III, Part A.

My school district has faced budget cuts for the school year that includes the loss of two ESL/ELL teachers. Can our district use Title III, Part A funds to pay for all or any part of the salary to keep one of the ESL/ELL teachers employed in the district as an ESL/ELL teacher?

The district would need to determine whether this teacher provides services that are required by Lau (See **Lau V. Nichols, 1974**), and also apply the second test of supplement-not-supplant, prior year, to determine whether this would be an allowable cost.

Can we use Title III, Part A funds to pay for consultant fees for consultant to deliver professional development session?

Yes, if training is above and beyond any training required under State law, and not required to meet Lau V. Nichols, 1974 provisions.

Can we use Title III, Part A funds for payment of stipends to substitutes so teachers may attend professional development session during school hours?

Yes, if training is above and beyond any training required under State law, and not required to meet Lau V. Nichols, 1974 provisions.

Can we purchase ESL curriculum development?

Yes, if the LEA can demonstrate that this curriculum development is above and beyond what is required by the school or LEA.

Are we allowed to purchase a laptop for immigrant students to use a language development software program?

If the laptop in question is something the district would not purchase in the absence of Title III, Part A funds, i.e., is not something they are otherwise be required purchase or have been purchasing, then it would not violate the non-supplanting requirement to make such a purchase. The LEA would need to have checks in place to ensure that the laptop is being utilized for the Title III, Part A or the immigrant children and youth program, however.

Are we allowed to purchase textbooks that serve as a child’s primary math or language arts textbook?

No. The LEA is responsible to provide this as part of the core educational program for all students.

Are we allowed to purchase supplementary textbooks or reference guides that supplement the LEA-provided textbook?

Yes, if the LEA can demonstrate that they are supplemental.

Are we allowed to purchase office supplies for the English learner student intake center?

No. Title III, Part A funds should only be used to support purchase of Title III-specific supplies, not supplies for the intake center.

Are stipends to teachers to assess newly enrolled students for English language proficiency an allowable use of funds?

No, as the LEA is obligated to assess the English language proficiency of students identified under the Home Language Survey for placement and identification purposes.

Are we allowed to use Title III, Part A funds for an ESL instructional coach whose duty is to administer the English language proficiency (ELP) assessment for placement and identification?

No, as the LEA is obligated to assess the English language proficiency of all students identified as English Learners, however, if the LEA can demonstrate that this position is supplemental, it may be allowable to utilize Title III, Part A funds for a portion of the coach’s salary to support duties unrelated to ELP assessment administration or meeting Lau obligations.

Can we pay for a data clerk who enters data for Title III, Part A and Migrant Education?

A portion of the data clerk’s salary to support his/her duties directly relevant to data entry for data required under Title III, Part A could be paid for by Title III, Part A funds. The portion of this individual’s salary to support duties for other programs should be assigned to those programs. Documentation would need to be maintained to support this allocation

Can Title III, Part A funds be used to pay for a position the LEA will refer to as “EL Curriculum and Professional Development Facilitator”? Job duties for the position will be to provide guidance/training in ways to adapt/adjust the district curriculum to meet the needs of ELs.

This would not be an allowable use of Title III, Part A funds, since all LEAs have the responsibility, under Lau v. Nichols to ensure that ELs have equal access to education and making the curriculum accessible to EL students would be part of meeting that federal requirement. However, a position as Professional Development Facilitator, in and of itself, may be an allowable use of Title III, Part A funds, since Title III, Part A specifically requires professional development. The district would have to ensure that the professional development is supplemental and not for meeting other federal, state, or local requirements for serving ELs and meets all other supporting conditions (appropriately addressed in the application, benefits ELs only by serving their teachers only, and costs are necessary and reasonable).

Can we use Title III, Part A funds for a Language Translator or Interpreter?

Whether this is allowable would depend on the exact responsibilities of the translator or interpreter, since Title III, Part A funds must only be used 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. For example, translation of instructional materials or instruction in a language other than English would not be an allowable use of Title III, Part A funds, since it falls under the LEA’s responsibility, under Lau v. Nichols to offer ELs services to help them overcome their language barriers and to ensure that ELs have equal access to education and educational excellence.

This also applies to translation of general information for the LEA (e.g., translating information for the Spanish language version of the LEA website, newsletter, or other communications, translating information related to the LEA data system and to the State’s achievement assessments, etc.).

