Under the Congressional Review Act, Congress has passed, and the President has signed, a resolution of disapproval of the accountability and State plans final regulations that were published on November 29, 2016 (81 FR 86076). This guidance document is unaffected by that resolution and remains applicable.

Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA)

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Table of Contents

Purpose 3

Introduction & Executive Summary 3

A-Fiscal Issues 5

General 5

Supplement-not-Supplant 6

State and District Administrative Costs 10

Subgrants to LEAs 11

Local Uses of Funds 13

B-English Language Proficiency Standards 15

C-Language Instruction Educational Programs 18

D-Educators of English Learners 22

E-Parent, Family, & Community Engagement 27

F- Early Learning 31

G-Immigrant Subgrant and Serving Immigrant Students 34

H-Reporting and Data Collection 37

I-Long-term English Learners 38

J-Former English Learners 39

K-English learners with disabilities 41

Addendum Standardized Entrance and Exit Requirements 44

Appendix A: Glossary. 51

Appendix B: Resources by Topic Area 53

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. 3432 (Jan. 25, 2007). See 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 2016-2017 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 *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/significant-guidance.html.

Introduction & Executive Summary

In the last several decades, English learners (ELs)[1] 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.[2] ELs also comprise a highly diverse group of students who bring with them valuable cultural and linguistic assets, including their home languages. Yet despite these many assets, ELs face significant opportunity and academic achievement gaps compared to their non-EL peers. For example, in school year 2013-2014, the high school graduation rate for ELs was just 62.6 percent, compared to 82.3 percent for all students.[3] With effective, research-based supports and access to excellent educators, ELs can

[1] In the ESEA, as amended by the ESSA, the term, 'English learner' replaces the term 'limited English proficient' used in section 9101 of the ESEA, as amended by the No Child Left Behind Act (NCLB). Please see the glossary section of this document for the definition of "English learner."

[2] 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

[3] National Center for Education Statistics (2014). Table 1. Public high school 4-year adjusted cohort graduation rate (ACGR), by race/ethnicity and selected demographics for the United States, the 50 States, and the District of

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.[4] 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.[5] 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 changes in fall or winter 2016. While this guidance largely focuses on changes due to the ESSA amendments, it also clarifies issues that have been addressed in previous guidance documents on ELs[6] and Title III and addresses new topics that stakeholders recommended through Department

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Columbia: School year 2013–14. Retrieved from: https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2013-14.asp.

[4] Title III includes two types of subgrants to LEAs: EL formula subgrants (See ESEA section 3111 and 3114(a)) and immigrant children and youth subgrants. (ESEA section 3114(d)). Title III also includes two discretionary grant programs, which are not addressed in this guidance. (See ESEA Sections 3112 and 3131).

[5] As recipients of Federal financial assistance under ESEA and other Department-funded grant programs, and as public entities, States and LEAs must also not discriminate against ELs in their educational programs based on race, color, national origin, sex, age, or disability. The Department's Office for Civil Rights (OCR) enforces Federal laws that prohibit discrimination on these bases.

[6] Please also see the 2016 policy issued by the U.S. Department of Health and Human Services and U.S. Department of Education *Policy Statement* on *Supporting the Development of Children who are Dual Language Learners in Early Childhood Programs* which addresses bilingualism and nurturing the native and home languages of our youngest learners. The statement and its recommendations can be found here: https://www.acf.hhs.gov/sites/default/files/ecd/dll_policy_statement_final.pdf.

outreach. In general, existing Departmental guidance[7] on ELs and Title III is applicable through the 2016-17 school year. After that time, please refer to this guidance instead.

This guidance can assist States, LEAs, and schools to support ELs in achieving college and career readiness, participating in our schools and society, and maintaining their bilingualism as an asset. The Department hopes that this guidance will strengthen State and local efforts to improve educational outcomes for ELs and immigrant children and youth; connect States, LEAs, and schools with promising practices and helpful resources; and promote effective LIEPs for all ELs. Finally, recognizing the diversity of the EL population and the need for supports from cradle to career, this guidance touches upon distinct populations of ELs (*e.g.*, English learners with disabilities and long-term ELs) as well as supporting ELs in early learning programs. See the Appendices of this guidance for a glossary and resources.

A-Fiscal Issues

General

A-1. Several provisions in the ESEA[8] regarding ELs have moved from Title III to Title I. How does that affect a State's responsibility with respect to Title III funds, including monitoring an LEA's use of Title III funds?

Each State is still responsible for using Title III funds in a manner consistent with Federal law and guidelines, and retains all of its oversight responsibilities to ensure that its LEAs spend Title III subgrants in a manner consistent with Federal law and guidelines. See 34 CFR §§76.700-76.783 for general State administrative responsibilities.

Under Section 3113(b)(3)(F) of the ESEA, each State is required to conduct Title III fiscal monitoring of its LEAs. See 2 CFR §§200.328, 200.331 for State obligations to conduct subrecipient monitoring. A new provision added by the ESSA permits the use of consolidated State administrative funds for fiscal support teams, which can be used for technical assistance to LEA subgrantees. (ESEA Section 8201(b)(2)(I)).[9] State Educational Agency (SEA) Title I staff should work together with Title III staff to ensure a coordinated approach to serving ELs in the State.

[7] This includes 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, however, the nondiscriminatory requirements of Title VI and the EEOA, as discussed in the 2015 EL Dear Colleague Letter, will remain valid and are not affected by ESSA. The 2015 Dear Colleague Letter about EL students and LEP parents jointly released by the Department of Education and the Department of Justice is *available at* http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.

[8] Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

[9] Note that LEAs can also consolidate administrative funds (see ESEA section 8203), and they can use State and local funds to expand the reach of fiscal support teams without violating any non-supplanting requirement of any of the programs contributing funds. (ESEA section 8203(d)(2)).

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. 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 Civil Rights Act of 1964 and the EEOA?

Under Title VI of the Civil Rights Act of 1964 and the EEOA, all States and LEAs must ensure that ELs can participate meaningfully and equally in educational programs and services. To meet their obligations under Title VI and the EEOA, LEAs must, for example:

- 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 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;[10]

[10] As further explained in Section I. E. of the 2015 EL DCL (pages 22-24), while EL programs may require that an EL student receive separate instruction for a limited period of time, EL programs may not unjustifiably segregate students on the basis of national origin or EL status—thus, LEAs must carry out their chosen EL program in the least segregative manner consistent with achieving the program's stated educational goals.

- Ensure that EL students who have or are suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 are identified, located, and evaluated in a timely manner and that the language needs of students who need special education and disability related services because of their disability are considered in evaluations and delivery of services;
- Meet the needs of EL students who opt out of language assistance programs;
- Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level content knowledge, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;
- Evaluate the effectiveness of a school district's language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program is reasonably calculated[11] 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.

Additional information about States' and LEAs' legal obligations under Title VI and the EEOA can be found in a 2015 Dear Colleague Letter about EL students and LEP parents jointly released by the Department of Education and the Department of Justice (hereinafter "DCL"), *available at* http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.

Recommendations on promising practices to ensure that language instruction educational programs (LIEPs) facilitate improved English language proficiency and academic outcomes can be found in the Department's English Learner Tool Kit, *available at* http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf.

A-4. Does the Title III supplement-not-supplant prohibition mean that States and LEAs can no longer use Title III funds for State or LEA EL-related activities that have moved from Title III to Title I?

States and LEAs may continue to use Title III funds to carry out activities relating to ELs that have been moved from Title III to Title I in the circumstances described below. The inclusion of English language proficiency standards and assessments, and the inclusion of progress in attaining English proficiency as a separate component of the Statewide accountability system under Title I, will help facilitate a unified Statewide approach to supporting ELs across Title I and Title III, and should provide a necessary focus on the nation's growing EL population and high-quality services for these students.

[11] As further explained in the 2015 EL DCL (*see, e.g.*, page 6), *Castañeda v. Pickard* requires that the program and practices used by the school (as part of the language assistance program) be reasonably calculated to implement effectively the educational theory adopted by the school.

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 guidelines for "reasonable and necessary costs" (See 2 Code of Federal Regulations (CFR) Parts 200 and 225);

2) The specific use of funds is supplemental to the SEA's or LEA's civil rights obligations to ELs under Title VI and the EEOA (See question A-2 and A-3 above); and

3) The SEA or LEA can demonstrate that it is also using Title III funds to conduct activities required under Title III (for SEAs, see ESEA Section 3111(b); for LEAs, see ESEA Section 3115(c)).

Examples of State activities that have moved from Title III to Title I include:

- Alignment of English language proficiency standards to State content standards (ESEA Section 1111(b)(1)(F));
- Alignment of English language proficiency assessments to English language proficiency standards (ESEA Section 1111(b)(2)(G)(ii));Establishment of English language proficiency goals and indicators for accountability purposes (ESEA Sections 1111(c)(4)(A)(ii), 1111(c)(4)(B)(iv)), and
- Identification of interventions to address ELs' academic achievement and progress in attaining English language proficiency (ESEA Sections 1111(c)(4)(C)(iii), 1111(c)(4)(D)).

Examples of LEA activities that have moved from Title III to Title I include:

- EL parental notification regarding 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)).

A-5. May a State or LEA use Title I funds for the State or LEA EL activities that have moved from Title III to Title I?

