

Kentucky Department of Education

August 24-26, 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 Kentucky State Department of Education (KDE) the week of August 24-26, 2009. This was a comprehensive review of the KDE'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 ED team reviewed evidence of the 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). The ED team visited two local educational agencies (LEA) – Hardin County Public Schools (HCPS) and Shelby County Public Schools (SCPS) where they reviewed documentation and interviewed administrative and school staff.

Previous Audit Findings: None

Previous Monitoring Findings: ED reviewed the KDE's implementation of the Title III, Part A program April 10-14, 2006. ED issued the following findings:

- (1) The KDE did not provide sufficient evidence that the State English language proficiency (ELP) standards are fully aligned with State academic content and student achievement standards;
- (2) The KDE did not assess LEP students in grades kindergarten through first-grade for English language proficiency in the domains of reading and writing in the 2004-2005 school year;
- (4) The KDE did not provide sufficient evidence that the State English language proficiency (ELP) assessment is aligned to the State ELP standards;
- (5) The KDE did not provide evidence of the relationship (comparability) between the LAS (previous assessment) and the ACCESS (new assessment);
- (6) The KDE did not provide accurate AMAO data for 2004-2005. The State explained that some of the subgrantees reported inaccurate ELP data to the State Department of Education;
- (7) Some Title III-served LEAs in Kentucky reported inaccurate or incomplete ELP assessment data for school year 2004-2005;
- (8) The KDE did not uniformly allocate Title III funds to districts experiencing significant increases in immigrant children and youth, as required under section 3115(d) of the ESEA;
- (9) The KDE did not require the Title III subgrantees that failed to meet Title III AMAOs in school year 2004-2005 to notify parents of such failure.

Summary of Title III, Part A Monitoring Indicators

State Submissions			
Element Number	Description	Status	Page
Element 1.1	State Submissions: Follow-up on areas identified through desk audit and document reviews.	Met requirements	N/A

Monitoring Area 2: Fiduciary

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. ▪ 20 USC 6821(b)(3), 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. 	Finding	3
Element 2.2	Within District: The SEA ensures that its LEAs comply with the provisions related to LEA use of funds under section 3115 of the ESEA.	Met requirements	N/A
Element 2.3	Maintenance of Effort: The SEA ensures that the LEAs comply with the procedures for ensuring maintenance of effort (MOE) as outlined in section 9521 of the ESEA.	Met requirements	N/A
Element 2.4	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.	Finding	3
Element 2.4A	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 English language proficiency (ELP) assessments under sections 1111(b)(7) and 3113(b)(2) of the ESEA.	Finding	4

Monitoring Area 2: Fiduciary

Element 2.1 - Allocations, Reallocations, and Carryover

Finding: The KDE has not allocated funds to LEAs in compliance with section 3114(a), which requires States to allocate funds on the basis of the number of limited English proficient (LEP) students in each LEA. The KDE allocates funds to local educational agencies (LEAs) on the basis of the number of limited English proficient (LEP) students whose test results indicate assessment in all four language domains. This method of allocating funds does not include all students who have been identified as LEP, including LEP students in private schools.

Citation: Section 3114(a) of the ESEA requires each State educational agency(SEA) receiving a grant under section 3111(c)(3) to award subgrants for a fiscal year by allocating to each eligible entity in the State an amount that is based on the population of limited English proficient children in schools served by the eligible entity.

Further Action Required: The KDE must revise its method of allocating funds to eligible entities to include all students who have been identified as LEP. The KDE must provide ED with evidence that it has revised its method of allocating funds and notified LEAs of the new method.

Element 2.4 - Supplement, Not Supplant – General

Finding: The KDE has not ensured that its LEAs use Title III funds to supplement and not supplant Federal funds. HCPS employs six English as a second language (ESL) associates to implement its language instruction educational program for LEP students. The LEA uses Title III funds to pay the salary of one ESL associate and local funds for the other five ESL positions. The use of Title III funds to provide core language instruction, including providing for the salaries of teachers who provide those core services for LEP students, would violate the supplement, not supplant provision in section 3115(g) of the Act, as such services are required to be provided by States and districts regardless of the availability of Federal Title III funds.

Citation: Section 3115(g) of the ESEA prohibits an LEA from using Title III funds to support services or activities that it would provide in the absence of a Title III subgrant.

Further Action Required: The KDE must provide ED with evidence that it has notified LEA officials in HCPS and SCPS of their non-compliance with the supplant, not supplant provisions and evidence that, beginning with the 2009-2010 school year, the LEAs are complying with the supplement, not supplant requirements. Additionally, the KDE must provide ED with evidence of guidance it has provided to all its LEAs regarding the requirement to use Title III funds to supplement, not supplant, State, local and other Federal funds.

Element 2.4 A - Supplement, Not Supplant – Assessment

Finding: The KDE has not ensured that its LEAs comply with the non-supplanting provisions related to the use of Title III funds for assessment purposes.

- Both HCPS and SCPS are using Title III funds to pay for personnel who perform duties associated with administration of the annual ELP assessment. Among the responsibilities listed as performance responsibilities for the ESL/LEP Consulting Teacher in SCPS are completion of required LEP assessments and administering LEP assessments.
- SCPS is using Title III funds to purchase a screener test to identify LEP students at the kindergarten level.

