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## Purpose

The U.S. Department of Education (Department) has determined that this guidance is significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 34324 (n. 25, 2007). See

[www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf](http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf) Significant guidance is non-binding and does not create or impose new legal requirements.

The Department is issuing this guidance to provide States and local educational agencies (LEAs) with information to assist them in meeting their obligations under Title III of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act of 2015 (ESSA). This guidance also provides members of the public with information about their rights under this law and other relevant laws and regulations.

Once this guidance is in effect (after the 2017 school year) this guidance supersedes the [2008 Notice of Final Interpretations of Title III of the ESEA, as amended by the No Child Left Behind Act \(NCLB\)](#), and the [2008 Guidance on the Supplement Not Supplant Provision of Title III of the ESEA](#).

If you are interested in commenting on this guidance, please email us your comment at [OESEGuidanceDocument@ed.gov](mailto:OESEGuidanceDocument@ed.gov) or write to us at the following address:

U.S. Department of Education  
Office of Elementary and Secondary Education  
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For further information about the Department's guidance processes, please visit [www2.ed.gov/policy/gen/guid/significantguidance.html](http://www2.ed.gov/policy/gen/guid/significantguidance.html)

## Introduction & Executive Summary

In the last several decades, English learners (ELs)<sup>1</sup> have been among the fastest-growing populations in our Nation's schools. ELs comprise nearly 10 percent of the student population nationwide, and in many schools, local educational agencies (LEAs) and States, account for an even higher percentage of the student population.<sup>2</sup> ELs also comprise a highly diverse group of students who bring with them valuable cultural and linguistic assets, inc-10 (e)4 (r.9 (u)n)-20 ( g)10 ( t)-2 (he)ur

achieve English language proficiency and perform academically at the same high levels as their non-EL peers.

The ESSA recognizes the unique needs of ELs, including by acknowledging the heterogeneity within the EL subgroup (e.g., recognizing separate groups of ELs such as English learners with disabilities, recently arrived ELs, and long-term ELs). It moves several provisions relevant to ELs (e.g., accountability for performance on the English language proficiency assessment) from Title III, Part A of the ESEA as amended by the ESSA (Title III) to Title I, Part A (Title I) of the ESEA. This guidance addresses Title III State formula grants, as well as limited portions of Title I pertaining to ELs.<sup>4</sup> As States and LEAs begin to implement these changes to the ESEA, we encourage close collaboration among staff who administer Title I and Title III programs.

This guidance addresses how Title III funds may be used to provide supplemental services that improve the English language proficiency and academic achievement of ELs, including through the provision of language instruction educational programs (LIEPs) and activities that increase the knowledge and skills of teachers who serve ELs. All services provided to ELs using Title III funds must supplement, and not supplant, the services that must be provided to ELs under Title VI of the Civil Rights Act of 1964 (Title VI), the Equal Educational Opportunities Act of 1974 (EEOA), and other requirements, including those under State or local laws.<sup>5</sup> This guidance does not address the inclusion of ELs in academic content assessments in reading/language arts, mathematics, and science, English language proficiency assessments, accountability and school improvement under Title I, or the new Title III requirement that all States establish and implement standardized statewide entrance and exit procedures for ELs, as these topics will be addressed through rulemaking.

In general, the ESSA amendments to Title I and Title III take effect beginning on July 1, 2017. Thus, we recommend that States and LEAs begin planning for the implementation of these



## Supplement-not-Supplant

### **A-2. Does the amended supplement-not-supplant provision in the ESEA that applies to Title I also apply to Title III funds?**

No. The provision in Section 1118(b) of the ESEA setting forth requirements that Title I funds supplement and do not supplant non-Federal funds does not apply to Title III. Title III does, however, contain its own provision prohibiting supplanting of other Federal, State, and local funds, and that provision was not changed by the ESSA. (See Section 3115(g) of the ESEA). In general, it is presumed that supplanting has occurred: 1) if the SEA or LEA uses Federal funds to provide services that the State Educational Agency (SEA) or LEA was required to make available under other laws; or 2) the SEA or LEA uses Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year. See OMB Compliance Supplement, Department of Education Cross-Cutting Section, Part 4, Section 84 Section III.G.2.2, at 4-84.000-16, available at [https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133\\_compliance/2016/2016\\_compliance\\_supplement.pdf](https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2016/2016_compliance_supplement.pdf). These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available. Therefore, just as prior to enactment of the ESEA, as amended by the ESSA, Title III funds cannot be used to fulfill an LEA's obligations under Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA). These obligations are explained in greater detail in question A-3.

### **A-3. What are the legal obligations of States and LEAs to ELs under Title VI of the Ci7.91 i7.91 T1 ode**



A State and its LEAs may use Title III funds for activities relating to ELs that were previously required under Title III and are now required under Title I as long as:

- 1) The specific use of funds is consistent with the purpose of Title III and meets Federal



the cost of scoring State English language proficiency assessments). As stated above, 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, for those States and LEAs, 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) (See questions A-2 and A-3 above for more information).

**A-8. May an LEA use Title III funds to develop or 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 (See question A-3 above for more information). 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.