A State or LEA may generally use Title I funds for the EL activities listed in A-4 above, although an LEA must ensure that it provides Title I schools with sufficient funds from non-Federal sources to provide services that are required by law for ELs before using Title I funds in the school. (See ESEA Sections 1114(a)(2)(B), 1118(b)).[12] Although Title I funds may not be used to provide general aid to schools without express statutory authority but rather must be used for activities that are reasonable and necessary to operate a Title I program, the new inclusion in Title I of the EL activities included in A-4 makes it clear that ELs are a critical part of Title I

[12] This document does not address the specific application of the new Title I supplanting prohibition in ESEA section 1118(b) to the use of Title I funds for ELs.

funded programs and, thus, these activities are an allowable use of Title I funds. For example, given that ESEA now includes English language proficiency (ELP) as a component of Title I accountability, a State might use part of its Title I State activity funds for specific technical assistance to LEAs that have a consistently low-performing EL subgroup.

A-6. What ESEA funds are available for States to develop or align English language proficiency assessments?

There are specific funds available under the ESEA to help States develop or align their English language proficiency assessments. Among other uses, grants to States under Section 1201 of the ESEA ("Grants for State Assessments and Related Activities") may be used specifically to develop or improve "assessments for English learners, including assessments of English language proficiency…." (ESEA Section 1201(a)(2)(C)); in addition, Enhanced Assessment Grants under ESEA Section 1203(b)(1) may be used for the same purpose. The authorized uses of these funds for developing an English language proficiency assessment include developing an alternate English language proficiency assessment for certain English learners with disabilities who cannot take the regular English language proficiency assessment even with accommodations. Neither the supplement-not-supplant provision in Title III (ESEA Section 3115(g)) nor the supplement-not-supplant provision that applies to funds under Title I (ESEA (Section 1118) apply to these grants for State Assessments, which are provided under Title I, Part B.

The use of Title III funds to develop the annual English language proficiency assessment is not permitted because it would violate the supplement-not-supplant provision. This is because, under Title VI and the EEOA, a State must monitor EL students' progress in achieving English language proficiency to ensure that EL students are making appropriate progress with respect to acquiring English. (See DCL, referenced in A-3 above). Assuming that a State uses its annual Statewide English language proficiency assessment to meet this civil rights obligation, the use of Title III funds to develop the annual English language proficiency assessment would constitute supplanting.

Please note, however, that a State may use Title I or Title III administrative funds, either alone or consolidated with other ESEA administrative funds (see ESEA Section 8201(f)) to align the English language proficiency assessment with English language proficiency standards, although the amount of State Title I and Title III administrative funds is restricted by statute (see ESEA Sections 1004(a) and (b) and 3111(b), respectively).

A-7. What ESEA funds are available for States or LEAs to administer English language proficiency assessments?

Formula grants to States under Sections 1201 of the ESEA may also be used for administering English language proficiency assessments (*e.g.*, to pay for substitute teachers or materials, or for the cost of scoring State English language proficiency assessments); in addition, the statute authorizes the use of these funds for the provision of appropriate accommodations for English learners with disabilities on the English language proficiency assessment. (See ESEA Section 1201(a)(2)(A)).

An LEA generally may not, however, use Title III subgrant funds to administer the annual English language proficiency assessment (*e.g.*, to pay for substitute teachers or materials or for

the cost of scoring State English language proficiency assessments). 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:

- 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
- 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 the flexibility to apply its restricted indirect cost rate to the rest of its State activity funds. For example, a direct administrative cost could be the part of the salary of a State employee who works on Title III activities, if that portion of the salary can be directly attributed and allocated to the Title III grant and is not otherwise recovered as an indirect cost. See 2 CFR §§ 200.412-417 for classification of direct versus indirect costs.

A-10. How much of an LEA's Title III formula subgrant may the LEA use for administrative costs?

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 under Title I?

Yes. An LEA may consolidate its Title III funds in a schoolwide program pursuant to the requirements of Section 1114(a) of the ESEA. Under that Section, the LEA is not required to maintain separate fiscal accounting records by program if it maintains records that demonstrate that the schoolwide program, considered as a whole, addresses the intent and purpose of each Federal program from which it consolidates funds.

In addition, in a school that consolidates Title III funds in a schoolwide program, the Title III supplement-not-supplant provision would not apply to the Title III funds; rather, the specific non-supplanting provision in Section 1114(a)(2)(B) of the ESEA would apply. An LEA must ensure that each schoolwide program school receives funds from non-Federal sources to provide services that are required by law for students with disabilities and ELs before using Title I funds in the school. (ESEA Section 1114(a)(2)(B)).

A-12. May an LEA spend funds under both Title I and Title III on the same activities for ELs?

Yes. It is possible for an LEA to combine Title I and Title III funds for the same EL-related purpose, even if it is not in a schoolwide program. However, note that most Title I funds are allocated to schools, while Title III funds are allocated to LEAs, and not schools. Thus, as an example, an LEA could use a combination of Title III and Title I funds for the salary of a supplemental EL math specialist for a Title I high school to serve low-achieving ELs, assuming that supplement-not-supplant guidelines are met (See questions A-2 and A-3 above).

Subgrants to LEAs

A-13. What are State obligations for awarding Title III formula subgrants to LEAs?

A State must award formula subgrants for a fiscal year by allocating funds in a timely manner to each LEA in the State with an approved Title III plan. (ESEA Section 3114(a)). In determining what constitutes a "timely manner" for making subgrants, a State should ensure that its LEAs receive Title III funds with enough time to spend the funds in a thoughtful and meaningful way during the school year for which the funds are intended to be used (*i.e.*, so LEAs can offer services to ELs at the beginning of the school year). Additionally, a State should award subgrants in a manner that is timely enough to ensure that LEAs are able to engage in timely and meaningful consultation with private school officials prior *to* making any decisions that may affect the participation of eligible private school students and teachers as required under ESEA Section 8501. If a State does not award the subgrants until late in the school year, it would likely not have met the requirement to award Title III subgrants "in a timely manner."

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 that does not, on its own, have a sufficient number of ELs to meet the requirement in ESEA Section 3114(b) that a Title III subgrant be at least $10,000. Such a small LEA could, for example, form a consortium with other small LEAs to receive Title III funds or enter into an agreement with a neighboring larger LEA to receive services provided by the larger LEA. Some examples of consortia models in place in various States include:

- The LEA fiscal agent provides consortium-wide services, such as professional development and supplemental instructional materials, directly to all LEAs in the consortium.
- The LEA fiscal agent enters into a contract with another entity to provide services to all of the member LEAs.
- The LEA fiscal agent distributes a portion of the consortium's allocation to each member LEA based on the number of ELs in each LEA.

A-16. What requirements pertain to the formula that States must use to award Title III immigrant subgrants?

A State must reserve not more than 15 percent of the State Title III allocation for subgrants to LEAs in the State that have experienced a significant increase in the percentage or number of immigrant children and youth who have enrolled in schools in the LEA in the *current fiscal year* compared to the average of the last two fiscal years. (ESEA Section 3114(d)). Prior to the ESSA, States had to compare the percentage or number of immigrant students in the *preceding* fiscal year to the average of the prior two fiscal years in order to determine which LEAs had a significant increase in the number or percentage of immigrant children and youth. Under that prior law, some States and LEAs raised concerns that the comparison data did not reflect the most recent changes in immigration patterns. The Department recognizes, however, that a State may not have current year data at the time it would generally award the immigrant subgrants. In that instance, the State may decide to award immigrant subgrants using estimates based on the prior year's data, and adjust those subgrant awards as necessary once the current year's data become available.

As under the previous law, each State will continue to determine what constitutes a "significant increase" and may change that definition from year to year without requesting approval from the Department. See Section G below for more information about immigrant subgrants.

A-17. What is the "maintenance of effort" requirement for LEAs that applies to the Title III subgrants?

The maintenance of effort requirement in Section 8521 of the ESEA applies to Title III subgrants and is similar to the provision previously in Section 9521 of the ESEA, as amended by NCLB, with two major exceptions. First, under the amended ESEA, when an LEA fails to maintain effort, a State is not required to reduce its subgrant in the first year of the LEA's failure to maintain fiscal effort. A State must reduce a subgrant, however, if an LEA has also failed to maintain effort for one or more of the five immediately preceding fiscal years. Second, the maintenance of effort requirement gave the Secretary the authority to waive the requirements if a waiver would be equitable due to either (1) exceptional or uncontrollable circumstances, such as a natural disaster, or (2) a precipitous decline in the LEA's financial resources. (ESEA Section 8521(c)). For the situation of "exceptional or uncontrollable circumstances," a change in the LEA's organizational structure was added as an example under the ESEA, as amended by the ESSA.

Local Uses of Funds

A-18. What are the required LEA uses of Title III EL formula subgrants?

Prior to the ESSA, an LEA was required to use its Title III funds for two required activities: professional development and providing an LIEP. Under Section 3115(c)(1)-(3) of the ESEA, an LEA must still conduct these two required activities, but must also now conduct a third activity: providing and implementing other effective activities and strategies that enhance or supplement LIEPs for ELs, which must include parent, family, and community engagement activities, and may include strategies that serve to coordinate and align related programs.

An LEA may also use Title III funds for a number of permissible activities listed in Section 3115(d) of the ESEA. These activities include, for example, providing community participation programs, family literacy services, and parent outreach and training to ELs and their families,

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?