If, however, the translation/interpreting is for a purpose above and beyond the level of other federal (including OCR and Title I, Part A), state, and local requirements, then this may be an allowable use of Title III, Part A funds. Possible examples would be to provide interpretation during a Title III, Part A parent involvement meeting or event or providing translation of materials to be used for supplemental parent classes, etc. Such an example may be an allowable use of funds, provided that all supporting conditions were met.

Can we use Title III, Part A funds to purchase interactive boards for use in a secondary classroom with ELs?

Technology (to include interactive boards, computers, printers, classroom response, systems, etc.) may be an allowable expense for serving ELs in a secondary classroom, based on the following:

* For use in a self-contained ESL classroom with ELs, the purchase of technology would be an allowable expense, provided all other supporting conditions are met (addressed in application, costs are necessary and reasonable, etc.). For use in a general education classroom with ELs, this would not be allowable.

Can a district use Title III, Part A funds to pay all or any part of the salary to keep a tutor or paraprofessional employed?

The LEA would need to determine whether this tutor or paraprofessional provides services that are required by Lau v. Nichols, 1974, and also apply the prior year test of supplement, not supplant –to determine whether this would be an allowable cost. Were state or local funds used in the past to pay for this program or activity? If so, using Title III, Part A funds to pay for it is supplanting.

ELL/ESL Teachers who provide the core language instruction educational programs for ELs cannotbe paid for with Title III, Part A funds. This would violate section 3115(g) of the ESEA because such services are required to be provided, even in the absence of Title III, Part A. State and local funds should be used to pay these salaries.

Can we use Title III, Part A funds to pay for food?

A district hosting a meeting or conference may not use grant funds to pay for food for attendees unless doing so is necessary to accomplish legitimate meeting or conference business.

* A working lunch is an example of a cost for food that might be allowable under a Federal grant if attendance at the lunch is needed to ensure the full participation by conference attendees in essential discussions and speeches concerning the purpose of the conference and to achieve the goals and objectives of the project.

Can we pay for travel costs with Title III, Part A funds?

Yes, but must necessary and reasonable considering the amount of money being spent and the needs of the program.[[56]](#footnote-56) This requirement comes from a set of federal regulations known as the Uniform Grant Guidance (UGG), which applies to all federal grants including ED grants.[[57]](#footnote-57) If attending a meeting or conference is necessary to achieve the goals and objectives of the grant, and if the expenses are reasonable (based on the grantee’s own policies and procedures, and State and local laws), Federal grant funds may be used to pay for travel expenses of grantee employees to attend a meeting or conference. To determine whether a meeting or conference is “necessary,” grantees should consider whether the goals and objectives of the grant can be achieved without the meeting or conference and whether there is an equally effective and more efficient way (in terms of time and money) to achieve the goals and objectives of the grant. To determine whether the expenses are “reasonable,” grantees should consider how the costs (e.g., lodging, travel, registration fees) compare with other similar events and whether the public would view the expenses as a worthwhile use of Federal funds. Among other considerations, grantees should consider how many people should attend a meeting or conference on its behalf. The number of attendees should be reasonable and necessary to accomplish the goals and objectives of the grant. The grantee should also determine whether it is necessary to attend the entire meeting or conference, or whether attending only a portion of the meeting or conference is reasonable and necessary.

What classroom materials are allowed to be paid for by Title III, Part A funds?

Title III, Part A funds should be used to increase English language proficiency and access to academic content through effective language instruction educational programs.

Title III, Part A funds may be used for “acquiring or developing education technology or instruction materials for English Learners, including materials in languages other than English.”

Technology can be purchased using Title III, Part A funds as long as that same technology is not being provided to non-English Learners with other state and/or federal funds.

Some examples of allowable technology/software:

* iPads
* Kindles
* laptops/netbooks
* electronic translators
* word-to-word dictionaries
* Imagine Learning Software
* Rosetta Stone Software
* Renaissance Learning - English in a Flash Software
* LeapFrog English language learning materials
* National Geographic Learning - English language teaching materials

Is tuition an allowable use of Title III, Part A funds?

Costs for tuition and fees for teachers to obtain English as a Second Language (ESL) certification may be paid out of Title III, Part A funds. This may be considered supplemental, as LEAs would not normally pay these fees for teachers.

Can we implement a summer or after school programs and pay for it with Title III, Part A funds?