### State and District Administrative Costs

**A-9. How may a State use Title III State-level activity funds?**

Consistent with the prior reauthorization of the law, a State may only reserve up to 5 percent of the total State grant for State activities (ESEA Section 3111(b)(2)). Each State must still reserve at least 95 percent of Title III funds for LEA subgrants. The ESEA, as amended by the ESSA, did, however, make changes to the authorized uses of the State-level activity funds, including by:

- x Permitting the use of State-level activity funds to establish and implement the standardized Statewide entrance and exit procedures for ELs required under ESEA Section 3113(b)(2); and
- x Expanding the use of State-level activity funds for professional development to include the improvement of teaching skills to meet the needs of ELs. (ESEA Section 3111(b)(2)).

In addition, a State may use up to 50 percent of Title III State-level activity funds, or \$175,000, whichever is greater, for planning and direct administrative costs of implementing the Title III State formula grant program. (ESEA Section 3111(b)(3)). The ESEA, as amended by the ESSA, made two significant changes to this provision: (1) the percentage of State-level funds that can be used for planning and administrative costs has been reduced from 60 percent to 50 percent, and (2) the portion (up to 50 percent) of State-level funds that the State reserves for administrative costs must now only be used for **direct** administrative costs. This gives each State

An LEA may use no more than 2 percent of its LEA funds for administrative costs. (ESEA Section 3115(b)). 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. See references in question A-9 above for guidance on direct versus indirect costs.

**A-11. May an LEA consolidate its Title III subgrants with other funds as part of a schoolwide program?**

**A-14. Under what circumstances may a State reallocate Title III EL formula subgrant funds to LEAs?**

As under previous law, a State may reallocate funds made to an LEA that will not be used for the purpose for which the allocation was made to another LEA or other LEAs "...in accordance with such rules as it determines to be appropriate..." that the State "...determines will use the amount to carry out that purpose." (ESEA Section 3114(c)). The State must be able to justify its determination that the LEA will not use the Title III funds for the intended purpose. For example, a State may determine that an LEA will not use the funds for the purpose for which they were intended if the LEA has not obligated a significant portion of the funds after 24 months or if the LEA is a single-school LEA that closes at some point during the period of availability of the funds.

Each State must have business rules in place that will govern how it reallocates funds. For example, the State's business rules may require that the State reallocate the funds to all remaining eligible entities, based on the formula it used to make the initial Title III formula allocations. Alternatively, a State may use criteria to determine to which LEAs it will award reallocated funds. Such criteria may include, for example, whether the LEA will use the funds for their intended purpose, how the funds will help EL students, the LEA's need for additional funds as demonstrated by the amount of Title III funds the LEA has remaining, and the LEA's commitment to using the funds within the period of availability. Whether the State uses additional criteria, the State must reallocate funds on a formula basis based on the number of ELs in the LEA or LEAs receiving the reallocated funds. (ESEA Section 3114(c)).

**A-15. How can LEAs form a consortium to receive a Title III EL formula subgrant?**

An LEA may join with other LEAs to form a consortium of LEAs to receive Title III formula funds under the ESEA. This option is the same as under the previous version of the ESEA. Under this arrangement, one of the LEAs must serve as the fiscal agent for the consortium, and is legally responsible to the Department for the grant. See generally 34 CFR § 76.303. The option of joining a consortium may be especially relevant to a small LEA.



and improving the instruction of ELs, which may include English learners with disabilities, by acquiring or developing educational technology and accessing electronic networks. The ESSA also adds a number of new permissible activities under Title III, including for example, uses related to developing or implementing LIEPs in preschools that are coordinated with other relevant programs and services, and offering early college high school or dual or concurrent enrollment programs or courses designed to help ELs achieve success in postsecondary education.

As noted, all uses of Title III funds must be supplemental; therefore, an LEA may not use Title III funds to meet its obligations under Title VI and the EEOA, including the obligation to provide EL students with a language assistance program that is educationally sound and proven successful and the obligation to ensure meaningful communication with parents who have limited English proficiency. See question A-3 for more information about LEAs' obligations under Title VI and the EEOA.

**A-19. May an LEA use Title III funds to improve EL access to rigorous coursework?**

Yes, as noted in question A-18 the ESEA now explicitly allows an LEA to use Title III funds to support dual or concurrent enrollment programs or early college high schools for ELs. (ESEA Section 3115(d)). This new provision presents a valuable opportunity to promote college and career readiness for ELs and to bridge their transition to postsecondary education. Title III funds cannot, however, be used to fulfill an LEA's obligations under Title VI and the EEOA, including an LEA's basic obligation to provide an LIEP to all ELs in the district that is educationally sound and has been proven successful.

**A-20. What constitutes a dual or concurrent enrollment program?**

Section 8101(15) of the ESEA defines "dual or concurrent enrollment program" as a "program offered by a partnership between at least one institution of higher education and at least one [LEA] through which a secondary school student who has not graduated from high school with a regular high school diploma [also defined in the ESEA] is able to enroll in one or more postsecondary courses and earn postsecondary credit that –

- (A) is transferable to the institutions of higher education in the partnership; and
- (B) applies toward completion of a degree or recognized educational credential as described in the Higher Education Act of 1965."

**A-21. What constitutes an early college high school?**

Section 8101(17) of the ESEA defines "early college high school" as a partnership between at least one LEA and at least one institution of higher education that allows participants to simultaneously complete requirements toward earning a regular high school diploma and earn not less than 12 credits that are transferable to the institutions of higher education in the partnership as part of an organized course of study toward a postsecondary degree or credential at no cost to the participant or the participant's family.