The LEA could prorate the cost based on the number of ELs and use Title III funds for only the ELs in the program, assuming that there was no supplanting problem (*i.e.*, there would be a supplanting problem if the program was previously funded from State or local funds, or is required by law, or is not supplemental to the district's basic civil rights obligation).

A-23. May an LEA use Title III funds to implement all or part of the comprehensive support and improvement plan it is required to develop and implement under Section 1111(d)(1) of the ESEA?

An LEA may use Title III funds to implement part of a comprehensive support and improvement plan under ESEA Section 1111(d)(1) to the extent that the activities are allowable under Title III and do not violate the supplement-not-supplant provision. (See question A-3.) For example, it may be appropriate for an LEA serving a school that is identified for comprehensive support and improvement under ESEA Section 1111(c)(4)(D)(i)(III) due to chronic low performance of the EL subgroup in that school, to use a portion of its Title III funds to provide, as part of the comprehensive support and improvement plan, supplemental academic support to ELs and additional professional development to teachers of ELs, if these uses of Title III funds do not violate the supplement-not-supplant provision.[13] As another example, it may be appropriate for an LEA serving a school that is identified for comprehensive support and improvement under ESEA Section 1111(c)(4)(D)(i)(I) because it is among the lowest-performing five percent of all schools in the State to use a portion of its Title III funds to provide differentiated support aimed at improving the English language and academic proficiency of low-performing ELs in the school, if these uses of Title III funds do not violate the supplement-not-supplant provision. However, an LEA may not use Title III funds to provide supports to non-ELs in the school.

B- English Language Proficiency Standards

B-1. What are the requirements for English language proficiency standards?

Section 1111 (b)(1)(F) requires that "each State plan shall demonstrate that the State has adopted English language proficiency standards that:

- (i) are derived from the 4 recognized domains of speaking, listening, reading, and writing;
- (ii) address the different proficiency levels of English learners; and
- (iii) are aligned with the challenging State academic standards."

These requirements in Title I are essentially identical to the requirements that were previously in Title III of the ESEA prior to the ESSA amendments.

[13] Whether a use of funds is consistent with the supplement-not-supplant provision depends upon a context-specific determination of whether the use of funds is necessary to meet civil rights requirements under Title VI and the EEOA. Improvements to an LIEP that are necessary in order to meet basic civil rights requirements could not be funded from Title III.

B-2. Must a State change or update its English language proficiency standards due to the passage of the ESSA?

Not necessarily. As long as a State's English language proficiency standards meet the requirements set by the ESEA in Section 1111(b)(1)(F) (See question B-1), a State need not change or update the English language proficiency standards it implemented under the ESEA prior to the ESSA amendments. However, as stated in B-1, all States must demonstrate in their State plans that they have adopted Statewide ELP standards that are aligned with the State's academic content standards.

B-3. Must English language proficiency standards be implemented in every LEA that enrolls ELs in the State?

Yes. Section 1111(b)(1)(F) requires that "[e]ach State plan shall demonstrate that the State has adopted English language proficiency standards that [meet the requirements listed in B-1 above]", and section 1111(b)(2)(G) requires that "[e]ach State plan shall demonstrate that [LEAs] in the State will provide for an annual assessment of English proficiency of all English learners in the schools served by [SEA]" and that these assessments "shall be aligned with the State's English language proficiency standards."

B-4. What does it mean for English language proficiency standards to be "aligned with" academic standards?

The ESEA requires that a State's English language proficiency standards be "aligned with" a State's challenging academic standards. (ESEA Section 1111(b)(1)(F)). This requirement is consistent with that of the former Title III requirement that the State's English language proficiency standards must be "aligned with achievement of the challenging State academic content and student academic achievement standards…" (ESEA as amended by NCLB Section 3113(b)(2)).

Just as under the former law, a State's English language proficiency standards must be aligned with the challenging academic standards in the content areas of reading/language arts, mathematics, and science. It is especially important that the English language proficiency standards reflect the language demands of each content area. For example, as mathematics assessments become increasingly language-heavy, it is essential that ELs learn the corresponding English vocabulary of mathematics in order to succeed in that subject area. A State's English language proficiency standards should reflect research on the process of language acquisition and, based on this research, reflect the elements needed for EL students to acquire the English language skills necessary to meet academic content standards. As such, English language proficiency standards should be designed to assist teachers in moving EL students towards both proficiency in the English language and proficiency on a State's academic content standards. The goal of English language proficiency standards is to build a foundation in the English language that will enable EL students to succeed in each academic content area.

Consistent with the requirement that the English language proficiency standards address the different proficiency levels of ELs (ESEA Section 1111(b)(1)(F)), the highest English language proficiency standards, addressing the "proficient" level, should correspond to the proficient level of the content area standards.

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 ELs and define progressive levels of competence in the acquisition of the English language. English language proficiency standards must be derived from the four language domains of speaking, listening, reading, and writing. (ESEA Section 1111(b)(1)(F)). Reading/language arts standards, on the other hand, describe what all students should know and be able to do in the specific academic content area of reading/language arts.

B-6. What is the difference between the English language proficiency assessment and the content assessment in reading/language arts?

State English language proficiency assessments are designed for ELs and measure students' proficiency in the English language. English language proficiency assessments measure students' proficiency levels and progress in the four domains of language: speaking, listening, reading, and writing. (ESEA Sections 1111(b)(1)(F), 1111(b)(2)(G), 3113(b)(3)(B)). Reading/language arts assessments, on the other hand, measure what students know and are able to do in the specific academic content area of reading/language arts. Reading/language arts is a content area in which States may administer assessments in a student's native language for up to three years (or five years in certain unique circumstances), for an EL for whom such assessment would yield more accurate information on what the student knows and can do in the content area. (ESEA Section 1111(b)(2)(B)(ix)). Some States, for example, provide a Spanish version of their reading/language arts assessment whereas the English language proficiency assessment must be administered in English because the very purpose of the English language proficiency assessment is to measure a student's proficiency in the English language.

B-7. If a State develops challenging State academic standards in subjects in addition to reading/language arts, mathematics, and science, should the State English language proficiency standards also be aligned with those academic standards?

Yes. The alignment of English language proficiency standards with the challenging State academic standards is crucial for ensuring that ELs, as they develop English language proficiency, are able to achieve college- and career-readiness to the same extent as their non-EL peers. If a State establishes challenging academic standards in additional subjects, then the State's English language proficiency standards should also be aligned with those standards. For example, many States have established academic standards in social studies and have aligned the English language proficiency standards to the social studies standards.

B-8. What is the relationship between the State English language proficiency standards and the State English language proficiency assessment?

Title I requires that a State's English language proficiency assessments be aligned with its English language proficiency standards. (ESEA Section 1111(b)(2)(g)). This strengthens the assessment's validity, which is not only required under Title I but is also consistent with the obligation under Title VI and the EEOA to use valid and reliable criteria for assessing English proficiency. The Department plans to issue guidance for the peer review of State English

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?

Title III of the ESEA replaces the expectation in the ESEA, as amended by NCLB, that LIEPs be "scientifically based" with a new expectation – that LIEPs be "effective."

Specifically, for States:[14]

- A State may use Title III funds to provide technical assistance to LEAs on identifying and implementing *effective* language instruction educational programs and curricula for teaching ELs (ESEA Section 3111(b)(2)(D)(i)); and
- A State must ensure that EL formula subgrants to LEAs are of sufficient size and scope to allow the LEAs to carry out *effective* language instruction educational programs for ELs (ESEA Section 3113(b)(3)(D)).[15]

Similarly, an LEA must:

- Use Title III funds for *effective* approaches and methodologies for teaching ELs (ESEA Section 3115(a));
- Increase the English proficiency of ELs by providing *effective* language instruction educational programs that meet the needs of ELs and demonstrate success in increasing (A) English language proficiency; and (B) student academic achievement (ESEA Section 3115(c)(1));
- Use Title III funds in ways that build its capacity to continue to offer *effective* language instruction educational programs that assist English learners in meeting challenging State academic standards (ESEA Section 3113(b)(3)(E)); and
- Include in its local plans for a Title III subgrant a description of the *effective* programs and activities that will be provided, including language instruction educational programs (ESEA Section 3116(b)(1)).

Under Title VI and the EEOA LEAs must provide a language assistance program that is effective—educationally sound and proven successful. For additional information about LEAs' obligations in this area, see the English Learner Students and Limited English Proficient Parents DCL referenced in A-3 above. Please see A-2 and A-3 for additional information about LEAs' obligation to use Title III to supplement, not supplant, funds used to meet this civil rights obligation.

C-2. How may a State incentivize more effective LIEPs at the local level?

[14] Emphasis added in each bullet that follows.

[15] As noted in A-2, under Title VI and the EEOA, LEAs must provide ELs with a language assistance program that is effective—educationally sound and proven successful. Title III funds may be used to supplement, but not supplant, State and local funds necessary to meet these civil rights obligations.

Similar to the ESEA prior to the ESSA amendments, a State may use State-level Title III funds to provide financial awards to LEAs that have significantly improved the achievement and progress of ELs in meeting—

- The State-designed long-term goals established under ESEA Section 1111(c)(4)(A)(ii), including measurements of interim progress towards meeting such goals, based on the State's English language proficiency assessment under ESEA Section 1111(b)(2)(G); and
- The challenging State academic standards. (ESEA Section 3111(b)(2)(E).

