



Supplement not Supplant – Follow up from October 2008 LEP Partnership Meeting

Webinar

December 11, 2008

The Context

- ❖ The purpose of this presentation is to follow up on questions raised during the October 2008 LEP Partnership meeting that pertain to the Department of Education's guidance on use of Title I and Title III funds for English language proficiency assessments.
- ❖ This presentation also addresses additional questions regarding the use of Title III funds consistent with the supplement not supplant requirement.

Supplement not Supplant in Brief – General Principle

In general, 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 students would otherwise receive.

Title III Supplement not Supplant Requirement

Title III funds must be used to supplement the level of Federal, State, and local funds that, in the absence of Title III funds, would have been expended for programs for LEP children and immigrant children and youth.

[Section 3115(g) of ESEA]

The First Test of Supplanting: Required by Law

The Department assumes supplanting exists if –

- ❖ A local educational agency (LEA) uses Title III funds to provide services that the LEA is required to make available under State or local laws, or other Federal laws.

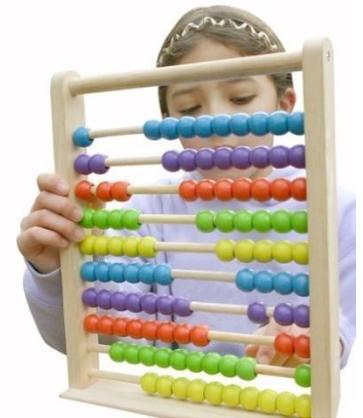
The Second Test of Supplanting: Prior Year

The Department assumes supplanting exists if –

- ❖ An LEA uses Title III funds to provide services that it provided in the prior year with State, local, or other Federal funds.

This assumption may be rebutted.

Any determination about supplanting is **very fact specific**, and it is difficult to provide general guidelines without examining the details of a situation.



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Practical Applications –

*English Language Proficiency (ELP) Assessment
Development and Administration*



Use of Title III Funds to Develop State ELP Assessments

Due to the supplanting requirement, a State **may only** use funds for State activities under Section 3111(b)(2) of Title III either to:

- ❖ Pay for the costs of developing an ELP assessment, separate from the ELP assessment required under Title I, (that is aligned to the State's ELP standards), or
- ❖ Pay for the costs of enhancing an existing ELP assessment required under Title I in order to align it with the State's ELP standards required under Title III.

Use of Other ESEA Funds to Develop State ELP Assessments

An SEA **may** use the following funds to develop State ELP assessments:

