

Texas Education Agency

August 10-14, 2009

Scope of Review: The U.S. Department of Education's (ED) Student Achievement and School Accountability Programs (SASA) office of Title III State Consolidated Grant Group monitored the Texas Education Agency (TEA) the week of August 10-14, 2009. This was a comprehensive review of the TEA'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. During the onsite week, the ED team also visited five local educational agencies (LEAs) – Ysleta Independent School District (YISD), Dallas Independent School District (DISD), Austin Independent School District (AISD), Cypress-Fairbanks Independent School District (CFISD) and Corpus Christi Independent School District (CCISD) where ED team members 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 TEA during the week of May 1-5, 2006. ED identified compliance findings in the following areas:

- (1) Texas did not provide sufficient evidence in the March 6, 2006 Consolidated State Performance Report on how it is complying with the requirement to establish state English language proficiency (ELP) standards that are aligned to state academic content and achievement standards in mathematics.
- (2) Texas did not provide sufficient evidence in the March 6, 2006 Consolidated State Performance Report on how the State is complying with the requirement to implement an ELP assessment that is aligned to the State ELP standards by spring 2006.
- (3) Texas did not provide sufficient evidence in the March 6, 2006 Consolidated State Performance Report regarding the setting of a target and the submission of supporting data for the "making progress" requirement of the Title III annual measurable objectives (AMAOs) for grades K-2. TEA indicated that 22 to 24 consortia member school districts did not report ELP data for school year 2004-2005, and, therefore, the TEA was unable to make AMAO determinations for those LEAs.

Summary of Title III, Part A Monitoring

Fiduciary			
Element Number	Description	Status	Page
2.1	<p>Within State Allocations, Reallocations and Carryover. The State Educational Agency (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 ESEA. ▪ The provisions related to reallocations under section 3114(c) of ESEA. ▪ The provisions related to making immigrant subgrants under section 3114(d) of the ESEA. 	Findings	2
2.2	<p>Within District. The SEA ensures that its local educational agencies (LEAs) comply with the provisions related to LEA use of funds under section 3115 of ESEA</p>	Findings	4
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 § 9021 of the ESEA.</p>	Met requirements	N/A
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>	Met requirements	N/A
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) of the ESEA.</p>	Recommendation	6

Monitoring Area 2: Fiduciary

Indicator 2.1 – Within State Allocations, Reallocations and Carryover

Finding (1): The TEA has not ensured that it meets requirements regarding the maximum amount of its Title III grant that can be used for state-level administration. The TEA reserved 5 percent of its Title III allocation. From that reservation, it has determined an amount that is to be used for administration. The remainder of the reservation is used for state-level activities. The TEA provides the funding for state-level activities through its Educational Service Centers (ESCs). These centers provide state-level activities authorized by section 3111 of the ESEA. The ESCs charge administrative costs such as indirect costs and salaries such as for secretaries, directors and coordinators to this funding. These additional administrative costs are not attributed

to state administration and, consequently, the TEA may have exceeded the maximum amount of administration funding that it may take.

Citation: Section 3111(b)(3) of the ESEA limits the maximum amount of funding that an SEA may take to not more than 60 percent of five percent of its total allocation or \$175,000, whichever is higher.

Further action required: The TEA must ensure that it meets requirements for the maximum amount of funding that it may use for state administration. In addition, the TEA must ensure that all applicable administrative costs, including those taken by ESCs for costs associated with administering the funding for state-level activities, are included. The TEA must provide ED with evidence that, for the 2009-2010 school year, it has included all administrative costs, including those taken by the ESCs for administration of the funding for state-level activities that they provide on behalf of the TEA, and that those costs do not exceed the maximum amount allowed.

Finding (2): The TEA is not including all English language learners (ELLs) in the count it uses to allocate funds to LEAs under section 3114(a) of the ESEA and has not ensured that its LEAs are complying with its obligation to provide for the equitable participation of ELL children attending private schools. The TEA does not provide grants to LEAs based on total number of ELL students in public and private schools nor does it require its LEAs to calculate the amount of Title III funds to be spent on providing for the equitable participation of ELLs attending private schools.

Citation: Section 3114(a) of the ESEA requires that Title III funds are to be allocated on the basis of an LEA's count of ELLs attending schools served by an LEA, including those ELLs attending private schools. Section 9501(a)(4) of ESEA requires that expenditures for services to private school students, teachers, and other educational personnel be equal to the expenditures for the public school program, taking into account the number and educational needs of the children to be served.

