

New Hampshire Department of Education

September 21-24, 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 New Hampshire Department of Education (NHDOE) the week of September 21-24, 2009. This was a comprehensive review of the NHDOE's administration of the following programs authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended: Title I, Part A; Title I, Part D; and Title III, Part A. Also reviewed was Title X, Part C, Subtitle B of the McKinney-Vento Homeless Assistance Act, as amended (also known as the McKinney-Vento Homeless Education Assistance Improvements Act of 2001). This is a report of the Title III, Part A program only. Title I, Part A; Title I, Part D; and Subtitle B of the McKinney-Vento Homeless Assistance Act are addressed in a separate report.

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). During the onsite week, the ED team also visited two local educational agencies (LEA) – Concord School District (SAU #8) and Manchester School District (SAU #37) where they reviewed documentation and interviewed administrative and school staff.

Previous Audit Findings: None

**Previous Monitoring Findings:** ED last reviewed the Title III, Part A programs administered by the NHDOE in May 21-24, 2007. ED identified compliance findings in the following areas:

- (1) Indicator 3.1 English Language Proficiency (ELP) Standards—The NHDOE did not provide evidence that it has a process that complies with section 3113(b)(2).
- (2) Indicator 4.2 Required Subgrantee Activities—The NHDOE has not ensured that subgrantees carry out professional development activities that are of sufficient intensity and duration as required under section 3115.
- (3) Indicator 6.1 State Monitoring of Subgrantees—The NHDOE did not provide sufficient evidence that it has implemented a monitoring plan for evaluating how LEAs comply with Title III requirements.

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

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"> <li>▪ The subgrant provision under section 3111 of the ESEA.</li> <li>▪ The State activities provision under section 3111(b) of the ESEA.</li> <li>▪ Section 3111(b)(3).</li> <li>▪ The provisions related to allocations under section 3114(a)-(b) of the ESEA.</li> <li>▪ The provisions related to reallocations under section 3114(c) of the ESEA.</li> <li>▪ The provisions related to making immigrant subgrants under section 3114(d) of the ESEA.</li> </ul>	Finding Recommendations	6
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>	Recommendations	6
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 sections 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>	Finding	6
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	7

## Monitoring Area 2: Fiduciary

### Element 2.1 – Within State Allocations, Reallocations and Carryover

**Finding:** The NHDOE has not ensured that it meets requirements related to allocation of Title III subgrantee funds awarded under section 3114(a). The NHDOE allocates Title III funds for one fiscal year. The NHDOE has imposed a time restriction on Title III subgrantees' use of funds awarded under section 3114(a) which does not conform to the period of time allowed by section 421(b) of the General Education Provisions Act (GEPA). The NHDOE requires Title III subgrantees to expend all Title III funds during a one-year grant period. This restriction precludes Title III subgrantees from using funds for the 15-month period of availability plus a 12-month carryover period provided by GEPA.

**Citation:** Section 421(b) of the General Education Provisions Act (GEPA) provides SEAs and LEAs 27 months, extending from July 1 of the fiscal year for which the funds were appropriated through September 30 of the second succeeding fiscal year, to obligate Title III funds.

**Further Action Required:** The NHDOE must revise its allocation and reallocation practices to ensure that Title III funds are available to subgrantees for 27 months. The NHDOE must provide ED with evidence that it has revised these practices and notified Title III subgrantees of the change.

**Recommendation (1):** ED recommends that the NHDOE calculate its subgrants to LEAs experiencing significant increases in their immigrant population under section 3114(d)(1) on the total Title III grant allotted to the agency. The NHDOE calculates its immigrant portion after setting aside the funds allowed for state-level activities.

**Recommendation (2):** ED recommends that NHDOE review its process for reviewing and approving the immigrant portion of the Title III grants to ensure that subgrants are made in a timely manner. One LEA (SAU #8) visited received its 2008-2009 immigrant grant in June 2009.

### Element 2.2 - Within District Allocation

**Recommendation:** ED recommends that the NHDOE provide more guidance to Title III subgrantees on the use of Title III funds to ensure that expenditures are necessary and reasonable. One LEA (SAU #8) used nearly one-third of its allocation for immigrant children and youth to provide a tutor for one student. The NHDOE should ensure funds awarded under the immigrant program are used in a more prudent and fiscally responsible manner that maximizes services for immigrant children and youth.

### Element 2.4 - Supplement, Not Supplant – General

**Finding:** The NHDOE has not ensured that its Title III subgrantees use Title III funds to supplement, and not supplant Federal, State and local funds. One LEA (SAU #8) is using Title III funds to pay for secondary ESOL teachers who have the same duties and responsibilities as secondary ESOL teachers paid with State and local funds. The district was unable to adequately explain how the secondary English for Speakers of Other Languages (ESOL) teachers were supplementary to the district's ESOL core program, i.e., the program of language instructional educational services that the district would have to provide to limited English proficient (LEP) students even if it did not have a Title III subgrant.

**Citation:** Section 3115(g) of the ESEA requires that Federal funds made available under Title III be used 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.