Given that the attainment of English language proficiency and high academic achievement for ELs are key purposes of Title III, we encourage States to use a portion of their State-level funds to provide these types of financial awards.

C-3. What criteria should States and LEAs receiving Title III funds use to ensure that ELs are provided "effective" LIEPs, as required under the ESEA?

In addition to the requirements outlined in question C-1 above, we encourage States and LEAs that receive Title III funds to adopt criteria to ensure that LIEPs are effective in helping ELs achieve English language proficiency, as well as helping them meet the State's challenging academic standards. At a minimum, LIEPs should be outcomes-driven; an LIEP should demonstrably result in improved English language proficiency and academic achievement for ELs to be considered "effective" for purposes of the Title III requirements.

Additionally, in analyzing whether an LIEP is effective, States and LEAs should consider whether the LIEP is:

- Driven by data on the unique needs of ELs, including distinct subgroups of ELs as discussed in this guidance, and responsive to student performance data as part of continuous improvement;
- Aligned with local needs identified through timely and meaningful consultation with a broad range of stakeholders and examination of relevant data;
- Based on rigorous, relevant research[16] on what instructional approaches are proven effective for promoting English language proficiency and high academic achievement (for more information on ways to improve student outcomes including using evidence, see the Using Evidence to Strengthen Education Investments Non-Regulatory Guidance *available at* http://www2.ed.gov/policy/elsec/leg/essa/guidanceuseseinvestment.pdf); Accompanied by a robust plan for implementation that may include, for example, a logic model or theory of action; well-defined, measurable goals; clearly outlined roles and responsibilities for people involved; and implementation timelines;
- Examined through performance monitoring, and if appropriate, evaluation, in order to make changes to improve LIEP implementation and effectiveness; and

[16] See, for example, the Institute for Educational Sciences Practice Guide "Teaching Academic Content and Literacy to English Learners in Elementary and Middle School," *available at* http://ies.ed.gov/ncee/wwc/PracticeGuide.aspx?sid=19.

- Included as part of a systemic approach to serving ELs, based on a State's English language proficiency standards and its academic content standards.

As stated in A-3, under Title VI and the EEOA LEAs must provide a language assistance program that is effective—educationally sound and proven successful. For additional information about LEAs' obligations in this area, see the DCL referenced in A-3. As stated in A-3 above, Title III funds may not be used to meet these civil rights requirements; such usage is prohibited by the supplement-not-supplant provision in Title III. Title III funds may, however, be used to supplement – that is, to increase the effectiveness of a language assistance program that already satisfies these civil rights obligations.

C-4. Are States or LEAs required to implement any particular type of LIEP?

No. Consistent with ESEA section 3124, the Department does not recommend any particular curricula, program of instruction, or instructional materials, nor does it prohibit any language instruction educational program used with ELs that is consistent with Title III of the ESEA and other laws, including Title VI and the EEOA. States and LEAs may select any LIEP that is effective, as indicated in C-3 above, and meets its Title VI and EEOA obligations, as indicated in A-3 and C-1 above. For more information on various types of LIEPs, see chapter 2 of the EL Toolkit *available at* http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf.

Regardless of the LIEP that a State or LEA chooses to implement, States and LEAs may wish to incorporate methods of supporting home language development. Research on language use in early childhood programs and in elementary school, and on supporting home language development, including fostering bilingualism, maintaining cultural connections and communication with family members, and the transferability of home language skills to English language acquisition, suggests that systematic and deliberate exposure to English, paired with supporting home language development within high quality educational settings, can result in strong, positive outcomes for children who are non-native English speakers, as well as positive outcomes for native English speakers.[17]

C-5. Must a State conduct monitoring of its LEAs' LIEPs to ensure that they are "effective"? What steps should a State take to assist an LEA if its LIEP is not effective?

The ESEA now requires that each State both monitor LEAs in implementing Title III and take steps "to further assist eligible entities if the strategies funded under this subpart are not effective, such as providing technical assistance and modifying such strategies." (ESEA Section 3113(b)(8)). In order to determine whether the LEA's strategies are, in fact, effective, a State should establish and disseminate uniform, clear statewide guidelines or benchmarks for demonstrating effectiveness. For example, a State may choose to use the State-level indicator for progress in achieving English language proficiency established under Title I, Part A (ESEA

[17] For research citations and additional information, see the Policy Statement on *Supporting Children who are Dual Language Learners in Early Childhood Programs* published by the Departments of Education and Health and Human Services, which provides background supporting the language development of young learners: https://www.acf.hhs.gov/sites/default/files/ecd/dll_policy_statement_final.pdf.

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.

If multi-year student performance data (including data that are required to be reported under Title III) demonstrate that ELs in a particular LEA are not making sufficient annual progress towards English language proficiency and gains in academic achievement, the State should work with the LEA to revise its LIEP and strategies for instructing ELs using evidence and research to guide its decision-making[18].

As noted in A-3, Title VI and the EEOA independently require each State and LEA to evaluate the effectiveness of an LEA's language assistance program to ensure that EL students acquire English proficiency and that language programs are reasonably calculated to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time. In reviewing LEA Title III plans, SEAs should ensure that LIEPs are effective and that they are being implemented consistent with a State's uniform guidelines or benchmarks. (ESEA 3116)

Under Title VI and the EEOA, meaningful program evaluations include longitudinal data on EL students, former EL students, and never-EL students.[19]

C-6. Must an LEA provide for the equitable participation of eligible private school students, their teachers and other educational personnel in Title III, Part A programs?

Yes. An LEA must provide for the equitable participation of eligible private school students, their teachers and other educational personnel in private schools located in areas served by the LEA. This requirement applies to both the EL and immigrant youth subgrants. An LEA must engage in timely and meaningful consultation with private school officials during the design and development of their Title III, Part A programs and prior to making any decision that may affect the participation of private school students, their teachers and/or other educational personnel in the program. (ESEA Sections 8501-8504).[20]

[18]See the Using Evidence to Strengthen Education Investments Non-Regulatory Guidance for more information about evidence-based decision-making, *available at* http://www2.ed.gov/policy/elsec/leg/essa/guidanceuseseinvestment.pdf)

[19] "Never-EL" students are those who have never been identified as EL or never enrolled in an EL program. For more information, see the DCL referenced in question A-3, section II.I, "Evaluating the Effectiveness of a District's EL Program," pp. 35-37.

[20] New or changed requirements that affect the equitable participation of private school teachers and other educational personnel under the ESEA will be addressed in forthcoming guidance. Except as otherwise provided in that guidance, the existing non-regulatory Title IX, Part E Uniform Provisions, Subpart 1 – Private Schools (Revised March 2009) will remain applicable.

D- Educators of English Learners

D-1. What is the definition of "professional development" under the ESEA?

Under ESEA Section 8101(42) the term "professional development" means activities that—

(A) are an integral part of school and local educational agency strategies for providing educators (including teachers, principals, other school leaders, specialized instructional support personnel, paraprofessionals, and, as applicable, early childhood educators) with the knowledge and skills necessary to enable students to succeed in a well-rounded education and to meet the challenging State academic standards; and

(B) are sustained (not stand-alone, 1-day, or short term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused, and may include activities that--

(i) improve and increase teachers'—(I) knowledge of the academic subjects the teachers teach; (II) understanding of how students learn; and (III) ability to analyze student work and achievement from multiple sources, including how to adjust instructional strategies, assessments, and materials based on such analysis;

(ii) are an integral part of broad schoolwide and districtwide educational improvement plans;

(iii) allow personalized plans for each educator to address the educator's specific needs identified in observation or other feedback;

(iv) improve classroom management skills;

(v) support the recruitment, hiring, and training of effective teachers, including teachers who became certified through State and local alternative routes to certification;

(vi) advance teacher understanding of (I) effective instructional strategies that are evidence-based; and (II) strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers;

(vii) are aligned with, and directly related to, academic goals of the school or local educational agency;

(viii) are developed with extensive participation of teachers, principals, other school leaders, parents, representatives of Indian tribes (as applicable), and administrators of schools to be served under this Act;

(ix) are designed to give teachers of English learners, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;

(x) to the extent appropriate, provide training for teachers, principals, and other school leaders in the use of technology (including education about the harms of copyright piracy), so that technology and technology applications are effectively used in the

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 and instruct classroom practice;

(xiv) include instruction in ways that teachers, principals, other school leaders, specialized instructional support personnel, and school administrators may work more effectively with parents and families;

(xv) involve the forming of partnerships with institutions of higher education, including, as applicable, Tribal Colleges and Universities as defined in Section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)), to establish school-based teacher, principal, and other school leader training programs that provide prospective teachers, novice teachers, principals, and other school leaders with an opportunity to work under the guidance of experienced teachers, principals, other school leaders, and faculty of such institutions;

(xvi) create programs to enable paraprofessionals (assisting teachers employed by a local educational agency receiving assistance under part A of Title I) to obtain the education necessary for those paraprofessionals to become certified and licensed teachers;

(xvii) provide follow-up training to teachers who have participated in activities described in this paragraph that are designed to ensure that the knowledge and skills learned by the teachers are implemented in the classroom; and

(xviii) where practicable, provide jointly for school staff and other early childhood education program providers, to address the transition to elementary school, including issues related to school readiness.

D-2. What requirements pertain to pre-service and in-service professional development for teachers of ELs?