**A-22. If an LEA provides a dual or concurrent enrollment program for all students who qualify, and some of those students are ELs, can it pay for some of the entire dual or concurrent enrollment program with Title III funds?**





**B-5. What is the difference between English language proficiency standards and content standards in reading/language arts?**

Reading/language arts standards are not the same as English language proficiency standards. English language proficiency standards should be specifically developed for students who are

language proficiency assessments, including the alignment of these tests to English language proficiency standards. (ESEA Section 1111(a)(4)).

## **C- Language Instruction Educational Programs (LIEP)**

**C-1. What are the requirements for LIEPs?**



x Included as part of a systemic approach to serving ELs, based on a State's English

Section 1111(c)(4)(B)(iv)), and the progress current and former ELs are making in achieving proficiency on the academic content assessments, to determine whether or not an LEA's LIEP is effective.

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classroom to improve teaching and learning in the curricula and academic subjects in which the teachers teach;

(xi) as a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to improve the quality of professional development;

(xii) are designed to give teachers of children with disabilities or children with developmental delays, and other teachers and instructional staff, the knowledge and skills to provide instruction and academic support services, to those children, including positive behavioral interventions and supports, multi-tier system of supports, and use of accommodations;

(xiii) include instruction in the use of data and assessments to inform

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Further, the Department encourages States and LEAs to use State and local funds to conduct preparation and professional development activities that will lead to participating teachers and principals meeting relevant State or local certification and licensing requirements for educators of ELs.

**D-5. How may a State or LEA monitor preparation and professional development programs and activities for teachers and school leaders of ELs to ensure that they are effective?**

In order to facilitate successful implementation at the local and school levels, a State or LEA should establish and disseminate uniform Statewide or districtwide criteria that can be used to ensure that all preparation and pro

## **E- Parent, Family, & Community Engagement**

### **E-1. What are the requirements in the ESEA for parent,<sup>26</sup> family, and community engagement with regard to ELs?**

First, Title I now requires that each LEA that receives a Title I subgrant implement an effective means of outreach to parents of ELs. The outreach must include holding, and sending notice of opportunities for, regular meetings in order to gather and respond to recommendations from parents. (ESEA Section 1112(e)(3)(C)).

Second, an LEA receiving a Title III formula subgrant must conduct parent, family, and community engagement, in addition to the required uses of funds for supplementing LIEPs for ELs and providing professional development to teachers and school leaders. (ESEA Section 3115(c)(3)).

Third, the ESSA expanded allowable uses of Title III State-level activity funds to include providing technical assistance to LEAs to strengthen and increase not only parent and community engagement in programs that serve ELs, but also family engagement in such programs. (ESEA Section 3111(b)(2)(D)(iv)).

Fourth, a State must ensure that its Title III State plan, or a consolidated State plan that includes Title III funds, has been developed in consultation with parents of ELs, in addition to LEAs, teachers, administrators of Title III programs and other relevant stakeholders. (ESEA Section 3113(b)(3)(G)).

It is important to note that all LEAs have language assistance obligations to LEP parents under Title VI and the EEOA. LEAs must ensure meaningful communication with LEP parents in a language they can understand and adequately notify LEP parents of information about any program, service, or activity of an LEA or State that is called to the attention of non-LEP parents.<sup>27</sup> As part of this obligation, an LEA must provide language assistance to LEP parents effectively with appropriate, competent staff or appropriate and competent outside resources. In addition, each LEA must develop and implement a process for determining whether parents are LEP and what their language needs are. An LEA may not use Title III funds to meet its obligations under Title VI and the EEOA. Title III funds may be used to supplement an LEA's activities if the LEA is already meeting its obligation to ensure meaningful communication with LEP parents in a language they can understand.

### **E-2. For purposes of outreach to families of ELs, how are “families” defined in the ESEA?**

The ESEA does not define the term “families.” Families may include relatives involved in the social, emotional, and academic support of the student and expand beyond parents and guardians to include siblings, grandparents, aunts, uncles, cousins and others. As such, States, LEAs, and schools looking to involve and support families should be responsive to their students' diverse family structures. For an EL or immigrant student, extended family members may have a

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<sup>26</sup> The ESEA definition of “parent” in section 8101(38) includes parents, legal guardians, and other individuals who are standing in loco parentis, such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare.

<sup>27</sup> Please see Section II.J., “Ensuring Meaningful Communication with Limited English Proficient Parents,” in the Dear Colleague Letter referenced in question A-3.

powerful impact on the student’s academic success. In many cultures, grandparents in particular play a pivotal role in guiding and shaping household values. Providing outreach to those relatives, including through information about school programs and student progress, as well as opportunities for meaningful involvement, such as participation in school functions like family literacy nights and other such events, can have a positive impact on student learning. It is also important to consider the family situation of foster youth, unaccompanied children, and others whose “family” network may extend beyond biological relatives.

**E-3. For purposes of outreach to an EL student’s community, how is “community” defined in the ESEA?**

The ESEA does not define the term “community.” A community may include the local and extended network of organizations that exist to support the student and his or her family. These communities can include private, non-profit, for-profit, or faith-based organizations. A school and LEA should make an effort to familiarize themselves with the various community organizations that support the students and families in their area. Knowing the churches, synagogues, mosques or other faith-based communities to which families belong can provide avenues for communicating about school events, including important dates, like back to school night or kindergarten enrollment. Non-profit organizations such as cultural centers, heritage language schools and mutual assistance associations in the local community often provide valuable educational services outside of school hours, such as tutoring and mentoring. Sharing information about students’ needs and progress, with parental consent, can align those organizations’ efforts with the school’s efforts and magnify the positive impact.

