

California Department of Education

June 8-12, 2009

Scope of Review: The U.S. Department of Education's (ED) Student Achievement and School Accountability Programs (SASA) office, Title III State Consolidated Grant Group monitored the California Department of Education (CDE) the week of June 8 - 12, 2009. This was a comprehensive review of the CDE's administration of Title III, Part A, authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

During the review, the ED team conducted several monitoring activities. The team reviewed evidence of implementation of the State's Title III accountability system, State level monitoring, technical assistance, and fiscal and administrative oversight with the State educational agency (SEA). During the onsite week, the ED team also visited five local educational agencies (LEAs) – Los Angeles Unified School District (LAUSD), San Bernardino Unified School District (SBUSD), Elk Grove Unified School District (EGUSD), Long Beach Unified School District (LBUSD), and San Diego Unified School District (SDUSD) - where they reviewed documentation and interviewed administrative and school staff.

Previous Audit Findings: None

Previous Monitoring Findings: ED last reviewed Title III, Part A programs in the CDE during the week of September 26-30, 2005. ED identified compliance findings in the following areas:

- (1) The CDE was unable to determine what portion of students who took the California English Language Development Test (CELDT) for initial identification purposes were classified as limited English proficient (LEP) and is unable to determine how many students who took the CELDT for annual assessment purposes were reclassified to Fluent English Proficient status.
- (2) The CDE does not test the English language proficiency of K-1 English language learners (ELLs) in reading and writing. The State also received an Attachment T condition on its Title III grant award and has submitted a corrective action plan to address this finding.

In response to the Federal requirements, in 2007, California's Education Code Section 60810 was amended in order to assess students in kindergarten and grade one in reading and writing (early literacy development). Field testing for this test was conducted in spring 2009 and will become part of the administration of the English language proficiency (ELP) assessment, CELDT, in the 2009-10 school year. Students in kindergarten and grade one will then be tested in listening, speaking, reading and writing.

All personnel in LEAs visited were being trained to begin using the new assessment in July 2009. There is no indication that the CDE will not be in compliance with this requirement by the timeline indicated on their 2008 corrective action plan.

Summary of Title III, Part A Monitoring Indicators

Fiduciary			
Element Number	Description	Status	Page
Element 2.1	<p>Within State Allocations, Reallocations and Carryover: The SEA complies with-</p> <ul style="list-style-type: none"> ▪ The subgrant provision under section 3111 of the ESEA. ▪ The State activities provision under section 3111(b) of the ESEA. ▪ Section 3111(b)(3) ▪ The provisions related to allocations under section 3114(a)-(b) of the ESEA. ▪ The provisions related to reallocations under section 3114(c) of the ESEA. ▪ The provisions related to making immigrant subgrants under section 3114(d) of the ESEA. 	Findings	3
Element 2.2	<p>Within District Allocations, Reallocations and Carryover: The SEA ensures that its LEAs comply with the provisions related to LEA use of funds under section 3115 of the ESEA.</p>	Met Requirements	N/A
Element 2.3	<p>Maintenance of Effort: The SEA ensures that the LEAs comply with the procedures for ensuring maintenance of effort (MOE) as outlined in section 9521 and 9021 of the ESEA.</p>	Met Requirements	N/A
Element 2.4	<p>Supplement, Not Supplant – General: The SEA ensures that the LEA complies with the provision related to supplement, not supplant under section 3115(g) of the ESEA.</p>	Findings	4
Element 2.4A	<p>Supplement, Not Supplant – Assessment: The SEA has met requirements related to supplement, not supplant and use of Title III funds to develop and administer State ELP assessments under sections 1111(b)(7) and 3113(b)(2) and (3)(C) of the ESEA.</p>	Finding	5

Monitoring Area 2: Fiduciary

Element 2.1 – Within State Allocations, Reallocations and Carryover

Finding (1): The CDE has no formal written procedures for the submission of subgrantee budget instructions or guidance or a process for ensuring that subgrantees meet requirements related to allowable expenditures. The CDE does not, prior to awarding funds, require its LEAs to submit a description of how each LEA will spend its Title III funds. The CDE depends solely on the single audit process, signed assurances, and its monitoring conducted every four years, to determine whether LEAs are proposing and carrying out activities that meet Title III requirements.