The ESSA makes several important changes pertaining to preparation and professional development for teachers of ELs. First, instead of describing these programs and activities as "high-quality," as under NCLB, the statute has strengthened these provisions by clarifying that

such programs and activities supported by Title III funds must be "effective." Specifically, the ESEA provides that: [21]

- States may use State-level Title III funds to provide *effective* teacher and principal preparation, as well as for ongoing professional development activities that are *effective*, which may include helping educators meet State and local certification and licensing requirements for teaching English learners and improving their teaching skills to meet the diverse needs of English learners (including *effective* instruction) (ESEA Section 3111(b)(2)(B)); and
- LEAs must use Title III funds to provide *effective* professional development for teachers and principals of ELs that is:
    - Designed to improve the instruction and assessment of ELs;
    - Designed to enhance the ability of teachers and principals to understand and implement curricula, assessment measures and practices, 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 teachers of ELs; and
    - Of sufficient intensity and duration to have a positive and lasting impact on the teachers' performance in the classroom. This does not include one-day or short-term events, unless as part of a teacher's comprehensive professional development plan that is based on a needs assessment.

(ESEA Section 3115(c)(2)).

Second, the use of Title III State-level funds for professional development was previously limited to assisting personnel in meeting certification and licensing requirements for teaching ELs; States may now also provide professional development to improve teaching skills to meet the diverse needs of ELs, including how to implement effective programs and curricula to teach ELs. (ESEA Section 3111(b)(2)(B)). The professional development provided by either the State or an LEA need not be limited to teachers who teach exclusively ELs, but may be provided to all teachers who have ELs in their classrooms, to enable them to teach those ELs more effectively. School districts also have an obligation under Title VI of the Civil Rights Act of 1964 and the EEOA to provide the personnel and resources necessary to effectively implement their chosen language assistance program.[22] The supplement-not-supplant provision in Title III prohibits the use of Title III funds to meet these civil rights requirements, but Title III funds may be used to supplement professional development by a school district that is already meeting its civil rights obligations.

[21] Emphasis added in each bullet that follows.

[22] See the DCL referenced in question A-3, section II.C, "Staffing and Supporting EL Programs," pp. 14-17.

D-3. What legal obligations apply to States and LEAs pertaining to the qualifications of teachers and other staff who teach ELs?

The ESEA does not dictate specific qualifications for teachers of ELs; this is a matter that is determined by States. However, it is crucial to the success of ELs that teachers are trained on how to support both ELs' English language development and their mastery of academic content knowledge. As noted in question D-2, Title VI and the EEOA require LEAs to provide the personnel and resources necessary to effectively implement their chosen language assistance program. More information about these Title VI and EEOA requirements can be found in the DCL referenced in question A-3 above. See question K-4 for further discussion of requirements for personnel serving English learners with disabilities.

D-4. What criteria should a State and its LEAs receiving Title III funds use to ensure that teachers and school leaders of ELs are well-prepared, including through the provision of effective preparation and professional development?

Preparation and professional development programs and activities for teachers and school leaders of ELs must meet the statutory requirements described in question D-2 above. ((ESEA Section 3115(c)(2)).

Access to effective educators is critical for supporting ELs; research has shown that teacher effectiveness is strongly correlated with student success.[23] In order to promote positive educational outcomes for ELs, preparation and professional development for teachers of ELs and school leaders should improve instruction, increase teachers' and school leaders' ability to implement effective curricula for ELs, increase students' English language proficiency and improve students' academic achievement. Preparation and professional development programs for teachers of ELs should be based on the highest available level of evidence and should be measured to determine their effectiveness. (See the Department's Using Evidence to Strengthen Education Investments Non-Regulatory Guidance *available at* http://www2.ed.gov/policy/elsec/leg/essa/guidanceuseseinvestment.pdf)). When measuring the effectiveness of the professional development activities, States and LEAs should assess not only teacher competencies and skills, but also performance data and measurements of student outcomes.[24]

[23] See, for example, Jacob, Brian A. and Lars Lefgren, 2008. "Can Principals Identify Effective Teachers? Evidence on Subjective Performance Evaluation in Education." Journal of Labor Economics 26, no. 1 (January): 101-136; Kane, Thomas J., and Douglas O. Staiger. 2008. "Estimating Teacher Impacts on Student Achievement: An Experimental Evaluation." National Bureau of Economic Research Working Paper 14607; Koedel, Cory, and Julian Betts. 2009. "Does Student Sorting Invalidate Value-Added Models of Teacher Effectiveness? An Extended Analysis of the Rothstein Critique." University of Missouri Department of Economics Working Paper 0902; Rothstein, Jesse. 2010. "Teacher Quality in Educational Production: Tracking, Decay, and Student Achievement." Quarterly Journal of Economics, 125(1): 175-214.; Hanushek, Eric A., and Steven G. Rivkin. 2010. "Constrained Job Matching: Does Teacher Job Search Harm Disadvantaged Urban Schools?" National Bureau of Economic Research Working Paper 15816.

[24] Title VI and the EEOA also require States and school districts that provide training to teachers of ELs to evaluate whether the training adequately prepares teachers to implement the language assistance program effectively. See the DCL referenced in #A-3, section II.C, "Staffing and Supporting EL Programs," pp. 14-17.

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 professional development activities meet the statutory requirements under the ESEA and demonstrate effectiveness with regards to language development and academic outcomes for ELs (see D-1). More information on increasing the effectiveness of preparation and professional development is available in the 2016 Title II, Part A guidance.

D-6. Which teachers and principals are eligible to receive or participate in professional development and preparation funded under Title III?

If a State or LEA receives Title III funds, it may use these funds to provide preparation and professional development opportunities to *all* teachers of ELs and *all* leaders of schools in which ELs are enrolled. Thus, an LEA may provide training not only to those who exclusively teach ELs, but to teachers who may only have a few ELs in their classrooms. Regardless of the specific participants, such activities must be effective and fully meet the requirements of Section 3115(c)(2) of the ESEA. Title III funds may also be used to provide professional development for other educators who work with ELs to include paraprofessionals, counselors, and special education teachers.

D-7. How may a State or LEA use Title III funds for staffing purposes, consistent with the supplement-not-supplant requirement in Title III?

As discussed in question A-3, Title III funds must be used for *supplemental* purposes and a State and LEA may not use Title III funds to meet obligations to ELs under Title VI and the EEOA. However, Title III funds may be used to provide supplemental staff to support ELs, as long as a State or LEA has already met its civil rights obligations, including the *Castañeda* standards.[25] For example, 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. As another example, an LEA could assign an EL teacher to spend 50% of her time providing language instructional services to ELs, with 50% of her salary funded from State and local funds, and 50% of her time providing supplemental EL services, funded from Title III. Note, however, that determinations about the supplement-not-supplant requirement in Title III are always fact-specific.

[25] For more information on the Castañeda standards, please see page 6 of the DCL referenced in question A-3 and pages 14-17 for more information on staffing requirements under the Castañeda standards.

E- Parent, Family, & Community Engagement

E-1. What are the requirements in the ESEA for parent,[26] 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.[27] 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

[26] 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.

[27] 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—

  - To coordinate and align related programs for ELs, which may include programs for parents and families of ELs. (ESEA Section 3115(c)(3)).
  - 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 families in helping their children to improve their academic achievement, and to help parents and families to become active participants in the education of their children. (ESEA Section 3115(d)(6)).

- An LEA receiving Title III immigrant subgrant funds under ESEA Section 3114(d)(1) may use those funds—
  - For 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; and

- To provide activities, in coordination 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. (ESEA Section 3115(e)(1)(A), (G)).

For all of these activities, an LEA may not use Title III funds to meet its obligations under Title VI and the EEOA, as described in question E-1. 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-5. What notifications must an LEA provide to parents of ELs under the ESEA?

Title I requires that every LEA that uses funds under either Title I or Title III for services to ELs must provide a parent with notification that outlines their child's identification as an EL and placement in an LIEP. (ESEA Section 1112(e)(3)).

The parental notification must include:

- ☐ The reason for identification of the child as an EL;
- The child's level of English language proficiency, how the level was assessed, and the status of the child's academic achievement;
- ☐ Methods of instruction used in the program in which the child is, or will be, participating, and the methods of instruction used in other available programs, including how the programs differ;
- ☐ How the program will meet the educational strengths and needs of the child and help the child achieve English language proficiency, and meet academic standards;
- ☐ Exit requirements for the program, expected rate of transition to a classroom not tailored for EL students, and expected rate of high school graduation;
- In the case of a child with a disability, how the program meets the annual goals in the child's individualized education program (IEP); and
- Information regarding parents' right to withdraw the child from a program upon their request, and to decline enrollment or choose another program or method of instruction, if available.

(ESEA 1112(e)(3)(A)).

The notification must be provided no later than 30 calendar days after the beginning of the school year or within the first two weeks of placement in an LIEP for students who enroll after the start of the school year. (ESEA Section 1112(e)(3)(A), 1112(e)(3)(B)).

The notice and information provided must be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.[28] (ESEA Section 1112(e)(4)).

E-6. May the parent of a child who is identified as an EL decline to enroll in, or have the student removed from, the LIEP?