**E-4. What parent and family engagement activities may be conducted using Title III funds?**

A State may use its State-level activity funds to strengthen and increase parent, family, and community engagement in programs that serve ELs. (ESEA Section 3111(b)(2)(D)(iv)). An LEA, in addition to using funds for each of the parent, family, and community engagement activities described in question E-1 above, may also use its subgrant—

- o To coordinate and align related programs for ELs, which may include programs for parents and families of ELs. (ESEA Section 3115(c)(3)).
- o To provide community participation programs, family literacy services, and parent and family outreach and training activities, which may include English as a Second Language courses for parents and families of ELs in order to assist parents and fami[ (, i8 )-10 (aehc -0.002 (s)4 (on)(aehc g)1hc -t2 (s)4 (o6 (n)2910 (aehc -( )Tj ] -





the college and career success of undocumented youth in secondary and postsecondary settings;

The [White House Task Force for New Americans Webinar Series](#), which focused on the educational and linguistic integration of immigrants and refugees, including engaging with immigrant parents and families; and

- x The [Newcomer Tool Kit](#), 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.

## **F- Early Learning**

### **F-1. How are early learning programs included in Title III?**

While Title III funds could also be used to serve ELs as young as age 3 under the ESEA prior to the ESSA amendments, the ESSA amendments further promote the inclusion of ELs in early learning programs as part of Title III. The relevant statutory provisions are highlighted below:<sup>32</sup> o2 .04MC (I)

ESEA Section 3116, which contains the requirements for local plans for the Title III EL subgrants, includes a new assurance pertaining to early learning programs, if applicable.

- o LEAs must assure that they will, if applicable, coordinate activities and share relevant data under the plan with local Head Start and Early Head Start agencies, including migrant and seasonal Head Start agencies, and other early childhood education providers.

**F-2. May a State or LEA include preschool teachers in pre-service and in-service professional development activities provided using Title III funds?**

Yes. Title III funds may be used to provide professional development for teachers of ELs in publicly funded preschool programs to help ensure that preschool teachers are well prepared to meet the unique needs of ELs in those preschool programs.<sup>33</sup> We encourage States and LEAs to include preschool teachers in professional development. Early learning programs, including preschools, can set ELs on a strong path to long-term school success; professional development to strengthen the knowledge and skills of preschool teachers working with ELs may help facilitate these positive outcomes on a broader scale.

**F-3. How may an LEA provide language instruction in a preschool program for ELs, consistent with Title III requirements?**

An LEA receiving a Title III subgrant may use a portion of those funds to provide effective preschool LIEPs that are coordinated with other relevant programs and services by providing supplemental language instrp-2 (r7c s)-11 (g)102nggus b6 (te)6 ( th)2 (e)6 (s)1 (e)6 ( p)Arograms5ve0( f)3v( i)-2



**F-6. What data should LEAs share and what activities should LEAs coordinate with Head**

required to provide equal access to a basic public education to all students, regardless of immigration status. For more information see OCR’s Guidance for School Districts to Ensure Equal Access for All Children to Public Schools Regardless of Immigration Status, available at <http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/raceorigin.html>.

**G-2. How must a State allocate funds reserved under ESEA Section 3114(d) – the required reservation for immigrant children and youth (immigrant subgrant)? How might a State allocate immigrant subgrant funds in a manner that increases the potential impact of these funds?**

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. (ESEA Section 3114(d)). 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. (ESEA Section 3114(d)(1)). 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, we encourage 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 (see question A-16). 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. (ESEA Section 3114(b)).

In order to ensure that immigrant subgrant awards are used for meaningful activities that improve outcomes for immigrant children and youth, we encourage 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. (ESEA Section 3114(d)). 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.”

**G-3. How must a State determine whether an LEA has had a “significant increase” in immigrant children and youth?**

The ESEA prior to the ESSA amendments required a State to consider the preceding fiscal year’s data as compared to the average of the two fiscal years preceding that year. The ESEA as

amended by the ESSA requires a State to consider the current fiscal year's data as compared to the average of the two preceding fiscal years. For more information, please see question A-16.

**G-4. How must an LEA use Title III immigrant subgrant funds? How might an LEA prioritize certain uses of funds to respond to the unique needs of the immigrant children and youth that it serves?**

Under the statute, an LEA must use the immigrant subgrant to provide enhanced instructional opportunities for immigrant children and youth (ESEA Section 3115(e)). Activities may include (with ESSA changes emphasized):

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.

We strongly encourage an LEA that receives 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.

**G-5. What additional resources are provided by the Department to help LEAs and schools support immigrant children and youth?**

The Department, as part of the White House Task Force on New Americans, has developed a number of resources for States, LEAs, and schools to support immigrant children and youth. For the totality of resources, please visit the Department's immigration webpage available at <http://www2.ed.gov/about/overview/focus/immigration-resources.html>. Among other resources,

the Department's Newcomer Tool Kit is designed to help schools support immigrants, refugees, and their families with a successful integration process; the Tool Kit is available at <http://www.ed.gov/about/offices/list/oela/new-comer-toolit/ncomertoolkit.pdf>.