Citation: Section 9304(a) of the ESEA requires that the SEA must ensure that (1) programs authorized under ESEA are administered in accordance with all applicable statutes, regulations, program plans, and applications; and (2) the State will use fiscal control and funds accounting procedures that will ensure the proper disbursement of and accounting for Federal funds.

Section 3114(a) of the ESEA requires that States award subgrants by allocating funds to each eligible entity in the State having a plan approved under section 3116 of the ESEA.

Section 3115(b) of the ESEA requires that LEAs limit the amount that they may spend on administrative costs in any fiscal year to two percent. This includes all direct and indirect costs associated with administering the Title III program.

Further action required: The CDE must develop and provide ED with written procedures that it will use to ensure that all Title III programs proposed by subgrantees meet all applicable statutes and regulations prior to awarding funds. The CDE must also provide ED with evidence that the procedures have been implemented.

Finding (2): The CDE has no process for reallocating funds. The CDE does not determine when or if any amount of an LEA allocations will not be used for the purpose for which the allocation was made.

Citation: Section 3114(c) of the ESEA requires that whenever an SEA determines that Title III funds allocated to LEAs under section 3114(a) of the ESEA will not be used by a LEA for the purpose for which it was made, the SEA must reallocate the funds in accordance with its reallocation procedures.

Further action required: The CDE must provide ED with a detailed description including a timeline of the process it will use to determine whether Title III funds will not be used by a LEA for the purpose for which those funds were awarded and, thus, can be reallocated to other LEAs. In addition, the CDE must provide ED with a detailed description of how and when it informed its LEAs of this process. This documentation may include letters to LEAs or agendas for technical assistance meetings.

Finding (3): The CDE has not ensured that it has met requirements related to allowable costs. The CDE does not consolidate administrative funds. The CDE charges a certain portion of the salaries of staff that carry out the monitoring and complaint functions to Title III. The CDE staff

was not able to provide ED with time and effort documentation for CDE support staff who are partially funded through Title III.

Citation: 2 CFR 225, Appendix B, section 8.h.4. requires that time and effort records be kept for individuals whose salary is charged to a Federal program. If an SEA does not consolidate Federal funds with State and local funds in a consolidated administration pool, an employee who works, in whole or in part, on a Federal program or cost objective must meet the OMB Circular A-87 requirements as follows:

- (a) An employee who works solely on a single cost objective (i.e., a single Federal program whose funds have not been consolidated or Federal programs whose funds have been consolidated but not with State and local funds) must furnish a semi-annual certification that he/she has been engaged solely in activities supported by the applicable source in accordance with OMB Circular A-87, Attachment B, paragraph 8.h (3).
- (1) An employee who works on multiple activities or cost objectives (i.e., in part on a Federal program whose funds have not been consolidated in a consolidated administrative pool and in part on Federal programs supported with funds that have been consolidated in a pool or on activities funded from other revenue sources) must maintain time and effort distribution records in accordance with OMB Circular A-87, Attachment B, paragraph 8.h (4), (5) and (6). The employee must document the portion of time and effort dedicated to: the Federal program; and, each program or other cost objective supported by either consolidated Federal funds or other revenue sources.

Further action required: The CDE must develop and provide ED with the written procedures it will use to determine the appropriate amount or percentage of Title III funds it will charge to Title III. The procedures must describe how employees who are split funded will maintain time and effort records and must include a description of how and when the CDE will review these records and how and when it will make adjustments in the percentage of salary charged to Title III. The CDE must also provide ED with evidence that the procedures have been implemented and that time and effort reports have been completed for personnel who are split-funded.

