



State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent

Implications of the “Supplement Not Supplant” Provisions of Title III of the ESEA for Assessment of English Language Proficiency

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Based on final interpretations from the U.S Department of Education in 2008, it is important to review current practices in relation to the assessment of and services for English language acquisition. Per Title III of the *Elementary and Secondary Education Act*, the definition of “Supplement Not Supplant” is the following:

Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for limited English proficient children and immigrant children and youth and in no case to supplant such Federal, State, and local public funds (Section 3115(g)).

In other words:

The Title III supplement not supplant requirement is intended to ensure that services provided with Title III funds are in addition to, and do not replace or supplant, services that are the responsibility of the district to provide, or are already being provided with other state or federal funding.

That means:

Because assessment of English language proficiency is considered to be the responsibility of the Local Education Agency (LEA), neither Title III nor Title I funds may be used to pay for the cost of administering the annual English language proficiency (ELP) examination, ACCESS for ELLs[®] or the cost of administering the W-APT[™], MODEL[™] or any screening instruments. This includes the costs for substitute teachers or additional testers to facilitate test or screener administration or purchase of materials or equipment related to the administration of ACCESS for ELLs[®] or the screening instruments.

IMPORTANT: Beginning with the 2009-10 School Year, the Wisconsin Department of Public Instruction will pay the cost of ACCESS for ELLs[®] test materials and scoring for all LEAs, including private schools that choose to participate in Title III. However, the costs to *administer* the annual ACCESS for ELLs[®] and any ELP screeners must be paid for using local district funds.

Can a presumption of supplanting be overcome?

As a general rule, the use of Title III funds to pay for services to ELL/LEP students that were paid for in prior years with state, local, or other federal funds also raises a presumption of a violation of the Title III non-supplanting requirement. LEAs may be able to rebut this presumption, if the LEA can demonstrate through contemporaneous documentation, that it would not have continued to provide those services for LEP students with state, local, or other federal funds because of severe budgetary constraints or significant loss of revenue.

For example, if a state law requires an LEA to provide after-school reading services, auditors will assume the LEA would use state or local funds to comply with state law. If, however, the LEA can prove there were no state or local funds available to support the reading services, and that it would not have been able to provide the services absent the federal funds, the LEA may be able to overcome the supplanting presumption.

If a state agency or LEA wishes to use federal funds to pay for services or positions previously paid for with state or local funds, the LEA must provide and retain records that confirm:

- the reduced amount or lack of state and local funds available to pay for the position or services, and
- the decision to eliminate the position or services had federal funds not been available, together with the reason for that decision.

Questions related to this information may be directed to:

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