## **H- Reporting and Data Collection**

### **H-1. Does Title III have additional reporting requirements for LEAs to report to States on ELs, beyond what is required to be reported under the Title I State and LEA report cards?**

Yes. Title I requires that States and LEAs annually report on ELs' progress in achieving English language proficiency, attainment of English language proficiency, academic achievement, and high school graduation rates. (ESEA Section 1111(h)(1), (h)(2)). Under Title III, there are additional reporting requirements. LEAs must report to their States on<sup>34</sup>:

- Title III programs and activities
- Number and percentage of ELs making progress toward English language proficiency
- Number and percentage of ELs who attain proficiency and exit LIEPs
- Number and percentage of former ELs who meet academic content standards (for 4 years)
- Number and percentage of ELs who have not exited LIEPs after 5 years as an EL er3 (i)-12 (5 -0 0 12 2e)

education (SIFE), as defined by the State. As stated above, more detailed data will enable LEAs to better tailor services funded under Title III to meet the unique needs of ELs and to identify and appropriately respond to gaps in achievement between different groups of ELs and when compared to non-EL peers.

Disaggregating student performance data may provide valuable information on how different subgroups of ELs are performing. These data can inform program improvement and help LEAs and States address gaps in achievement between EL subgroups. ELs are a highly diverse student population; disaggregated data can provide a more detailed picture of performance variation among different subgroups of ELs including, but not limited to, English learners with disabilities.

In addition to disaggregating for distinct populations of ELs, LEAs should analyze disaggregated data by type of LIEP. Performance data by program type may help LEAs to determine which LIEPs are meeting the Title III requirement to be effective in improving English language proficiency and academic achievement for ELs who participate in such programs. These disaggregated data may help an LEA to take appropriate steps to avoid civil rights violations under Title VI and the EEOA and modify its LIEPs if, for example, a particular program type or model is not generating improved outcomes for ELs.

## **I-Long-term English Learners**

### **I-1. How is a long-term EL defined by the ESEA?**

The ESEA does not define “long-term English learner.” However, the reporting requirement under ESEA Section 3121(a)(6) may be instructive in determining which ELs served under Title III are long-term ELs. Specifically, this provision requires LEAs receiving Title III subgrants to biannually report the number and percentage of ELs who have not yet attained English language proficiency within five years of initial classification as an EL and first enrollment in the LEA. Thus, beyond the specific reporting requirement in ESEA Section 3121(a)(6), States and LEAs may consider ELs who have not attained English language proficiency after five years as long-term ELs. Long-term ELs who remain in EL status for prolonged periods of time may face significant barriers to attaining English language proficiency and graduating college- and career-ready. Thus, many SEAs and LEAs have focused recent efforts on decreasing the number of long-term ELs in schools and on providing additional supports to these students. These students may require additional supports in order to achieve English language proficiency.

### **I-2. Which long-term ELs must be included as part of the reporting requirement under ESEA Section 3121(a)(6)?**

ESEA Section 3121(a)(6) requires that an LEA annually report the number and percentage of ELs who have not attained English language proficiency within five years of initial classification as an EL and first enrollment in the LEA. Therefore, an LEA must include in this measure all ELs enrolled in schools in the LEA who have not attained English language proficiency (based on the annual English language proficiency assessment) within five years of initial classification as an EL and first enrollment in the LEA.

If an EL moves into another LEA, the “new” LEA should still include that student in reporting on this measure if he or she has not attained English language proficiency within five years of

initial classification in the student’s original LEA. Including those long-term ELs who have not been enrolled in the same LEA for the entire period of their schooling is critical for ensuring that no child falls through the cracks and is unable to attain English language proficiency despite receiving EL services for many years. A State should take steps to ensure prompt and complete data-sharing among LEAs, which helps not only for this reporting requirement, but also for instructional and student support purposes.

**I-3. How might an LEA and SEA use the data on ELs who have not yet attained English language proficiency within five years of initial classification as an EL and first enrollment in the LEA to improve its programs for ELs?**

Long-term ELs may need unique supports to address both academic and non-academic factors, such as social emotional skills development, that may impact the time it takes them to attain English language proficiency. Positive emotional well-being correlates with higher rates of academic engagement, a sense of belonging and connectedness in school. LEAs and States can actively support skill development by creating safe learning environments where it is safe to express emotions and providing strategies for critical problem solving with emphasis on communication and relational skills. Academic factors may also impact the time it takes them to attain English language proficiency. For example, long-term ELs may have not received the high-quality English language development services they need to learn academic English, and may not have access to English language materials and supports outside of school, such as assistance with homework in English. In order to support these students, we encourage LEAs and States to use these data to determine whether any modifications to LIEPs are necessary and whether additional targeted services, which have been shown to be effective in increasing English language proficiency, may be needed to help long-term ELs.

**J-Former English Learners**

**J-1. Which ELs must be included as part of the reporting requirement regarding former ELs under ESEA section 3121(a)(5)?**

ESEA section 3121(a)(5) requires that LEAs report on the number and percentage of ELs meeting the challenging State academic standards for four years after such students are no longer receiving Title III services. To meet this requirement, an LEA must report to the State on the academic achievement of an EL for each year of the four years after such student has achieved EL and no longer receives EL services. These data must include results on content asseffu

exit procedures required under section 3113(b)(2) of the ESEA and no longer receive language services. Thus, if a particular SEA has standardized statewide exit procedures that include measures in addition to a score of proficient on the statewide ELP assessment, the SEA would not report all ELs who attained a score of proficient on the ELP assessment, but rather only those ELs who met the standardized statewide exit procedures and therefore no longer receive EL services.

