

## Spending Guidance for ESSA Programs – General Guidance

### 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 ESEA prior to ESSA was most recently known as the No Child Left Behind Act (NCLB).

ESSA went into effect on July 1, 2017. For more information about ESSA, and the transition from NCLB, please see <http://www2.ed.gov/policy/elsec/leg/essa/index.html>.

This spending guidance addresses Title III, Part A (English Language Acquisition and Language Enhancement) programs. It is important to note that this guidance only provides an overview of spending rules and options to assist in better understanding of the supplement, not supplant requirement for Title III; it does not discuss compliance requirements that apply to Title III programs.

### General U.S. Department of Education (ED) Grants Spending Considerations

There are three general issues that affect LEA spending under U.S. Department of Education (ED) formula grant programs.

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.<sup>1</sup> 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.<sup>2</sup>

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

- Lists costs that may never be paid for with federal funds.<sup>3</sup> For example, federal funds can never pay for alcohol<sup>4</sup> and typically cannot pay for lobbying.<sup>5</sup>
- Lists general criteria all costs supported with federal funds must satisfy.<sup>6</sup> For example, federal funds can only pay for costs that are allocable to the relevant grant.<sup>7</sup>
- Sets additional requirements for certain costs supported with federal funds.<sup>8</sup> 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.<sup>9</sup>

<sup>1</sup> 2 CFR 200.403(a).

<sup>2</sup> The Uniform Grant Guidance (UGG) is contained in Part 200 of Title 2 of the Code of Federal Regulations available at [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 at <http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>.

<sup>3</sup> See 2 CFR Part 200, Subpart E.

<sup>4</sup> 2 CFR § 200.423.

<sup>5</sup> 2 CFR § 200.450.

<sup>6</sup> See 2 CFR § 200.403.

<sup>7</sup> 2 CFR § 200.403(a).

<sup>8</sup> See 2 CFR §§ 200.420-200.475.

- Sets rules for how LEAs procure goods and services with federal funds,<sup>10</sup> how they track items paid for with federal funds,<sup>11</sup> and the kinds of records they must keep about their grant spending.<sup>12</sup>

Second, activities supported by ED funds must be **consistent with the LEA's application** for funds approved by the State Educational agency (SEA).<sup>13</sup> Following requirements found in Title III SEC. 3113, the Arizona Department of Education (ADE) requires all LEAs applying for Title III funds to create and submit a comprehensive plan which fully describes all programs, services and activities being provided to support their English learners. This plan, known as the Integrated Action Plan (IAP), is submitted through the Arizona LEA Tracker (ALEAT) system. Action steps within the IAP are distinctly tagged to identify whether programs, services and activities are funded with Title III or being provided as overall EL program support using other federal, state or local funds. IAPs are reviewed alongside the LEA's funding application to ensure alignment of EL programs and funding.

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).

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<sup>9</sup> 2 CFR § 200.430.

<sup>10</sup> 2 CFR §§ 200.317-200.326.

<sup>11</sup> 2 CFR §§ 200.313-200.314.

<sup>12</sup> See, for example, 2 CFR § 200.318(h)(i) for procurement records or 2 CFR § 200.302(b)(3) for financial records.

<sup>13</sup> 34 CFR § 76.700.

## Spending Guidance for ESSA Programs – Title III Part A

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

Title III, Part A is a U.S. Department of Education (ED) grant program that provides supplemental funding to help support English learners (ELs) and immigrant students. ED awards Title III, Part A funds to state educational agencies (SEAs), which then subgrant funds to LEAs.