Summer school programs, such as those that offer effective language instruction educational programs during the summer, are allowed under Title III, Part A as long as the school can demonstrate that the program is above and beyond what is provided by the school and the LEA. In other words, a summer school program for ELs cannot be funded out of Title III, Part A if a summer school program is already being funded out of Title I-A funds and both programs occur at the same time. The Title III, Part A summer school program must be designed to assist ELs in making progress in attaining English language proficiency and developing high levels of academic achievement. The curriculum used must be substantially different than what is used in any other summer school provided to ELs. In addition, the Title III, Part A summer school must be conducted at a different time than the Title I-A summer school.

When is interpretation an allowable use of Title III, Part A funds?

LEAs and schools are obligated to provide meaningful access to information and services provided. Therefore, Title III, Part A funds may only be used for *supplemental* translation and interpretation activities that are not provided by the LEA for all students, and for translation activities that are specific to Title III, Part A.

For reference - [Title III –Translation & Interpretation Examples](http://docplayer.net/14167562-Webinar-april-21-2011-student-achievement-and-school-accountability-programs-office-of-elementary-and-secondary-education.html) (Angela Martinez-Gonzalez, USDE Office for Civil Rights, 2011 Webinar), http://docplayer.net/14167562-Webinar-april-21-2011-student-achievement-and-school-accountability-programs-office-of-elementary-and-secondary-education.html.

Translation means converting writtentext from one language to another language.

Interpretation means converting spokenlanguage from one language to another language.

* If the LEA has a welcome center with staff who are responsible for administering the home language survey to all students and enrolling EL students, it would **not** be appropriate to utilize Title III, Part A funds to pay their salaries.
* If the LEA has a contract with a translation company that provides translated notices for Federal programs, then only the portion of the contract that pertains to Title III, Part A notices may be paid for with Title III, Part A funds.
* 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, Part A funds to pay for the postage for ELs, as this communication is paid for by the LEA or school for all students, and this is not Title III, Part A specific.
* 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, Part A funds to pay for translation or interpretation of these documents or activities, as this LEA and school are obligated to provide meaningful access to information and services provided. Title III, Part A funds could be used to pay for supplemental translation or interpretation.

May federal funds be used to pay for entertainment?

Federal grant funds may not be used to pay for entertainment, which includes costs for amusement, diversion, and social activities.