**J-2. May a State use different criteria to identify a former EL for Title III reporting purposes than to identify a former EL that may be included in the Academic Achievement indicator for accountability purposes under Title I?**

No. A student that exits EL status because he meets the State's definition of proficiency is a former EL, and must be considered such for purposes of Title III reporting, Title I accountability (if a State chooses to include former ELs for accountability purposes), and a State's civil rights obligations.

**J-3. How might an LEA or SEA use the data on former ELs, required under ESEA Section 3121(a)(5), to improve its programs for ELs?**

The ESEA requires that a State and LEA use the data reported under Title III to inform program improvement. (ESEA Section 3121(b)). The specific data measure on the academic achievement of former ELs will provide an important opportunity to monitor the progress of these students to determine whether they are performing academically on par with their never-EL peers or whether gaps in achievement remain. These data may be used to determine whether a student should be re-assessed for EL services, or whether he or she may need additional supports in order to meet the challenging State academic

## **K-English learners with disabilities**<sup>35</sup>

### **K-1. What are the new requirements under Title III for English learners with disabilities and how can States, LEAs, and schools use this data to improve instruction for English learners with disabilities?**

The ESEA supports States' efforts to accelerate the progress of ELs in several ways. These include acknowledging the diversity of ELs and drawing attention to subgroups of ELs by requiring that certain data reported under Title III be disaggregated by English learners with disabilities.

Specifically, the new reporting requirement under Title III of the ESEA requires that States and LEAs report the number and percentage of ELs in the programs and activities who are making progress toward achieving English language proficiency in the aggregate and disaggregated, at a minimum, by English learners with disabilities; it also requires that the data on former ELs be disaggregated by English learners with disabilities (ESEA Section 3121(a)(2), (a)(5)). For more information, see question H-2.

Additionally, although not required by Title III, States, LEAs, and schools are encouraged to consider further disaggregating the data on English learners with disabilities' attainment of English language proficiency, and the number and percentage of English learners with disabilities who have not attained proficiency within five years of initial classification as an EL. (See question H-3). States, LEAs, and schools should use the Title III data on English learners with disabilities to inform program planning, staff professional development, and instructional decision-making. These data can also inform program improvements and help LEAs and States determine instruction to address gaps in achievement.

### **K-2. How do the new Title III reporting requirements differ from the IDEA reporting requirements for English learners with disabilities?**

The new Title III reporting requirements are intended to track progress toward achieving English language proficiency for students identified as ELs, including English learners with disabilities.

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<sup>35</sup> The discussion of English learners with disabilities in this document focuses on the IDEA and does not address the rights of students with disabilities under Section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disabilities Act of 1990. LEAs must ensure that EL students are not incorrectly identified as students with disabilities because of their limited English proficiency, which may not be the basis of a child's disability determination under the

There is no similar reporting requirement under Section 618 of the IDEA. Rather, under Section 618 of the IDEA, States must continue to report data each year to the Secretary and the public on the number and percentage of children with disabilities by race, ethnicity, gender, limited English proficiency status, and disability category in specified areas, including the number and percentage of children: who are receiving special education and related services on the State-designated child count date (Part B Child Count Data); the educational environment in which they are receiving services on the State-designated child count date (Part B Educational Environments Data); and how they exit special education (e.g., graduate with a regular high school diploma, receive a certificate, or dropout) (Part B Exiting Data). (IDEA Section 618, 20 U.S.C. §1418(a)(1)).

**K-3. What should SEAs and LEAs consider when determining the effectiveness of teachers and professional development for teachers who teach English learners with disabilities?**

Instruction for English learners with disabilities should take into account their specific special education and related services needs, as well as their language needs. Teachers should have an understanding of the second language acquisition process, and how this might be influenced by the child's individual development, knowledge of EL effective instructional practices and, if relevant, the child's disability. Note that under the IDEA, States and LEAs must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of the IDEA are appropriately and adequately prepared and trained, and that those personnel have the content knowledge and skills to serve children with disabilities.<sup>36</sup> These personnel qualifications and personnel development requirements apply to personnel serving English learners with disabilities.

**K-4. What guidance and resources are available to assist States, LEAs, and school staff in providing appropriate instructional and assessment accommodations for English learners**



## **Addendum- Standardized Entrance and Exit Requirements**

### **Selected Topics - Entrance and Exit of English Learners from Language Instruction Educational Programs, Reporting, and Former English Learners**

#### **Purpose**

Under section 3113(b)(2) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA)<sup>37</sup> each State educational agency (SEA) is required to establish and implement standardized statewide procedures for English learners (ELs) to enter and exit from EL status and language instruction educational programs (LIEPs). This document serves as an addendum to the Non-Regulatory Guidance on English Learners and Title III issued on September 23, 2016 (hereafter referred to as “2016 EL Guidance”<sup>38</sup>) and specifically addresses statewide entrance and exit procedures for ELs. Additionally, this document addresses select topics on reporting and former ELs under Title III of the ESEA.