### Purpose of Title III Subgrants to LEAs

LEAs must use Title III funds for effective approaches and methodologies for teaching ELs and immigrant children and youth for the following:

1. Developing and implementing new language instruction educational programs and academic content instructional programs for English learners (ELs) and immigrant children and youth, including early childhood education programs, elementary school programs, and secondary school programs.
2. Carrying out highly focused, innovative, locally designed activities to expand or enhance existing language instruction educational programs and academic content instructional programs for ELs and immigrant children and youth.
3. Implementing schoolwide programs for restructuring, reforming, and upgrading all relevant programs, activities, and operations relating to language instruction educational programs and academic content instruction for ELs and immigrant children and youth.
4. Implementing LEA-wide programs for restructuring, reforming, and upgrading all relevant programs, activities, and operations relating to language instruction educational programs and academic content instruction for ELs and immigrant children and youth.<sup>14</sup>

### Title III and the Supplement not Supplant Requirement

Title III is subject to a strict “supplement not supplant” (SNS) requirement that affects how Title III funds are spent.<sup>15</sup> 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,”

<sup>14</sup> ESSA, Section 3115(a). For federal non-regulatory guidance on the Title III program, please see U.S. Department of Education, *English Learners and Title III of the Elementary and Secondary Education Act (ESEA)*, as amended by the Every Student Succeeds Act (ESSA) (September 2016) available at <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiiguidenglishlearners92016.pdf>. This guidance will be referred to as *ED 2016 Title III, Part A Guidance* for the rest of this document.

<sup>15</sup> ESSA, Section 3115(g).

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.<sup>16</sup>

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.<sup>17</sup>

**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.<sup>18</sup> 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,

<sup>16</sup> ED 2016 Title III, Part A Guidance, Question A-2.

<sup>17</sup> ED 2016 Title III, Part A Guidance, Question A-2.

<sup>18</sup> ED 2016 Title III, Part A Guidance, Question A-2 and A-3.

- 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.<sup>19</sup>

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.<sup>20</sup>

#### **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.<sup>21</sup>

#### **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:

<sup>19</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>20</sup> ED 2016 Title III, Part A Guidance, Question A-8.

<sup>21</sup> ED 2016 Title III, Part A Guidance, Question D-7.

- 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)).<sup>22</sup>

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,"<sup>23</sup>
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.<sup>24</sup> (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,<sup>25</sup> 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.<sup>26</sup>

## How Title III Funds May Be Used

Title III includes two types of subgrants to LEAs. First, are "formula" subgrants available to LEAs (or a consortium of LEAs) that generate at least \$10,000 under a formula established in the Title III law. These subgrants must be used to support ELs in learning English and meeting state academic standards. (See Section I below – these funds will be referred to as "Title III EL funds.") Second, are "targeted" subgrants SEAs might award to LEAs that experience a significant increase in immigrant children and youth and should provide immigrant children with enhanced instructional opportunities. (See Section II below – these funds will be referred to as "Title III Immigrant funds.")

### I. Title III EL Funds

LEAs must use Title III EL funds to assist ELs in learning English and meeting state academic standards.<sup>27</sup>

<sup>22</sup> ED 2016 Title III, Part A Guidance, Question A-4.

<sup>23</sup> 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](https://www.ecfr.gov/cgi-bin/text-idx?SID=1ab34260fd33363573a554baedb4aa24&mc=true&node=pt2.1.200&rgn=div5#sg2.1.200_1401.sg12).

<sup>24</sup> ED 2016 Title III, Part A Guidance, Question A-4.

<sup>25</sup> ESSA, Section 1111(b)(2)(G).

<sup>26</sup> ED 2016 Title III, Part A Guidance, Question A-7.

<sup>27</sup> ESSA, Section 3115(a).

## A. Required Uses of Title III EL Funds at the LEA-Level

LEAs **must** use Title III EL funds for three activities:

1. Providing **effective language instruction educational programs (LIEPs)** that meet the needs of ELs and demonstrate success in increasing English language proficiency and student academic achievement.<sup>28</sup>
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:
  - 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.<sup>29</sup>
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.<sup>30</sup>

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.