1. 2 CFR 200.403(a). [↑](#footnote-ref-1)
2. The Uniform Grant Guidance (UGG) is contained in [Part 200 of Title 2 of the Code of Federal Regulations](http://www.ecfr.gov/cgi-bin/text-idx?SID=f3948247e9ceb83b01019746db896096&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl), http://www.ecfr.gov/cgi-bin/text-idx?SID=f3948247e9ceb83b01019746db896096&tpl=/ecfrbrowse/Title02/2cfr200\_main\_02.tpl. Federal guidance and other resources about the UGG are available on [USED’s website](http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html), http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html. [↑](#footnote-ref-2)
3. See 2 CFR Part 200, Subpart E. [↑](#footnote-ref-3)
4. 2 CFR § 200.423. [↑](#footnote-ref-4)
5. 2 CFR § 200.450. [↑](#footnote-ref-5)
6. See 2 CFR § 200.403. [↑](#footnote-ref-6)
7. 2 CFR § 200.403(a). [↑](#footnote-ref-7)
8. See 2 CFR §§ 200.420-200.475. [↑](#footnote-ref-8)
9. 2 CFR § 200.430. [↑](#footnote-ref-9)
10. 2 CFR §§ 200.317-200.326. [↑](#footnote-ref-10)
11. 2 CFR §§ 200.313-200.314. [↑](#footnote-ref-11)
12. See, for example, 2 CFR § 200.318(h)(i) for procurement records or 2 CFR § 200.302(b)(3) for financial records. [↑](#footnote-ref-12)
13. 34 CFR § 76.700. [↑](#footnote-ref-13)
14. 4 AAC 34.055(c) [↑](#footnote-ref-14)
15. ESSA, Section 3115(b). [↑](#footnote-ref-15)
16. *ED 2016 Title III, Part A Guidance*, Question A-10. [↑](#footnote-ref-16)
17. ESSA, Section 3114(b) [↑](#footnote-ref-17)
18. ESSA, Section 3114(d) [↑](#footnote-ref-18)
19. ESSA, Section 3115(d)(1). [↑](#footnote-ref-19)
20. ESSA, Section 3115(d)(2). [↑](#footnote-ref-20)
21. ESSA, Section 3115(d)(3). [↑](#footnote-ref-21)
22. For more information on Title III and Early Learning, please see *ED 2016 Title III, Part A Guidance*, Section F. [↑](#footnote-ref-22)
23. ESSA, Section 3115(d)(4). [↑](#footnote-ref-23)
24. ESSA, Section 3115(d)(5). [↑](#footnote-ref-24)
25. ESSA, Section 3115(d)(6). [↑](#footnote-ref-25)
26. ESSA, Section 3115(d)(7). [↑](#footnote-ref-26)
27. ESSA, Section 3115(d)(8). [↑](#footnote-ref-27)
28. ESSA, Section 3115(d)(9). [↑](#footnote-ref-28)
29. ESSA, Section 3114(d). [↑](#footnote-ref-29)
30. ESSA, Section 3114(d)(1). [↑](#footnote-ref-30)
31. ESSA, Section 3114(b). [↑](#footnote-ref-31)
32. ESSA, Section 3114(d). [↑](#footnote-ref-32)
33. ESSA, Section 3115(e). See also *ED 2016 Title III, Part A Guidance*, Question G-4. [↑](#footnote-ref-33)
34. ESSA, Section 8521. [↑](#footnote-ref-34)
35. *ED 2016 Title III, Part A Guidance*, Question A-17. [↑](#footnote-ref-35)
36. ESSA, Section 1112(e)(3). [↑](#footnote-ref-36)
37. ESSA, Section 8501(b)(1)(C). [↑](#footnote-ref-37)
38. *ED 2016 Title III, Part A Guidance*, Question C-6. See also *ED 2016 Fiscal Changes Guidance,* Section P. [↑](#footnote-ref-38)
39. ESSA Sections 8501-8504 [↑](#footnote-ref-39)
40. ESSA, Section 3115(c)(2). For federal guidance on educators of English Learners, including professional development, please see *ED 2016 Title III, Part A Guidance*, Section D. [↑](#footnote-ref-40)
41. ESSA, Section 3114(c). [↑](#footnote-ref-41)
42. ESSA, Section 3115(c)(1). For federal guidance about LIEPs, please see *ED 2016 Title III, Part A Guidance*, Section C. [↑](#footnote-ref-42)
43. ESSA, Section 3115(c)(2). For federal guidance on educators of English Learners, including professional development, please see *ED 2016 Title III, Part A Guidance*, Section D. [↑](#footnote-ref-43)
44. ESSA, Section 3115(c)(3). For federal guidance on parent, family, and community engagement, please see *ED 2016 Title III, Part A Guidance*, Section E. [↑](#footnote-ref-44)
45. ESSA, Section 3115(g). [↑](#footnote-ref-45)
46. *ED 2016 Title III, Part A Guidance*, Question A-2. [↑](#footnote-ref-46)
47. *ED 2016 Title III, Part A Guidance*, Question A-2. [↑](#footnote-ref-47)
48. *ED 2016 Title III, Part A Guidance*, Question A-2 and A-3. [↑](#footnote-ref-48)
49. *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),](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf) http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf. [↑](#footnote-ref-49)
50. *ED 2016 Title III, Part A Guidance*, Question D-7. [↑](#footnote-ref-50)
51. *ED 2016 Title III, Part A Guidance*, Question A-4. [↑](#footnote-ref-51)
52. The concept of “reasonable and necessary” costs comes from federal regulations known as the Uniform Grant Guidance (UGG). See, for example, the discussion in *Basic Considerations* of the UGG, available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=1ab34260fd33363573a554baedb4aa24&mc=true&node=pt2.1.200&rgn=div5#sg2.1.200_1401.sg12>. [↑](#footnote-ref-52)
53. *ED 2016 Title III, Part A Guidance*, Question A-4. [↑](#footnote-ref-53)
54. ESSA, Section 1111(b)(2)(G). [↑](#footnote-ref-54)
55. *ED 2016 Title III, Part A Guidance*, Question A-7. [↑](#footnote-ref-55)
56. 2 CFR 200.403(a). [↑](#footnote-ref-56)
57. The Uniform Grant Guidance (UGG) is contained in [Part 200 of Title 2 of the Code of Federal Regulations](http://www.ecfr.gov/cgi-bin/text-idx?SID=f3948247e9ceb83b01019746db896096&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl), http://www.ecfr.gov/cgi-bin/text-idx?SID=f3948247e9ceb83b01019746db896096&tpl=/ecfrbrowse/Title02/2cfr200\_main\_02.tpl. Federal guidance and other resources about the UGG are available on [USED’s website](http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html), http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html.. [↑](#footnote-ref-57)