The purposes of this document are to (1) assist SEAs in establishing and implementing entrance and exit procedures and (2) provide responses to the numerous questions the U.S. Department of Education (the Department) has received from SEAs regarding standardized statewide entrance and exit procedures for ELs, reporting and former ELs. Because these topics also relate to requirements in other laws, including Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA) and the Individuals with Disabilities Education Act (IDEA), relevant provisions in these laws are also referenced below. The Department hopes that this document will strengthen State and local efforts to improve educational outcomes for ELs by clarifying statutory requirements and providing technical assistance.

#### **EL Entrance and Exit Procedures Generally**

##### **1. What are the requirements for an SEA to establish standardized statewide entrance and exit procedures for ELs under the ESEA?**

Under section 3113(b)(2) of the ESEA, each SEA receiving a Title III, Part A State formula grant must establish and implement standardized statewide entrance and exit procedures for ELs after conducting timely and meaningful consultation with local educational agencies (LEAs) representing the geographic diversity of the State. The requirement that the procedures be “statewide” means they must be consistently applied across the State. The ESEA also requires that all students who may be ELs be assessed for such status within 30 days of enrollment in a school in the State.

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<sup>37</sup> References in this document to the ESEA are to the ESEA as amended by the ESSA.

<sup>38</sup> September 23, 2016 Non-Regulatory Guidance: English Learners and Title III available at: [www2.ed.gov/policy/elsec/leg/essa/essatitleiiienglishlearners92016.pdf](http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiienglishlearners92016.pdf).

Statewide procedures for entrance might include, for example, the process for identification of ELs, the timeline for implementing that process, the home language survey the LEAs use, the specific English language proficiency (ELP) screener the LEAs administer and the scores on the ELP screener that will result in the identification of a student as an EL. For exit, the statewide procedures might include, for example, the timeline for administering the annual ELP assessment, the score on the ELP assessment that corresponds to proficiency, and how the four domains of language (i.e., speaking, listening, reading and writing) are factored into that score. The exit procedures would also include other statewide measures, if any, used to reclassify an EL and to exit that student from language services.

An SEA must ensure, in establishing the statewide entrance and exit procedures, that the procedures are consistent with Federal civil rights obligations under Title VI.<sup>39</sup> Further information specific to exit procedures is provided under the EL Exit Procedures heading below.

## **2. What is the timeline by which ELs must be identified?**

Under section 3113(b)(2) of the ESEA, a student who may be an EL must be assessed for such status within 30 days of enrollment in a school in the State. An SEA should also have procedures in place to identify in a timely manner ELs who may not have been identified during this initial identification period. An SEA should make every effort to identify students who are ELs as soon as possible in order

Because of the supplanting prohibition in ESEA section 3115(g) (which was not changed by the ESSA), as in the past, Title III funds may not be used to satisfy an LEA's civil rights obligations to ELs. The legal obligations of an SEA and an LEA under the civil rights laws are independent of the amount or type of State or Federal funding received. Therefore, an LEA may not use Title III funds for identification of ELs, including costs of administering a screening assessment, home language survey, or related tools.<sup>44</sup>

**4. May an LEA remove a student's EL designation if that student was erroneously identified as an EL, even if the student does not score proficient on the annual ELP assessment?**

An erroneously identified EL is a student who was identified as an EL but should not have been because the student does not in fact meet the definition of "English learner" in ESEA section 8101(20). The erroneous identification may have occurred as part of the initial identification process, e.g., due to a parent's in-

## EL Exit Procedures

### **6. When must a student be exited from EL status for ESEA purposes?**

An EL must be exited from EL status for ESEA purposes (i.e., for purposes of Title I and Title III requirements) when the student satisfies the State's standardized statewide exit procedures. Because section 3113(b)(2) of the ESEA requires a State to implement statewide exit procedures, a student who meets the exit procedures is no longer an EL for ESEA purposes, and the State may no longer use Title III funds for services for that student. Title VI's implementing regulations have been interpreted by case law to require that a student demonstrate proficiency on a valid and reliable ELP assessment in order to be exited from EL status.<sup>47</sup> Under the ESEA, in a State that adopts additional exit procedures, a student who scores proficient on the ELP assessment is not exited until the student meets those additional objective procedures. In such a State, for example, if a student scored proficient on the ELP assessment but a statewide teacher rubric that is a part of the exit procedures indicated that the student should not be exited, then that student would remain an EL for all ESEA purposes, until she meets all the exit procedures.

The requirement that an EL be exited from EL status for ESEA purposes when the student satisfies the criteria included in the State's standardized statewide exit procedures applies to an EL with a disability<sup>48</sup> as well. To ensure that the language proficiency of such a student is validly and reliably assessed, the Individualized Education I(z)-6 (e -1 (u)-1nEMC /P <w 0 -1.15 Td )m Eesase)MCID 24

make those decisions under Title II of the ADA must make this determination on a case-by-case basis in light of the particular needs of an EL with a disability.<sup>52</sup>

**7. May a student receive English language services after he or she has exited from EL status?**

A student may continue to receive English language services with local or State funds even after exiting from EL status. However, if exited students need continued language support, an LEA should verify that ELs are not being exited prematurely due to a score of proficiency on the State ELP assessment that is set too low to ensure actual English language proficiency and, therefore, a student's ability to succeed in the classroom.