Further action required: The TEA must ensure that its awards are based on the number of private and public school ELL students. The LEA must also ensure that its LEAs utilize the proper amount of its Title III funds to provide for the equitable participation of ELLs attending private schools. The TEA must provide ED with a detailed description of how and when it informed its LEAs of these requirements. This documentation must include letters to LEAs or agendas for technical assistance meetings. The TEA must also provide ED with a description of how it will annually ensure the correct implementation of this requirement.

Finding (3): The TEA has awarded subgrants to ineligible entities. The TEA has awarded subgrants to the ESCs to carry out state activities.

Citation: Section 3114(a) of the ESEA requires that, in order to receive a subgrant, entities must have a plan that it approved under section 3116 of the ESEA, and must receive an amount that bears the same relationship to the amount received under the grant as the population of limited English proficient children in schools served by the eligible entity. In addition, section 3115(a)-(b) of the ESEA requires that subgrantees agree to expend the funds to improve the education of

the limited English proficient children, by assisting the children to learn English and meet challenging State academic standards; and requires subgrantees to use the funds for specific activities that are different than those identified as state-level activities.

Further action required: The TEA must ensure that only eligible entities receive subgrants. If the TEA is required to contract out state-level activities, it must develop a contract to provide the ESCs with specific amounts of funding. Each contract would need to specify the amount being provided for state-level activities as well as the amount allowed for administration. The TEA must provide ED with a copy of the contract that it has developed for this purpose as well as a description of the process that it will use to award the contracts and the timeline that it will follow.

Indicator 2.2 – Within District Allocations

Finding (1): The TEA has not ensured that its LEAs meet the requirement regarding the 2 percent cap on administrative costs. One LEA exceeded the 2 percent maximum for administrative costs.

Citation: Section 3115(b) of the ESEA limits the percentage that an LEA may charge to administrative costs to 2 percent of its Title III allocation.

Further action required: The TEA must ensure that all its LEAs meet requirements related to administration costs. TEA staff indicated that they have been working with LEAs to remedy this situation. The TEA must provide ED with evidence that, for the 2009-2010 school year, LEAs have not exceeded the 2 percent administrative cap.

Finding (2): The TEA has not ensured that its LEAs have included all appropriate costs, including salaries when calculating administrative costs. One LEA has not included a secretarial position in calculating administrative costs. Another LEA has not required the third-party contractor that is providing services to ELL students attending private schools to break out the amount of funding for services and administration.

Citation: Section 3115(b) of the ESEA limits the percentage that an LEA may charge to administrative costs to 2 percent of its Title III allocation. A third-party under contract with an LEA to provide services to private school students and teachers may incur administrative costs, including fee or profit, supervisors, professional development activities for the contractor's teachers, etc. These costs must come off the top of the LEA's total allocation as administrative costs. To facilitate this determination, the parties should identify in the contract the portion of the costs that are administrative, and the LEA should use funds taken off the top of its total allocation to pay for this portion of the contract.

Further action required: The TEA must ensure that its LEAs have included all appropriate costs, including salaries when calculating administrative costs and that LEAs that use third-parties to provide services require contractors to break out administrative costs. The TEA must provide ED with evidence that it has informed its LEAs of this requirement. In addition, the TEA must provide ED with evidence that, for the 2009-2010 school year, LEAs have required its contractor

to break out administrative costs and that they are calculating those costs towards its 2 percent cap.

Finding (3): The TEA has not ensured that its LEAs meet requirements related to allowable costs. LEAs have not maintained appropriate time and effort records for Title III employees who are also paid by other Federal, State or local funds

Citation: Section 2 CFR 225, Appendix B, section 8.h.4. requires that time and effort records— Personal Activity Reports (PARs) -- be kept for individuals whose salaries are charged to a federal program and who work on more than one cost objective. The PAR must account for the total time, be prepared and signed at least monthly, be signed by the employee, and reflect the actual work performed. PARs must be examined regularly and, if the amount of time that the employee worked on does not accurately reflect the percentage of salary charged to that account, the salaries must be adjusted.

Further action required: The TEA must ensure that its LEAs meet requirements for split-funded staff. The TEA must provide evidence that it has informed its LEAs of this requirement. In addition, the TEA must provide ED with evidence that LEAs have developed written procedures they will use to require employees who are split funded to maintain time and effort records and provide evidence that the procedures have been implemented. The procedures must include a description of how and when the LEA will review these records and how and when it will make adjustments in the percentage of salary charged to Title III. In addition, the TEA must provide ED with evidence that LEAs have completed time and effort reports for personnel who are split-funded.

Finding (4): The TEA has not ensured that its LEAs maintain control of Title III program funds being used to provide equitable participation for private school ELL students and their teachers. One LEA staff indicated that private school officials directed that a specific contractor be hired to provide the services. In addition, the contractor's response to the Request for Proposal (RFP) indicates that it will act as the liaison between the private school officials and the LEA.