Element 2.4 – Supplement, Not Supplant – General

Finding (1): The CDE has not ensured that it does not carry out activities which violate Title III supplement, not supplant requirements. The CDE is proceeding with plans to use Title III funds to provide an analysis of the English Language Learner (ELL) “Best Practices” pilot program. California State Bill #AB 2117 requires that the CDE contract with an independent organization to perform an evaluation of this pilot project.

Citation: Section 3115(g) of the ESEA prohibits an LEA from using Title III funds to provide services or activities that are required by law. Recipients may not use Title III funds to pay for services that, in the absence of Title III funds, would be necessary to be provided by other Federal, or State, or local funds.

Further action required: The CDE must provide ED with evidence that it has informed the CDE’s Superintendent of Education and the State Board of Education (SBE) that Title III funds may not be used to carry out this State requirement. The CDE must also provide ED with

documentation that the CDE has used State or non-federal funds to carry out these activities, or that it has determined that these activities cannot be carried out.

Finding (2): The CDE has not ensured that its LEAs comply with supplement, not supplant requirements. California has a State requirement that, when schools have 15 or more percent of students who speak another language, the LEA is required to translate documents. LBUSD was not able to provide ED staff with evidence that it is not using Title III funds to meet State requirements for translations.

Citation: Section 3115(g) of the ESEA prohibits an LEA from using Title III funds to provide services or activities that are required by law. Recipients may not use Title III funds to pay for services that, in the absence of Title III funds, would be required to be provided by other Federal, or State, or local funds.

Further action required: The CDE must provide ED with a detailed description of how and when it informed its LEAs of the requirement to use Title III funds to supplement, not supplant Federal, or State, or local funds. This documentation must include letters to LEAs or agendas for technical assistance meetings. In addition, the CDE must provide evidence to ED that, for the 2009-2010 school year, the State has ensured that LEAs have complied with this requirement.

Element 2.4A – Supplement, not Supplant – Assessment

Recommendation: ED recommends that the CDE ensure that Title III subgrantees comply with the supplement, not supplant requirements regarding the use of Title III funds for assessment purposes. Title III funded staff in LAUSD are providing training to teachers regarding training on administering the CELDT. It is a violation of the Title III supplement, not supplant requirements to use Title III funded staff for this purpose because the ELP assessment (CELDT) is required by Title I. ED issued guidance on October 2, 2008 related the use of Title III funds for assessment purposes. ED expects States and LEAs to comply with the guidance.

English Language Proficiency (ELP) Standards, Assessments and Accountability			
Element Number	Description	Status	Page
Element 3.1	English Language Proficiency (ELP) Standards: State English language proficiency standards: The State provided evidence of a process that complies with section 3113 of the ESEA.	Met requirements	N/A
Element 3.2	ELP Assessments: The State provided evidence of a process that complies with Title III section 3113 of the ESEA and evidence that an ELP assessment has been administered to all K-12 LEP students in the State.	Recommendation	7
Element 3.3	New English Language Proficiency Assessment: The State provided evidence of a process that complies with Title III, section 3113 of the ESEA. The process addresses the transition to a new ELP assessment or revision of the current State ELP assessment aligned to the State developed ELP standards.	Met requirements	N/A
Element 3.4	Annual Measurable Achievement Objectives (AMAOs): AMAOs have been developed and AMAO determinations have been made for Title III-served LEAs.	Recommendation	7
Element 3.5	Data Collection: The State has established and implemented clear criteria for the administration, scoring, analysis, and reporting components of its ELP assessments, and has a system for monitoring and improving the ongoing quality of its assessment systems. A data system is in place to meet all Title III data requirements, including capacity to follow Title III-served students for two years after exiting, and State approach to following ELP progress and attainment over time.	Met requirements	N/A

Monitoring Area 3: English Language Proficiency (ELP) Standards, Assessments, and Accountability

Element 3.2-English Language Proficiency (ELP) Assessment

Recommendation: ED recommends the CDE ensure that a valid and reliable assessment is administered annually. One LEA visited (SBUSD) was implementing a year-round testing window for their annual assessment which is inconsistent with the State's testing window of July 1st-October 31st. A consistent testing window may be important to the assessment being valid and reliable.