Yes. As explained in question E-5, each LEA must provide written notification to parents of ELs of, among other things, information pertaining to the right of parents to have their child removed from the LIEP or to decline to enroll in such program. (ESEA 1112(e)(3)(A)(viii)).[29] Under Title VI and the EEOA, a parent's decision to opt out of a program for ELs must be knowing and voluntary, and an LEA may not recommend that parents decline all or some services within a program for ELs for any reason.[30]

Note, however, that if an EL is not participating in the LIEP, the LEA still has the obligation under Title VI and EEOA to take "affirmative steps" and "appropriate action" to provide the student with access to its educational programs. The English language and other academic needs of such an EL student must still be met.[31]

In addition, the ESEA requires that the LEA still must assess all ELs using the annual English language proficiency assessment, including those students whose parents have declined to enroll them in, or had them removed from, LIEPs. *All* ELs enrolled in schools served by the State must be assessed annually using the State's English language proficiency assessment. (ESEA Section 1111(b)(2)(G), emphasis added). State or district assessment policies, if they include a right to opt a child out of assessments, do not override or diminish the LEA's obligation to assess 100 percent of ELs using the annual English language proficiency assessment.

E-7. What resources does the Department provide to support parent, family, and community engagement?

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

- ☐ The Dual Capacity Building Framework, which focuses on building the capacity of educators and families to work collaboratively to support positive outcomes for all students;
- ☐ Chapter 10 of the EL Tool Kit, which provides tools and resources to ensure meaningful communication with LEP parents;
- ☐ The *Resource Guide: Supporting Undocumented Youth*, which is designed to help secondary schools, institutions of higher education, teachers, and other personnel support

[28] While the ESEA expressly includes certain protections for LEP parents, the ESEA does not override an LEA's independent obligations under Title VI and the EEOA, which requires LEAs to ensure meaningful communication with LEP parents in a language they can understand. For additional information, see question E-14.
[29] Parents also have a right under Title VI and the EEOA to decline or opt their children out of an LEA's program for ELs or out of particular language services within a program for ELs.
[30] For additional information about LEAs' Title VI and EEOA obligations to EL students, including EL students who opt out of an LEA's program for ELs, see the DCL referenced in question A-3, section II.G, "Meeting the Needs of EL Students Who Opt Out of EL Programs or Particular EL Services," pp. 29-32.
[31] For more information, see the DCL referenced in question A-3, section II.G, pp. 29-32.

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
- 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:[32]

- ☐ ESEA Section 3102, which outlines the purposes of Title III, now explicitly includes preschool teachers.
  - One of the purposes of Title III is to assist teachers (*including preschool teachers*), principals and other school leaders, State educational agencies, local educational agencies, and schools in establishing, implementing and sustaining effective language instruction educational programs designed to assist in teaching English learners, including immigrant children and youth.
  - Another purpose of Title III is to assist teachers (*including preschool teachers*), principals and other school leaders, State educational agencies, and local educational agencies to develop and enhance their capacity to provide effective instructional programs designed to prepare English learners, including immigrant children and youth, to enter all-English instructional settings.
- ☐ ESEA Section 3115, which outlines provisions related to the Title III EL formula subgrants, now refers to early childhood education programs as part of the stated purposes of subgrants and in the authorized uses of funds.
  - One of the purposes of Title III EL formula subgrants is developing and implementing new language instruction educational programs and academic content instructional programs for English learners and immigrant children and youth, including *early childhood education programs*, elementary school programs, and secondary school programs.
  - LEAs receiving Title III EL formula subgrants may use funds to develop and implement effective *preschool*, elementary school, or secondary school language instruction educational programs that are coordinated with other relevant programs and services.

[32] Emphasis added in the following bullets.

- 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.
    - 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.[33] 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 instruction for ELs in public preschool programs. In doing so, an LEA may braid Title III subgrant funds with other funding streams available to provide effective preschool language instruction for ELs. As with any use of the funds under Title III, an LEA must comply with the statutory supplement-not-supplant provision under ESEA Section 3115 (See questions A-2 and A-3.) An LEA should prioritize funds for *high-quality and effective* preschool programs when utilizing Title III funds to support language instruction for ELs in preschool, as these programs may be more likely to produce positive outcomes like improved school readiness and language development. For more information on high-quality early learning programs, please see the Department's non-regulatory guidance on early learning opportunities under the ESEA, *available at* (link to be added once the early learning guidance has been published). For more information on supplement-not-supplant obligations, see Section A of this document.

F-4. What are some examples of how an LEA may use Title III funds in preschool programs?

A district may use Title III funds for language instruction educational services in an existing preschool program that the district operates or funds, as long as the use of funds is supplementary and the funds are prorated proportionally to the number of ELs in the program.

- For example, District A operates a preschool program for four-year-olds that is currently funded with State and local funds, and half the students are ELs. The LEA plans to start

[33] With regard to private and community-based preschools, see the Department's non-regulatory guidance on early learning, *available at*: (link to be added once the early learning guidance has been published)).

implementing, in this existing program, a new optional dual-language preschool model that has a record of effectiveness. It wishes to use Title III funds for EL-related professional development for the preschool teachers (which meets the four requirements of ESEA Section 3115(c)(2) for professional development) and to purchase bilingual learning materials. Assuming that the professional development and the bilingual materials have not previously been provided from different funding sources, and that all of the teachers interact with all of the students, the LEA may use Title III funds for these purposes; however, those funds can be used for only half the per-pupil cost of the learning materials, because half the students are not ELs.

- ☐ As another example, District B currently operates a preschool program for four-year-olds that is currently funded with State and local funds, and one-third of the students are ELs. Two of the teachers have received training in teaching ELs, and the district wishes to use Title III funds to pay the salaries of those trained preschool teachers, and also to start conducting weekly family learning nights for the entire preschool population. The LEA may not use Title III funds for the teacher salaries; that would raise a rebuttable presumption of supplanting because those salaries were previously paid from State and local funds (see #A-2 above for more information). The LEA could use Title III funds for one-third of the total cost of the family nights, because one-third of the students are ELs.

The same considerations apply if a district starts a new preschool program. In addition, in either situation, although districts have the flexibility to use the Title III funds in the grade levels or schools that it chooses, the district must ensure that it also meets the three required uses of funds in ESEA Section 3115(c) (*i.e.*, to supplement LIEPs, to provide effective professional development, and to provide other activities that must include parent, family, and community engagement).

F-5. What considerations should an LEA take into account before using Title III funds to support ELs in preschool?

An LEA that uses Title III subgrant funds to support preschool-aged ELs should ensure that its language instruction and other services are developmentally appropriate for young ELs, culturally responsive, reflective of the latest research on effective instruction for ELs in early learning programs, and supportive of all ELs' needs. An LEA should consider the developmental and language needs of children when determining which students may be served using Title III funds.

Like LIEPS in elementary and secondary schools, LIEPs provided in preschool for ELs must also be "effective," and should be expected to demonstrate improved learning outcomes for ELs. (ESEA Section 3115(a), (c)). For more information, please see question C-3.

For more information on promising practices to support ELs from birth through age 5, please see the Joint U.S. Department of Education and U.S. Department of Health and Human Services' "Policy Statement on Supporting the Development of Children who are Dual Language Learners in Early Childhood Programs," *available at* https://www.acf.hhs.gov/sites/default/files/ecd/dll_policy_statement_final.pdf.

F-6. What data should LEAs share and what activities should LEAs coordinate with Head Start agencies (including Early Head Start and migrant and seasonal Head Start agencies) and other early childhood education providers?

The alignment of standards, curricula, instruction, and assessment systems for students from birth to age 8 may benefit children in early learning programs and elementary schools, including ELs, as it facilitates greater continuity and better organization of supports for students. This alignment may also help to make expectations more consistent between programs and foster greater collaboration between early learning programs and elementary schools.

The requirement that, as part of the local plan, LEAs that receive Title III subgrant funds must coordinate activities and share data with early childhood programs (ESEA Section 3116) should help lead to improved alignment across the early educational years and improved outcomes for ELs. Effective implementation of this new provision will lead to better coordination between Head Start, other early childhood programs, and schools served by the LEA, while facilitating a strong transition for ELs into elementary and secondary education. LEAs may hold joint professional development for elementary educators and preschool teachers of ELs, including those in Head Start and other early childhood community-based settings, coordinate data reporting and sharing, align standards and curricula, and conduct transition activities for children and families, as part of the activities coordinated with early childhood programs.

In determining which data would be most appropriate to share with early learning programs, including Head Start agencies, we encourage LEAs to consult with and solicit feedback from early learning programs in the community. We also encourage LEAs to consider which indicators would be most beneficial to create a feedback loop that informs the improvement of programs and supports for ELs, and then to consider which data could most accurately be used to measure progress against such indicators. For example, collecting and analyzing kindergarten entry assessment data, data from the annual English language proficiency assessment given in kindergarten or first grade, and elementary school academic achievement data could help to identify strengths of early learning programs in preparing ELs for academic success and areas for improvement. In considering whether to share or exchange student data, LEAs must comply with the Family Educational Rights and Privacy Act (FERPA); for further information on those requirements, contact the Department's Family Policy Compliance Office or see http://www2.ed.gov/policy/gen/guid/fpco/index.html.

G-Immigrant Subgrant and Serving Immigrant Students

G-1. How is an "immigrant child or youth" defined under Title III of the ESEA?

The term "immigrant children and youth," which is defined in Section 3201(5) of the ESEA, refers to individuals who: (A) are aged 3 through 21; (B) were not born in any State; and (C) have not been attending one or more schools in any one or more States for more than 3 full academic years. Note that "State" is defined in Section 3201(13) of the ESEA to include the 50 States, the District of Columbia, and Puerto Rico. Therefore, students born in Puerto Rico may not be included as "immigrant" students under Title III.