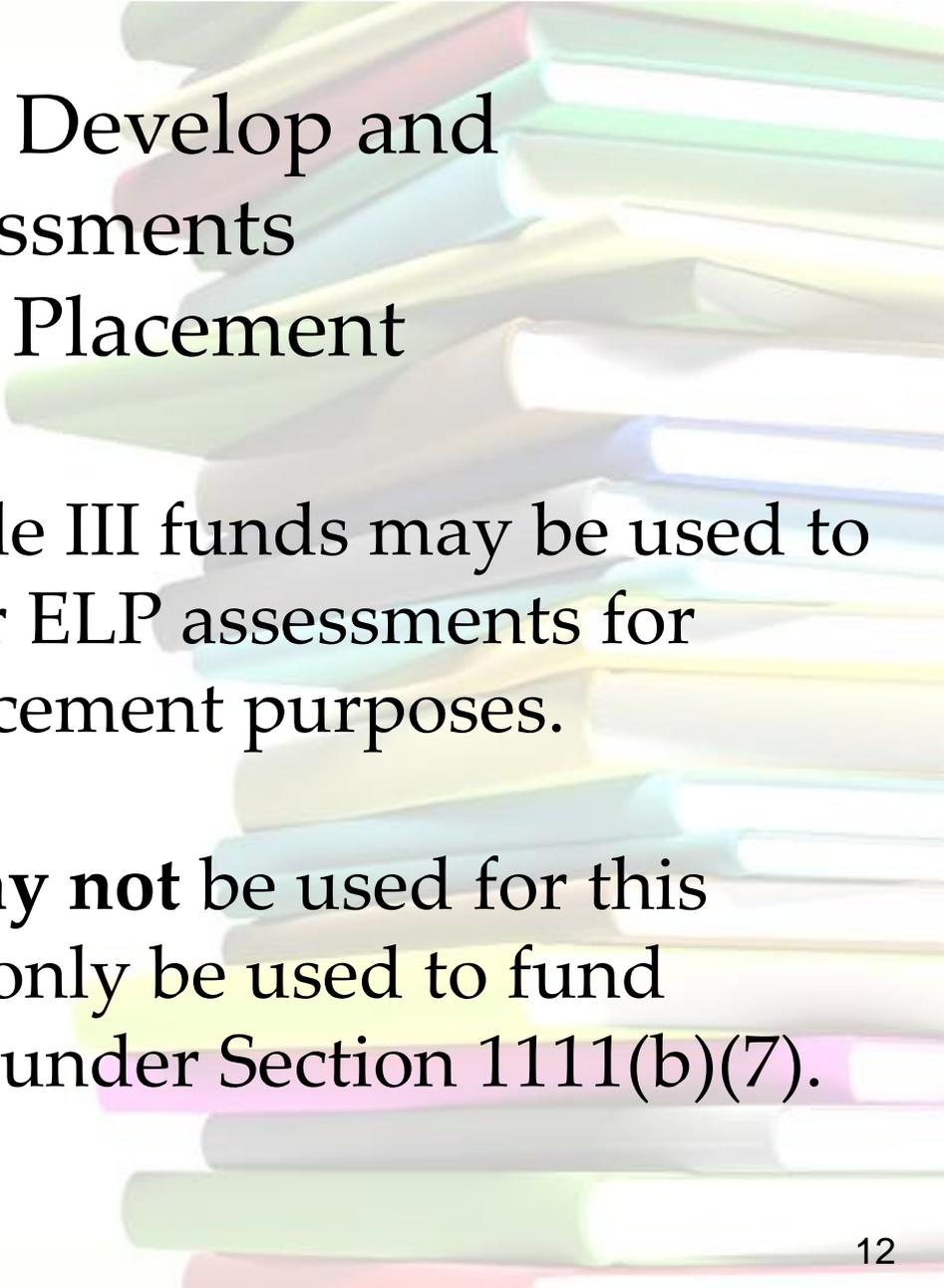
- ❖ Title I State Administrative funds.
- ❖ Title I State Administrative funds consolidated with other ESEA State administrative funds.
- ❖ Title III State administrative funds if consolidated with other ESEA administrative funds.
- ❖ Section 6111 funds.
- ❖ Section 6112 funds.

Use of ESEA Funds to Administer State ELP Assessments

Title I and Title III funds **may not** be used to administer State ELP assessments because:

- ❖ Title I does not specifically authorize this expenditure, which is necessary because the requirement applies to all LEP students (not just Title I students).
- ❖ Use of Title III funds for this purpose would violate the supplement not supplant requirement since the ELP assessment is a requirement under Title I.

An SEA **may** use Section 6111 funds to administer State ELP assessments.

A stack of several books with colorful spines in shades of green, yellow, blue, and red, positioned on the right side of the slide.

Use of ESEA funds to Develop and Administer ELP Assessments for Identification and Placement

- ❖ **Neither** Title I **nor** Title III funds may be used to develop or administer ELP assessments for identification and placement purposes.
- ❖ Section 6111 funds **may not** be used for this purpose as they may only be used to fund assessments required under Section 1111(b)(7).

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*Considerations at the LEA
and School Levels*



Questions to Ask When Considering Whether Title III Funds Can be Used Without Violating the Supplement not Supplant Requirement

1. What is the instructional program/service provided to all students?
2. What does the LEA do to meet *Lau* requirements?
3. What services is the LEA required by other Federal, State, and local laws or regulations to provide?
4. Was the program/service previously provided with State, local, and Federal funds?

Based on the answers to the above questions, would the proposed funds be used to provide an instructional program/service that is in addition to or supplemental to an instructional program/service that would otherwise be provided to LEP students in the absence of a Title III grant?

Department Follow-up on Supplement not Supplant

The Department of Education intends to include a section on supplanting, consistent with the October 2, 2008 guidance, in its monitoring protocols and in the OMB Compliance Supplement used by Single Audit Act auditors, beginning with the Title III grants that will be awarded in July 2009.

Resources

October 2008 USDE supplement not supplant letter and guidance on use of Federal funds for ELP assessments:

<http://www.ed.gov/programs/sfgp/legislation.html>

Title I fiscal guidance:

<http://www.ed.gov/programs/titleiparta/fiscalguid.doc>

Office for Civil Rights, ELL Resources:

<http://www.ed.gov/about/offices/list/ocr/ellresources.html>