Element 3.4 - Annual Measurable Achievement Objectives (AMAOs)

Recommendation: The CDE does not ensure that all students are included in all AMAOs. The cohort for AMAO 2 contains only those students who could reasonably be expected to have reached English language proficiency at the time of the annual CELDT administration which systematically excludes some Title III-served Limited English Proficient (LEP) students from AMAO targets, calculations, and determinations. Such practices are inconsistent with the AMAO provisions in Title III. In the notice of final interpretations published October 17, 2008, the Secretary interprets Title III to require that, in general, all Title III-served LEP students be included in all AMAO targets, calculations, and determinations. This interpretation is consistent with the plain language in Title III, which makes no provision for defining AMAOs in ways that systematically exclude any Title III-served LEP students from any AMAO targets, calculations, and determinations. States must demonstrate compliance with the notice of final interpretations beginning with their 2009-2010 AMAO calculations.

State Level Activities; LEA Authorized and Required Activities, Immigrant Children and Youth

Element Number	Description	Status	Page
Element 4.1	<p>State Level Activities: Using funds retained at the State level, the State carries out one or more activities that may include:</p> <ul style="list-style-type: none"> • Professional development. • Planning, evaluation, administration and interagency coordination. • Promoting parental and community participation. • Providing recognition to subgrantees that have exceeded AMAO requirements. 	Met requirements	N/A
Element 4.2	<p>Required Subgrantee Activities: The subgrantee must provide high quality language instruction educational programs and sustained professional development activities to all classroom teachers of LEP students (including teachers in classroom settings that are not defined as language instruction educational programs). Training activities must also include principals, administrators, and other school or community-based organization personnel.</p>	Met requirements	N/A
Element 4.3	<p>Authorized Subgrantee Activities: The LEA may use the funds by undertaking one or more authorized activities.</p>	Met requirements	N/A
Element 4.4	<p>Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth: The subgrantee receiving funds under section 3114(d)(1) of the ESEA shall use the funds to pay for activities that provide enhanced instructional opportunities for immigrant children and youth.</p>	Findings	9

Monitoring Area 4: State Level Activities

Element 4.4 - Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth

Finding 1: The CDE does not ensure that LEAs that are receiving Title III immigrant children and youth subgrants revise their plans if they are implementing activities with these funds that are not consistent with their 2003 plans. LEAs submitted initial plans in 2003 but the CDE does not ensure LEAs revise or update plans unless they are being monitored during the States 4-year monitoring cycle or the LEA is in improvement status. LEAs visited were implementing activities with immigrant children and youth subgrants that were not consistent with their State approved plans.

Citation: Section 3116(a) of the ESEA requires each subgrantee desiring a subgrant from the SEA under section 3114(d)(1) to submit a plan to the SEA. Section 3114(d)(b) of the ESEA requires the SEA to consider the quality of each local plan under section 3116 and ensure that each subgrant is of sufficient size and scope to meet the purposes of this part.

Section 9304(a) of the ESEA requires that the SEA ensure that (1) programs authorized under the ESEA are administered in accordance with all applicable statutes, regulations, program plans, and applications, and (2) the SEA will use fiscal control and funds accounting procedures that will ensure the proper disbursement of and accounting for Federal funds.

Further Action Required: The CDE must submit evidence to ED that CDE has a process to ensure that LEAs are updating their immigrant children and youth plans in accordance with sections 3114, 3116 and 9304 of the ESEA.

Finding 2: The CDE does not ensure that the appropriate students are included in the immigrant children and youth counts. The CDE does not include students born in the U.S. Territories and Outlying Areas (excluding Puerto Rico) in immigrant counts and LEAs visited do not account for the age of students in immigrant counts.