Citation: Section 3115(g) of the ESEA prohibits an LEA from using Title III funds to support services or activities that it would provide in the absence of a Title III subgrant. In general, the cost of administering the annual ELP assessment may not be paid with Title III funds, including funds reserved by the State for State-level activities, because Title I already requires States to administer an annual ELP assessment to all LEP students.

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

Further Action Required: The KDE must provide ED with evidence that it has notified LEA officials in HCPS and SCPS of their non-compliance with the supplant, not supplant requirements related to the use of Title III funds for assessment purposes and evidence that, beginning with the 2009-2010 school year, the LEAs are complying with the supplement, not supplant requirements. Additionally, the KDE must provide ED with evidence of guidance it has provided to all its LEAs regarding the requirement to use Title III funds to supplement and not supplant State, local and other Federal funds.

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.	Recommendation	6
Element 3.2	ELP Assessments: The State provided evidence of a process that complies with Title III, section 3113 and evidence that an ELP assessment has been administered to all K-12 LEP students in the State.	Met requirements	N/A
Element 3.3	New English Language Proficiency Assessment: The State provided evidence of a process that complies with Title III, section 3113. 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.	Finding Recommendation	6
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 3.1 - English Language Proficiency Standards

Recommendation: The ED team recommends that the KDE provide additional guidance to ensure that its Title III subgrantees have implemented the State's ELP standards. HCPS staff did not provide sufficient information about the process the LEA used to implement the ELP standards or evidence that the ELP standards are used to provide instruction to LEP students.

Element 3.4 - Annual Measurable Achievement Objectives (AMAOs)

Finding: The KDE has not ensured that Title III subgrantees that fail to meet AMAOs for two consecutive years develop and implement improvement plans that specifically address the factors that prevented the LEA from achieving the AMAOs. The Comprehensive Improvement Plan developed by HCPS is extremely broad and does not include specific strategies the LEA will use to identify and address the factors related to its failure to meet the AMAOs for LEP students.

Citation: Section 3122(b)(2) of the ESEA requires that if a State determines that an LEA has failed to make progress toward meeting AMAOs for two consecutive years, the State must require the LEA to develop an improvement plan that will ensure that the LEA meets such objectives. The improvement plan must specifically address the factors that prevented the LEA from achieving the objectives.

Further Action Required: The KDE must develop and submit to ED a plan, including a timeline, outlining the steps it will take to ensure that LEAs not meeting AMAOs for two consecutive years develop an improvement plan that specifically addresses the factors that prevented the LEA from meeting AMAOs.

Recommendation: The KDE's current policies and practices for implementing Title III accountability provisions do not reflect compliance with the October 17, 2008 Notice of Final Interpretations (NOI). The KDE's method for measuring improvements in the development and attainment of English language proficiency by LEP students does not meet the requirements in the NOI. The KDE's AMAOs do not reflect annual increases in the number or percentage of children making progress in learning English and achieving English proficiency as required in section 3122(3)(A). In addition, the KDE's use of cohorts that are based on factors other than time enrolled in a language instruction educational program does not meet the requirements in section 3122(2)(A). State Title III assessment and accountability systems must be consistent with the final NOI effective with the assessments administered in the 2009-2010 school year and AMAO determinations made based on those assessments.

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>	Finding	8
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) shall use the funds to pay for activities that provide enhanced instructional opportunities for immigrant children and youth.</p>	Met requirements	N/A

**Monitoring Area 4: State-Level Activities; LEA Authorized and Required Activities,
Immigrant Children and Youth**

Element 4.2 - Required Subgrantee Activities

Finding: The KDE has not ensured that its Title III subgrantees use Title III funds to carry out professional development activities as required in section 3115(c). HCPS was unable to provide evidence that it is using Title III funds for professional development activities other than one-day and short-term workshops and conferences.

Citation: Section 3115(c)(2) of the ESEA requires Title III subgrantees to provide high-quality professional development to classroom teachers, principals, administrators, and other school or community-based organizational personnel that is of sufficient intensity and duration to have a positive and lasting impact on the teachers' performance in the classroom.

Further Action Required: The KDE must submit to ED a plan that specifies the steps it will take to ensure that Title III subgrantees implement professional development activities that meet the requirements in section 3115(c)(2).

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)).	Finding	9
Element 5.2	Private School Participation: LEAs are complying with NCLB requirements regarding participation of LEP students and teachers in private schools in Title III.	Met requirements	N/A
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.	Finding	10
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

Finding: The KDE does not require eligible LEAs to submit sufficient information in their Title III plans about how they will use Title III funds to implement required and authorized activities. The local plans the team reviewed contained lists of general activities.

Citation: Section 3116(b) requires each eligible entity to submit a plan that includes a description of the programs and activities proposed to be developed, implemented, and administered under the subgrant.

Further Action Required: The KDE must ensure that eligible entities provide more specific information about the activities they will implement with Title III funds. The KDE must submit evidence that it has revised its Title III application and application review procedures to ensure that LEA plans include more specific information about activities to be carried out using Title III funds.

Monitoring Area 6: State Monitoring of Subgrantees

Element 6.1 – Monitoring: The SEA conducts monitoring of its subgrantees sufficient to ensure compliance with Title III program requirements.

Recommendation: The ED team recommends that the KDE implement more rigorous practices and procedures to monitor Title III subgrantees. Based on the numerous compliance issues present in HCP, the State's reliance upon desk audits does not appear to be effective in ensuring that Title III subgrantees comply with all programmatic and fiscal requirements.