Finally, note that the term "immigrant" as used in Title III is not related to an individual's legal status in the United States. Under the U.S. Supreme Court case *Plyler v. Doe*, schools are

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[34]:

- 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
- Any other information required by the SEA.

H-2. For which reporting elements is an LEA required to disaggregate EL data by the number and percentage of English learners with disabilities?

Under ESEA Section 3121, an LEA must disaggregate by English learners with disabilities in reporting the number and percentage of ELs making progress toward English language proficiency, and in reporting the number and percentage of former ELs meeting State academic standards for each of the four years after they no longer receive Title III services. Thus, for each of those two data elements, an LEA will report in the aggregate (all ELs, including English learners with disabilities) and report separately on English learners with disabilities.

H-3. Should LEAs disaggregate their EL data by English learners with disabilities on any additional measures, besides the two required under Title III?

We encourage LEAs to consider disaggregating, by English learners with disabilities, additional measures that are required under Title III to be reported to States, including attainment of English language proficiency and the number and percentage of ELs who have not attained proficiency within five years of initial classification as an EL. (See ESEA Section 3121).

H-4. Should LEAs consider disaggregating data reported under Title III by any other subgroups of ELs, besides English learners with disabilities? If so, for what purposes?

A State should consider requiring reporting of Title III data disaggregated by other subgroups of ELs. LEAs should also analyze disaggregated EL performance data by other subgroups of ELs, including long-term ELs, recently arrived ELs, and EL students with interrupted formal

[34] These are general summaries of the reporting requirements; for specific requirements see ESEA section 3121.

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 ELP* and no longer receives EL services. These data must include results on content assessments for reading/language arts, mathematics and science. The students included in this reporting must include *all* former ELs served by the LEA who have achieved ELP and therefore no longer receive any EL services.

These data must be disaggregated by ELs with disabilities. For more information, please see question H-2. An LEA should also disaggregate data by year after exit (*e.g.*, 1st year, 2nd year) to ensure that any academic deficits incurred due to participation in a language assistance program are recouped.

In reporting these data, an LEA must include students who have met the standardized, statewide

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 standards.

Under Title VI and the EEOA, States and LEAs have separate obligations to monitor the progress of exited EL students. After students have exited an EL program, school districts must monitor the academic progress of former EL students to ensure that: the students have not been prematurely exited; any academic deficits they incurred as a result of participation in the EL program have been remedied; and they are meaningfully participating in the standard instructional program comparable to their never-EL peers. When a school district's monitoring of former EL student indicates that a persistent language barrier may be the cause of academic difficulty, LEAs should re-assess the student with a valid and reliable, grade-appropriate English language proficiency test to determine if there is a persistent language barrier and must offer additional language assistance services where needed to meet its civil rights obligations.

K-English learners with disabilities[35]

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.

[35] 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 IDEA. See 34 CFR §300.306(b)(1)(iii). Such incorrect identification would constitute different treatment based on national origin in violation of Title VI.

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.[36] 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 with disabilities?

Federal resources to support States in this area are available through Department-funded technical assistance centers such as the National Center for Educational Outcomes (NCEO) and the Center for Parent Information and Resources (CPIR). CPIR provides an annotated list of resources that address how to make determinations regarding accommodations; below are some examples.

- Accommodations Manual: How to Select, Administer, and Evaluate Use of Accommodations for Instruction and Assessment of Students with Disabilities. This includes fact sheets and teacher tools. www.osepideasthatwork.org/toolkit/accommodations_manual.asp;
- Online Accommodations Bibliography: NCEO resource on the range of possible accommodations and what empirical research studies have to say about the effects of various testing accommodations for students with disabilities. www.cehd.umn.edu/NCEO/OnlinePubs/AccommBibliography/AccomStudies.htm;
- Special Topic Area: Accommodations for Students with Disabilities. NCEO answers frequently asked questions about testing accommodations for students with disabilities, discusses State policies and research in this area, and offers a number of research-based

[36] See 34 CFR §§300.156 (personnel qualifications) and 300.207 (personnel development).

- publications to guide policy and decision-making. www.education.umn.edu/NCEO/TopicAreas/Accommodations/Accomtopic.htm.

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)[37] 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"[38]) 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.

[37] References in this document to the ESEA are to the ESEA as amended by the ESSA.

[38] September 23, 2016 Non-Regulatory Guidance: English Learners and Title III available at: www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguidenglishlearners92016.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.[39] 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 to provide timely support for students who may be in need of language services. Title VI's implementing regulations have been interpreted by case law to require that LEAs have in place procedures that accurately identify in a timely manner all students who may be ELs and determine if they are ELs through a valid and reliable assessment that includes all four domains of language (*i.e.*, speaking, listening, reading and writing).[40]

Each LEA that uses funds under either ESEA Title I or Title III to supplement its LIEP must provide a parent of an EL student with notification that outlines their child's identification as an EL and placement in an LIEP.[41] The notification must also include the child's level of English proficiency, the methods of instruction used in the program the child will participate in and the specific exit requirements for the program, along with other statutorily required information. The ESEA requires that this notification be provided no later than 30 calendar days after the beginning of the school year or within the first two weeks of placement in an LIEP for a student who enrolls after the start of the school year.[42] See Q&A E-5 of the 2016 EL Guidance (referenced in footnote 2) for further information about the parental notification requirement.

3. May an LEA use Title III funds for EL identification?

No. The obligation to identify all EL students is part of an LEA's civil rights obligations.[43]

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[39] Title VI prohibits race, color and national origin discrimination in any program or activity receiving Federal financial assistance; as recipients of Federal financial assistance, SEAs are required to comply with Title VI. 42 U.S.C. § 2000d to d-7.
[40] *Rios v. Read*, 480 F. Supp. 14, 23 (E.D.N.Y. 1978); *Cintron v. Brentwood*, 455 F. Supp. 57, 64 (E.D.N.Y. 1978).
[41] ESEA section 1112(e)(3).
[42] *Ibid.*
[43] *Lau v. Nichols*, 414 U.S. 563 (1974).

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.[44]

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 inaccurate completion of the home language survey, administration of an EL screening assessment without providing for appropriate accommodations for a student with disabilities, inaccurate scoring on the annual ELP assessment, or other reasons.

In instances where a student is considered to be erroneously identified as an EL, an LEA should determine how to proceed based on the individual circumstances. For example, if the LEA discovers that appropriate accommodations on the EL screening assessment were not provided to a student with a disability, the logical step would be to re-test the student with appropriate accommodations. If the results of the screener assessment show that the student is not an EL, the EL designation would be removed.

Erroneous identification may also occur when a parent misunderstands the home language survey and indicates that languages other than English are spoken at home because there is occasional use of a language other than English, even though English is the dominant language used at home and the student does not speak or understand any language other than English. In that case, the LEA could remove the EL designation since the student should not have been identified as an EL in the first place.

These are rare exceptions to the general rule that, after a student is identified as an EL, the LEA may not remove the EL designation before that student scores proficient on the assessment of the four language domains, even if the student's parents object to the EL designation (although parents have the right to decline services).[45]

5. Where can States and LEAs find more information on procedures for identifying ELs?

Tools and resources for identifying all ELs are located in Chapter One of the Department's English

[44] See 2016 EL Guidance, Q&A A-8.
[45] See ESEA section 1112(e)(3); Q&A E-5 of the 2016 EL Guidance.

Learner Toolkit.[46]

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.[47] 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[48] as well. To ensure that the language proficiency of such a student is validly and reliably assessed, the Individualized Education Program (IEP)[49] Team or, in the case of a student served only under Section 504 or Title II of the ADA, the Section 504 Team or individual or group designated to make those decisions under Title II of the ADA,[50] must determine whether an EL with a disability needs to receive appropriate accommodations on the regular annual ELP assessment or, for an EL who is a student with a most significant cognitive disability as identified under 34 CFR §200.6(a)(1)(ii), needs to take an alternate assessment to the regular ELP assessment, if he or she cannot take the regular ELP assessment, even with appropriate accommodations.[51] An IEP Team, a Section 504 team, or the individual or group designated to

[46] See English Learner Toolkit available at: https://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html.

[47] *Rios v. Read*, 480 F. Supp. at 23.

[48] As used in this document, the term "EL with a disability" or "ELs with disabilities" refers to students who are children with disabilities under the IDEA as well as students who are not IDEA-eligible but who have disabilities under Section 504 or Title II of the ADA.

[49] An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 C.F.R. §§300.320-300.324 (34 C.F.R. §300.320(a)). This paragraph specifically discusses the responsibilities of a student's IEP team. Where a student has been identified as a student with a disability under Section 504 or Title II of the ADA but not under IDEA, the student's 504 team, or the team or individual designated by the LEA under Title II of the ADA would have similar responsibilities.

[50] See 34 C.F.R. §200.6(a(1)) and (h)(4).

[51] 34 C.F.R. §200.6(h)(5). Please note that the SEA must provide the alternate ELP assessment (34 C.F.R. §200.6(h)(5)), and may develop alternate ELP achievement standards for the alternate ELP assessment for ELs with the most significant cognitive disabilities. Alternate ELP achievement standards set expectations of performance that differ in complexity from grade-level ELP achievement standards. See *A State's Guide to the U.S. Department of Education's Assessment Peer Review Process* at

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.[52]

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, in grades kindergarten through grade twelve.[53] An SEA therefore may not permit one or more LEAs to use locally administered ELP assessments in lieu of the statewide ELP assessment. An LEA may, however, use a local ELP assessment for other purposes, such as to help identify the needs of and provide appropriate instructional supports for ELs so that they can attain ELP.