**Further Action Required:** The NHDOE must provide ED with evidence that it has provided guidance to all its LEAs regarding the requirement to use Title III funds to supplement and not supplant State, local and other Federal funds. The NHDOE may also provide ED with any information not already provided indicating that the services provided by the Title III funded ESOL teachers or tutors are supplemental to the ESOL core program.

#### **Element 2.4A - Supplement, Not Supplant – Assessment**

**Finding:** The NHDOE has not ensured that its Title III subgrantees comply with the non-supplanting requirements related to the annual English language proficiency (ELP) assessment required by section 1111(b)(7) and the identification and placement assessment used to meet the requirements of Title VI of the Civil Rights Act and LAU. One LEA (SAU #8) is using Title III funds for a tutor whose responsibilities include administering the annual ELP assessment. Another LEA (SAU #37) is using Title III funds to purchase an assessment used for identifying English language learners (ELLs) for placement into its language instruction educational programs.

**Citation:** Section 1111(b)(7) of the ESEA requires States and LEAs to provide for an annual assessment of English proficiency (measuring students' oral language, reading, and writing skills in English) of all students with limited English proficiency in the schools served by the SEA. In general, the cost of administering such assessments may not be paid with Title III funds, including funds reserved by the SEA for state-level activities, because Title I already requires States to administer an annual ELP assessment to all LEP students. Additionally, Title III funds may not be used for ELP assessments for the purpose of identification and/or placement because LEAs are required by Title VI of the Civil Rights Act to conduct these activities.

**Further Action Required:** The NHDOE must provide ED with evidence that it has provided guidance to all its LEAs regarding the requirement to use Title III funds to

supplement and not supplant State, local and other Federal funds. The NHDOE must ensure its subgrantees are complying with the supplement, not supplant requirement and provide documentation of this to ED.

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.	Finding	10
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	10
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 Standards, Assessments, and Accountability**

#### **Element 3.2 -- English Language Proficiency Assessment**

**Finding:** The NHDOE has not ensured that its Title III subgrantees comply with the requirement to annually assess the English proficiency of all LEP students in grades K-12. District personnel affirmed that one LEA (SAU #37) is not administering the annual ELP assessment to all LEP students at the high school level, particularly those students whose parents have refused services or who are enrolled in a technical high school.

**Citation:** Section 3113(b)(3)(D) of the ESEA requires States to ensure that Title III subgrantees annually assess the English language proficiency of all LEP children in grades K-12.

**Further Action Required:** The NHDOE must provide written guidance to its Title III subgrantees informing them of the requirement to assess annually the English language proficiency of all LEP students in grades K-12, and provide a copy of this guidance to ED. The State must also review subgrantees' practices and procedures regarding the annual ELP assessment of LEP students at the high school level and require corrective actions to ensure compliance.

#### **Element 3.4 – Annual Measurable Achievement Objectives**

**Recommendation:** The NHDOE'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 NHDOE 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 ACCESS 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 NOI, 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"> <li>• Professional development.</li> <li>• Planning, evaluation, administration and interagency coordination.</li> <li>• Promoting parental and community participation.</li> <li>• Providing recognition to subgrantees that have exceeded AMAO requirements.</li> </ul>	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>	Recommendation	12

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

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

**Recommendation:** See Indicator 2.2

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) of the ESEA).	Met Requirements	N/A
Element 5.2	Private School Participation: LEAs are complying with Title III requirements regarding participation of LEP students and teachers in private schools.	Finding Recommendation	14
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.	Finding	14

## **Monitoring Area 5: State Review of Local Plans**

### **Element 5.2 -- Private School Participation**

**Finding:** The NHDOE does not have a system for collecting information on the number of eligible LEP students enrolled in private schools located in areas served by its Title III subgrantees. As a result, the NHDOE is unable to determine whether Title III subgrantees are complying with the requirement to provide equitable services to private school LEP children and their teachers.

**Citation:** Section 9501 of the ESEA requires Title III subgrantees to comply with ESEA requirements regarding equitable services to eligible private school LEP students and teachers under Title III. Section 3114(a) of the ESEA requires States to count all LEP children served by all eligible entities in the State, not just those in public schools.

**Further Action Required:** The NHDOE must develop a means of collecting information on the number of eligible private school LEP students served by Title III subgrantees, and provide evidence of this system to ED.

**Recommendation:** ED recommends that the NHDOE provide additional guidance to its Title III subgrantees to ensure compliance with the requirement to engage in timely and meaningful consultation with private school officials regarding what services will be offered and how the services will be assessed. One LEA (SAU #37) required the assessment of private school LEP students using a district-selected assessment without consultation with private school officials. Another LEA (SAU #8) designed the Title III program for private school students and their teachers without sufficient input from private school officials.

## **Monitoring Area 7: 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.**

**Finding:** The NHDOE has not ensured that all Title III subgrantees provide annual notifications to parents of LEP students that include all of the information required under section 3302(a)(1-8) of Title III. One LEA (SAU #8) has not complied with the annual parent notification requirements.

**Citation:** Section 3302(a) of the ESEA requires subgrantees to provide parents of LEP children participating in or identified for participation in a Title III funded program with notification regarding such placement. This section of the ESEA describes eight types of information that must be included in such notifications.

**Further Action Required:** The NHDOE must ensure its subgrantees are complying with the parent notification requirements and provide documentation of this to ED.