Citation: Section 3301(6) of the ESEA defines immigrant children and youth as 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.

Section 3301(14) of the ESEA defines State as each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Further Action Required: The CDE must provide ED with evidence that it counts the appropriate students in the immigrant children and youth counts.

Finding 3: The CDE requires LEAs to join a consortium to be eligible for an immigrant children and youth subgrant if they are not eligible for a minimum of \$10,000.

Citation: Section 3114(b) of the ESEA states an SEA shall not award a subgrant from an allocation made under subsection (a) if the amount of such subgrant would be less than \$10,000.

This requirement applies to section 3114(a) of the ESEA and does not apply to the allocations for immigrant children and youth subgrants. However, under section 3113(b)(3)(F) of the ESEA, States assure the ED that awards made under section 3114(d)(1) will be of sufficient size and scope to provide a high-quality language instruction education program.

Section 3114(d)(1) requires SEAs to consider the quality of each local plan under section 3116 and ensure that each subgrant is of sufficient size and scope to meet the purposes of this part. A State may set minimum award amounts to account for sufficient size and scope requirement that applies to immigrant awards under section 3113(b)(3)(F), but that requirement must be part of the State's procedures for allocating awards under this part.

Further Action Required: If the CDE wants to establish \$10,000 as the minimum size of awards it will make under section 3114(d)(1), it must submit evidence to ED that it has revised its procedures to incorporate that requirement.

State Review of Local Plans			
Element Number	Description	Status	Page
Element 5.1	Application: The SEA ensures that its LEAs comply with the provision for submitting an application to the SEA. (section 3116(a) of the ESEA).	Finding	12
Element 5.2	Private School Participation: LEAs are complying with Title III requirements regarding participation of LEP students and teachers in private schools.	Recommendation	12
Element 5.3	Teacher English Fluency: Certification of teacher fluency requirement in English and any other language used for instruction (section 3116).	Met requirements	N/A
State Monitoring of Subgrantees			
Element 6.1	Monitoring: The SEA conducts monitoring of its subgrantees sufficient to ensure compliance with Title III program requirements.	Met requirements	N/A
Parent Notification			
Element 7.1	Parent Notification: Parent notification in an understandable format as required under section 3302 for identification and placement and for not meeting the State AMAOs.	Met requirements	N/A

Monitoring Area 5: State Review of Local Plans

Element 5.1 – State Review of Local Plans Application: The SEA ensures that its LEAs comply with the provision for submitting an application to the SEA.

Finding: The CDE does not ensure that LEAs that are receiving Title III formula subgrants revise or update their local plans if they are implementing activities with these funds that are not consistent with their 2003 local plans. LEAs submitted initial plans in 2003 but the CDE does not ensure that LEAs revise or update plans unless they are being monitored during the States 4-year monitoring cycle or the LEA is in improvement status. LEAs visited were implementing activities with Title III formula subgrants that were not consistent with their State approved local plans.

Citation: Section 3116(a) of the ESEA requires each subgrantee desiring a subgrant from the SEA under section 3114 to submit a plan to the SEA.

Section 9304(a) of the ESEA requires that the SEA ensure that (1) programs authorized under the ESEA are administered in accordance with all applicable statutes, regulations, program plans, and applications, and (2) the State will use fiscal control and funds accounting procedures that will ensure the proper disbursement of and accounting for Federal funds.

Further Action Required: The CDE must submit evidence to ED that CDE has a process to ensure that LEAs are updating their plans in accordance with section 3116.

Element 5.2 - Private Schools

Recommendation: ED recommends that the CDE provide additional guidance on meaningful consultation in the area of assessing services to ensure that LEAs conduct timely and meaningful consultation with appropriate private school officials during the design and development of the Title III program. Some LEAs were requiring the assessment of private school students using a district-selected assessment without consultation with the private school officials.