**8. May an LEA administer a local ELP assessment to satisfy the ESEA requirement for an annual ELP assessment?**

Each SEA must require that its LEAs administer a uniform, valid and reliable statewide ELP assessment annually to all ELs in schools served by the State. (a)4 (f)3 (S)-4dvicmdesaa siccis, (a)4 (h)

student is able to be appropriately assessed. An SEA that uses a composite or weighted score across the domains should determine what revised composite or weighting is needed for exit in less than all four domains.

The Department expects that only in very rare circumstances will children need to be assessed in fewer than four domains due to a disability that precludes assessment in a particular domain, and that the va

requirements.

**12. In an LEA that receives a Title III subgrant and provides services to ELs in pre-kindergarten (pre-k), when counting the number of years that an EL has received services for the purposes of reporting, should the LEA count pre-k or kindergarten as the first year of classification as an EL?**

Under ESEA section 3121(a)(6), an LEA receiving a Title III subgrant must report the number and percentage of ELs who have not yet attained ELP within five years of initial classification as an EL and first enrollment in the LEA. Although an LEA may use Title III funds to serve ELs as young as age three, it is not required to do so. Additionally, under 34 C.F.R. §200.5(a)(2), an SEA must administer the ELP assessment annually to all ELs in schools served by the State in all grades in which there are ELs, kindergarten through grade twelve. Therefore, an SEA should only include students in kindergarten through grade twelve for all reporting requirements under Title III, Part A, including reporting on ELs who have not attained ELP within five years of initial classification as an EL.

**13. If a child has been identified as an EL but the parents decline to allow the child to participate in language services, should the LEA count this child as Title III-served in its biennial report to the State?**

No. Under ESEA section 3121, an LEA receiving a Title III subgrant must report on the activities conducted and ELs receiving language services in the LEA. An LEA must report, among other measures, the number and percentage of ELs who exit LIEPs and the number and percentage of ELs meeting State standards for each of the four years after such children no longer receive language services. An LEA should not include ELs whose parents have declined language services in this report. Note, however, that under the ESEA, all ELs in kindergarten through grade twelve must be annually assessed for ELP, including those whose parents refuse their participation in language services.<sup>58</sup>

**Former English Learners**

See updates to J-1 above

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<sup>58</sup> ESEA section 1111(b)(2)(G); 34 C.F.R. §§ 200.5(a)(2), 200.6(h).



Note that "State" is defined in 1.04 -0d 1.04 -0 Sc-2 (t)10 (1.04 -DC 3201de)2 ((1-2 13de)Ehatl.04 -udthatde

## **Appendix B: Resources by Topic Area**

The U.S. Department of Education does not mandate or prescribe practices, models, or other activities in this non-regulatory guidance document. This guidance contains examples of, adaptations of, and links to resources created and maintained by other public and private

This U.S. Department of Education and U.S. Department of Health and Human Services joint Policy Statement on Supporting the Development of Children Who are Dual Language Learners in Early Childhood Programs provides recommendations for States and local communities to promote the development and learning of young children, birth to age five, who are dual language learners.

### **General Resources**

National Clearinghouse for English Language Acquisition (NCELA) – NCELA operates under a contract funded by the U.S. Department of Education that is administered by the Office of English Language Acquisition. The NCELA website contains a searchable resource library of more than 20,000 items related to English learner education. The site also contains demographic and State data, State profiles, links to external resources, and many other types of by Nudc1ET /Span <</L.Tj

Department and the U.S. Department of Justice in January 2015.  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

### **Immigrant Children and Youth**

For information regarding immigrant students see OCR's Guidance for School Districts to Ensure Equal Access for All Children to Public Schools Regardless of Immigration Status. <http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/raceorigin.html>. Also see the following resources available from the Office for Civil Rights:

Dear Colleague Letter (DCL): <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

Q&A about DCL: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201405.pdf>

Fact sheet about DCL: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201405.pdf>

The U. S. Department of Education, as part of the White House Task Force on New Americans, has developed a number of resources for States, LEAs, and schools to support immigrant children and youth. For the totality of resources, please visit the Department's immigration webpage available at <http://www2.ed.gov/about/overview/focus/immigrationresources.html>.

The U.S. Department of Education's [Newcomer Tool Kit](#) is designed to help schools support immigrants, refugees, and their families with a successful integration process. <http://www.ed.gov/about/offices/list/oela/new-comer-toolit/ncomertoolkit.pdf>

### **Private School Consultation and Equitable Services**

The Office of Non-Public Education (ONPE) provides resources to help assist SEAs and LEAs in meeting their obligations to ensure the provision of equitable services to eligible private school students and teachers in applicable programs. Information on ESSA and the participation of private school students, teachers, and other educational personnel are located on [ONPE's ESSA webpage](#).

### **Title III Program Implementation**

For general information on Title III program implementation see the Biennial Report to Congress on the Implementation of the Title III Grant Program. (October 2015) Available at <http://www2.ed.gov/about/offices/list/oela/resources.htm>

For information from LEAs and SEAs regarding implementation of the Title III State Formula Grant Program, see the [National Evaluation of Title III Implementation: Report on State and Local Implementation](#) (2012). This report answers a range of questions about the implementation of the Title III program drawing on data collected during the 2009-10 school year through telephone interviews with all State Title III directors, a survey of a nationally representative

sample of 1,528 Title III subgrantees, and case studies of a purposive sample of 12 LEAs nested within five States. <http://www2.ed.gov/about/offices/list/oepd/ppss/reports.html#titleiii>