



## Title III-A Supplement not Supplant Guidance

Title III-A funds must be used to ensure that services provided for LEP students with Title III funds are in addition to (*supplement*) and do not replace or *supplant* services that LEP students would otherwise receive from other federal, state and local funds that, in the absence of Title III funds, would have been provided for LEP children and immigrant children and youth. [See Section 3115(g) of ESEA]

### Title III Funds must supplement other funds used for core language instruction

States, districts, and schools are required to provide core language instruction educational programs and services for limited English proficient (LEP) students. This requirement is established based on Title VI of the Civil Rights Act of 1964, and its implementing regulations, as interpreted by the Supreme Court of the United States (including the Supreme Court's ruling in Lau v. Nichols), and based on other significant case law (including Castaneda v. Pickard), the Equal Educational Opportunities Act of 1974, and other Federal, State, and local laws. Therefore, the use of State or subgrantee Title III funds to provide core language instruction educational programs, including providing for the salaries of teachers who provide those core services for LEP students, would violate the supplement not supplant provision in section 3115(g) of the Act, as such services are required to be provided by States and districts regardless of the availability of Federal Title III funds.

*Considerations for use of Title III-A funds at the district and school Levels:*

1. Determine what instructional program is provided to all LEP students.
2. Determine what the district does to meet *Lau* requirements. *Lau* requires that districts take steps to help LEP students overcome language barriers and participate meaningfully in district educational programs
3. Consider the services required by other Federal, State and local laws or regulations.
4. Determine what services were previously provided with State, local and Federal funds.

SUPPLANTING TEST: Would the proposed use of Title III funds provide an instructional program or service that would otherwise be provided to LEP students in the absence of a Title III grant?

Supplanting exists if:

- 1) an LEA uses Title III funds to provide services that the LEA is required to make available under State, local, or other Federal laws; or
- 2) An LEA uses Title III funds to provide services that it provided in the prior year by using State, local, or other Federal funds.

### Using Title I and III Funds to administer State ELP assessments is not allowed

- The cost of administering the annual ELP assessment may not be paid with Title III funds, because Title I already requires States to administer an annual ELP assessment to all LEP students, not just Title I students. Costs for administering the ELP assessment include pay for substitute teachers during test administration, for the scoring or reporting of ELP assessment

results, for training incentives related to administering the ELP assessment, or for materials or equipment related to the administration of annual ELP assessments.

- The development and administration of screening or placement assessments to identify LEP students may not be paid for out of Title III or Title I Federal funds. This is because States and LEAs would be required to identify and make placement decisions for LEP students even without Federal funding. Thus, it would violate both the Title I and Title III “supplement not supplant” provisions to use such Federal funds for the development or administration of LEP screening or placement assessments.

## RESOURCES

Title I fiscal guidance: <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>

Supplement/ supplant letter 10/8/2008, USDOE: <http://www.ed.gov/programs/sfgp/legislation.html>

Office for Civil Rights ELL Resources: <http://www.ed.gov/about/offices/list/ocr/ellresources.html>

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