9. May an EL with a disability whose disability precludes his or her assessment in one or more domains of the State ELP assessment be exited from language services?

Under 34 C.F.R. §200.6(h)(4)(ii), if it is determined on an individualized basis that an EL has a disability that precludes assessment in one or more domains of the ELP assessment (speaking, listening, reading and writing), such that there are no appropriate accommodations for the affected domain or domains, an SEA must assess the child's English language proficiency based on the remaining domains in which it is possible to assess the student.[54] This is also consistent with obligations under Federal civil rights laws. A determination that a disability precludes assessment in one or more domains must be made on an individualized basis by the child's IEP Team, the student's 504 team or, for students covered under Title II of the ADA, by the team or individual designated by the LEA to make those decisions. Under the very rare circumstances when a student's disability precludes assessment in one or more domains, the student may be exited under the State's exit procedures based on a score of proficient on the remaining domains in which the

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https://www2.ed.gov/admins/lead/account/saa.html#Standards_and_Assessments_Peer_Review_for further information.

[52] The IDEA and the IDEA Part B regulations require that all eligible students with disabilities be included in all general State and districtwide assessment programs, including assessments described under section 1111 of the ESEA, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs (Section 612(a)(16)(A) of the IDEA and 34 C.F.R. §300.160(a); see also section 614(d)(1)(A)(i)(VI) of the IDEA and 34 C.F.R. §300.320(a)(6)).

[53] 34 C.F.R. §§200.5(a)(2), 200.6(h)(1).

[54] See the example provided in 34 C.F.R. §200.6(h)(4)(ii) of a non-verbal EL who because of an identified disability cannot take the speaking portion of the ELP assessment.

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 vast majority of ELs with disabilities will be able to be assessed in all four domains, with appropriate accommodations as needed, or by taking an alternate ELP assessment for ELs who are students with the most significant cognitive disabilities. The Department's assessment peer review process will evaluate the technical quality of the ELP assessment, including that it provides valid and reliable results. This includes the State's procedures for assessing ELs with disabilities on less than the four domains (see *A State's Guide to the U.S. Department of Education's Assessment Peer Review Process* referenced in footnote 15 above).

10. May a SEA exit an EL from language services using only the student's score on the State reading/language arts assessment?

No. Section 1111(b)(1)(F) of the ESEA requires each SEA to adopt ELP standards that "are derived from the four recognized domains of speaking, listening, reading and writing," "address the different proficiency levels of ELs" and "are aligned with the challenging State academic standards." The ESEA thus recognizes that English language proficiency and State academic content standards are distinct concepts. While assessments on ELP and reading/language arts content are related, they fundamentally measure different skills. The annual ELP assessment must be a valid and reliable measure of ELP, including speaking, listening, reading and writing skills, and must be aligned with the ELP standards.[55]

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.[56]

11. Does an SEA have the option of including in its exit procedures other objective, valid and reliable procedures in addition to the State's ELP assessment?

An SEA may include additional measures in its standardized statewide exit procedures that are valid, reliable objective and applied and weighted the same way across the State.[57] For example, an SEA may include local input such as the use of a teacher rubric or objective portfolio as part of its statewide exit procedures, as long as such the local input is applied and weighted consistently across the State. A state should not use additional procedures in its exit procedures that do not measure English language proficiency, such as the results of the mathematics content assessment.

Reporting

See Section H of the 2016 EL Guidance for additional questions and answers regarding reporting

[55] ESEA section 1111(b)(2)(G), 34 C.F.R. §200.6(h)(1).
[56] *Rios v. Read*, 480 F. Supp. at 23.
[57] ESEA section 3113(b)(2).

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.[58]

Former English Learners

See updates to J-1 above

[58] ESEA section 1111(b)(2)(G); 34 C.F.R. §§ 200.5(a)(2), 200.6(h).

Appendix A: Glossary

English learner – The term "English learner," when used with respect to an individual, means an individual —

(A) who is aged 3 through 21;

(B) who is enrolled or preparing to enroll in an elementary school or secondary school;

(C)(i) who was not born in the United States or whose native language is a language other than English;

(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual —

(i) the ability to meet the challenging State academic standards;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

(ESEA Section 8101(20))

English learners with disabilities – The phrase "English learners with disabilities" refers to English learners who are also "children with disabilities" under the IDEA, as defined in Section 602(3) of that Act and 34 CFR §300.8.

(ESEA Section 3201(4))

Immigrant children and youth – The term "immigrant children and youth" means individuals who—

(A) are aged 3 through 21;

(B) were not born in any State; and

(C) have not been attending one or more schools in any one or more States for more than 3 full academic years.

(ESEA Section 3201(5))

Note that "State" is defined in Section 3201(13) of the ESEA to include the 50 States, the District of Columbia, and Puerto Rico. Therefore, students born in Puerto Rico cannot be included as "immigrant" students under Title III.

Immigrant subgrant – These are subgrants for which each State must reserve not more than 15 percent of the State's Title III allocation for LEAs in the State that have experienced a significant increase in the percentage or number of immigrant children and youth who have enrolled in schools in the LEA in the current fiscal year compared to the average of the last two fiscal years. (See ESEA Section 3114(d)).

Language instruction educational program – The term "language instruction educational program" means an instruction course —

(A) in which an English learner is placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic standards; and

(B) that may make instructional use of both English and a child's native language to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language.

(ESEA Section 3201(7))

Title III EL formula subgrant – These are formula subgrants to LEAs that each State must award for a fiscal year by allocating funds in a timely manner to each LEA in the State with an approved Title III plan. (See ESEA Section 3114(a)). Grant funds are allocated based on the number of ELs in the LEA, and are only made to LEAs for which the number of ELs yields a subgrant of at least $10,000. (ESEA Section 3114(b)).

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 organizations. This information, informed by research and gathered in part from practitioners, is provided for the reader's convenience and is included here to offer examples of the many resources that educators, parents, advocates, administrators, and other concerned parties may find helpful and use at their discretion. The U.S. Department of Education does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of links to items and examples does not reflect their importance, nor are they intended to represent or be an endorsement by the U.S. Department of Education of any views expressed, or materials provided.

Children with Disabilities

See question and answer K-4.

Data

Through the Statewide Longitudinal Data System (SLDS) program, the Department has supported the development of data systems to improve instruction, practices, services, and policies.

The Department provides data through its user-friendly tool, ED Data Express, including data on ELs: http://eddataexpress.ed.gov/

The Department provides data on ELs as part of the Civil Rights Data Collection: http://ocrdata.ed.gov/

Educational Experiences of English Learners: Analyses of Extant Data (2016). Three briefs describe the educational experiences and performance of English learner (EL) students based on data from the 2011–12 Civil Rights Data Collection (CRDC) and other data. There is an instructional staff brief, college preparatory courses and programs brief, and grade retention, high school graduation, and GED attainment brief.
http://www2.ed.gov/about/offices/list/opepd/ppss/reports.html#titleiii

Dual Language Learners

Dual Language Education Programs: Current State Policies and Practices (December 2015) This report was prepared under a U.S. Department of Education contract with the American Institutes for Research, and contains an analysis of research and extant data related to dual language education policies and practices.
https://ncela.ed.gov/files/rcd/TO20_DualLanguageRpt_508.pdf

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 valuable information. http://ncela.ed.gov/

The Center for Applied Linguistics has developed a variety of publications related to the teaching and learning of languages, linguistics, policy, immigrant and refugee integration, and more. http://www.cal.org/resource-center/publications

Language Instruction Educational Programs

The paper, Language Instruction Educational Programs (LIEPs): A Review of the Foundational Literature (2012), describes LIEP characteristics that may influence the quality of programs delivered to ELs in grades K through 12.
http://www2.ed.gov/about/offices/list/opepd/ppss/reports.html#titleiii

The U.S. Department of Education's English Learner Tool Kit contains recommendations on promising practices to ensure LIEPs facilitate improved ELP and academic outcomes.
http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf.

The U.S. Department of Education's Institute for Educational Sciences Practice Guide "Teaching academic content and literacy to English learners in elementary and middle school" provides research and practice on instructing ELs. http://ies.ed.gov/ncee/wwc/PracticeGuide.aspx?sid=19.

The U.S. Department of Education's What Works Clearinghouse (WWC) has conducted reviews to examine the evidence of effectiveness of interventions designed for students whose primary language is not English and who have limited English speaking, reading, writing, and listening skills. Reviewed studies are found on the WWC website.
http://ies.ed.gov/ncee/wwc/Topic.aspx?sid=6

The Center for Applied Linguistics' report, Developing Academic Literacy and Language in the Content Areas, provides research-based strategies and practical, hands-on tools to help educators develop effective classroom strategies aligned with standards. http://www.cal.org/resource-center/publications/developing-academic-literacy-and-language-in-the-content-areas

Legal Obligations to English Learners and English Learner Parents

Information about an LEA's obligations to EL students and limited English proficient parents under Title VI and the EEOA is available in a Dear Colleague Letter jointly released by the

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/immigration-resources.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/opepd/ppss/reports.html#titleiii