ED has issued guidance to provide States and local educational agencies (LEAs) with information to assist them in meeting their obligations under Title III. This non-regulatory Title III guidance, found at <http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiienglishlearners92016.pdf>, encourages LEAs **to adopt criteria to ensure LIEPs** are effective in helping ELs gain English language proficiency and help them meet the State's challenging academic standards. It lists several criteria LEAs should consider in question C-3, pages 19-20. The guidance also makes recommendations **on professional development and staff qualifications** for those who teach ELs on pp. 22-26. Finally, the guidance **addresses parent engagement**, including new requirements under Title I (which are outside the scope of this Title III spending guide) on pages 27-31.

## B. Authorized Uses of Title III Funds at the LEA-Level

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

<sup>28</sup> ESSA, Section 3115(c)(1). For federal guidance about LIEPs, please see *ED 2016 Title III, Part A Guidance*, Section C.

<sup>29</sup> 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.

<sup>30</sup> 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.

- Upgrading program objectives and effective instructional strategies,<sup>31</sup>
- Improving the instructional program for ELs by identifying, acquiring, and upgrading curricula, instructional materials, educational software, and assessment procedures,<sup>32</sup>
- 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,<sup>33</sup>
- Developing and implementing effective preschool,<sup>34</sup> elementary school, or secondary school language instruction educational programs that are coordinated with other relevant programs and services,<sup>35</sup>
- Improving the English language proficiency and academic achievement of ELs,<sup>36</sup>
- 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,<sup>37</sup>
- 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,<sup>38</sup>
- Offering early college high school or dual or concurrent enrollment programs or courses designed to help ELs achieve success in postsecondary education,<sup>39</sup> and
- Carrying out other activities that are consistent with the purposes of Title III subgrants.<sup>40</sup>

If an LEA uses its Title III EL 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.

## II. Title III Immigrant Funds

LEAs that have experienced a significant increase in immigrant children and youth might receive an “immigrant subgrant” from their SEA. ADE subgrants issued for this purpose are known as Emergency Immigrant Education Program grants. 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,

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<sup>31</sup> ESSA, Section 3115(d)(1).

<sup>32</sup> ESSA, Section 3115(d)(2).

<sup>33</sup> ESSA, Section 3115(d)(3).

<sup>34</sup> For more information on Title III and Early Learning, please see *ED 2016 Title III, Part A Guidance*, Section F.

<sup>35</sup> ESSA, Section 3115(d)(4).

<sup>36</sup> ESSA, Section 3115(d)(5).

<sup>37</sup> ESSA, Section 3115(d)(6).

<sup>38</sup> ESSA, Section 3115(d)(7).

<sup>39</sup> ESSA, Section 3115(d)(8).

<sup>40</sup> ESSA, Section 3115(d)(9).



- 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.<sup>41</sup>

### III. Other Spending Considerations and Rules

#### A. LEA-Level Administrative Costs

LEAs may use up to two percent of their Title III funds for direct administrative costs.<sup>42</sup> Indirect costs are not part of the two percent cap.<sup>43</sup>

#### B. Maintenance of Effort

LEAs that receive Title III funds must comply with a maintenance of effort requirement.<sup>44</sup> In short, maintenance of effort ensures districts maintain a consistent floor of state and local funding for free public education from year-to-year.<sup>45</sup>

#### C. Equitable Services

Title III funds are subject to an equitable services requirement.<sup>46</sup> 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.<sup>47</sup>

<sup>41</sup> ESSA, Section 3115(e). See also *ED 2016 Title III, Part A Guidance*, Question G-4.

<sup>42</sup> ESSA, Section 3115(b).

<sup>43</sup> *ED 2016 Title III, Part A Guidance*, Question A-10.

<sup>44</sup> ESSA, Section 8521.

<sup>45</sup> *ED 2016 Title III, Part A Guidance*, Question A-17.

<sup>46</sup> ESSA, Section 8501(b)(1)(C).

<sup>47</sup> *ED 2016 Title III, Part A Guidance*, Question C-6. See also [ED 2016 Fiscal Changes Guidance](#), Section P.