Citation: Section 9501(d) of the ESEA requires LEAs to maintain control of programs being provided to private school students and their teachers.

Section 9306(a)(1) & (2) of the ESEA requires an LEA when submitting a consolidated application to ensure that Title III will be administered in accordance with all applicable rules, regulations, program plans, and applications and that the LEA will maintain control of funds provided and title to any property acquired with Title III funds. Contracts must contain sufficient detail on how the third-party provider will implement Title III requirements to enable LEAs to determine that the Title III statutory and regulatory requirements will be met.

Further action required: The TEA must require LEAs that provide services to private school students using third-party contractors to ensure that the third-party contractors are providing services to private school students that meet Title III requirements. The TEA must require its LEAs to have signed contracts or agreements with third-party vendors that provide technical

descriptions of the services with detail sufficient to enable LEAs to determine that the Title III statutory requirements will be met as required by section 9306 of the ESEA. The TEA must provide ED with a detailed description of how and when it informed its LEAs of this requirement, what technical assistance it has or will provide to them, how it will monitor this requirement, and a copy of a contract from LEAs that meets these requirements.

Indicator 2.4A – Supplement, not Supplant – Assessment

Recommendation: ED recommends that the TEA provide technical assistance regarding supplement, not supplant requirements pertaining to assessment. AISD used Title III funds for a testing specialist. This staff member provided other staff members with training on the Texas English Language Proficiency Assessment (TELPAS), an assessment of English language proficiency administered to ELLs. This violates Title III's non-supplanting requirements because funds under that program cannot be for this purpose because this assessment is required by section 1111(b)(7) of Title I. YISD used Title III funds to purchase LAS Links. YISD staff indicated that they use this test for identification, placement and for informing instruction of ELL students. Title III funds may not be used for English language proficiency (ELP) assessments for the purpose of identification and/or placement because LEAs are required by Title VI of the Civil Rights Act and *Lau* to conduct these activities.

ELP Standards, Assessments and Accountability			
Element Number	Description	Status	Page
Element 3.1	ELP Standards: State English language proficiency standards: the State provided evidence of a process that complies with section 3113.	Met Requirements	N/A
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 limited English proficient (LEP) students in the State.	Findings	8
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 subgrantees.	Findings Recommendation	8
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 – The State provides 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.

Finding: The TEA did not provide documentation that explains the process it uses to determine that the TELPAS is aligned with State ELP standards.

Citation: Section 3122(a)(3)(ii) of the ESEA requires States to ensure that LEAs use assessments that are valid and reliable assessments of English proficiency consistent with section 1111(b)(7) of the ESEA. Although States may develop their own test or use a commercially developed English language proficiency assessment, in order to ensure adequate assessment validity, they must ensure that any English language assessment that they use is aligned with the English language proficiency standards.

Further Action Required: The TEA must provide ED with documentation that explains the process it uses to determine that the TELPAS is aligned with the State ELP standards.

Element 3.4 – Annual Measurable Achievement Objectives

Finding (1): The TEA did not provide evidence that it made AMAO calculations consistent with the requirements of Title III. The State used inconsistent methods and measurements to make AMAO determinations. The State's process for determining compliance with AMAO 2 included two methods. Method 1 included LEP students assessed on TELPAS. In contrast, Method 2 included LEP students assessed on TELPAS and the performance of monitored LEP students as assessed on the Texas Assessment of Knowledge and Skills (TAKS) test. Method 2 included Grade 3 LEP students who have been in U.S. schools for three or more years and Grade 4-12 LEP students who have been in U.S. schools for four or more years only.

Citation: Section 3122(a)(1) of the ESEA states that States receiving Title III funds shall develop AMAOs for limited English proficient children served under this grant that relate to such children's development and attainment of English proficiency.

Further Action Required: The TEA must change AMAO targets to be consistent with the AMAO provisions in Title III. The State must submit an electronic copy of the revised section of the amendment to Texas's Consolidated State Application that pertains to Title III to Jenelle Leonard, Director of School Support and Technology Programs, at oese@ed.gov for review and approval by ED.

Finding (2): The TEA did not provide evidence that it is holding subgrantees that have not met AMAOs for four consecutive years accountable using the specific sanctions required in section 3122(b)(4) of the ESEA. The TEA was unable to demonstrate that it is requiring LEAs that have not met AMAOs for four consecutive years to modify their curriculum, program, and method of

instruction, or make a determination on whether funds should be received and require LEAs to replace personnel.

Citation: Section 3122(b)(4) of the ESEA states that, if an SEA determines that a subgrantee has not met AMAOs for four consecutive years, it must require the subgrantee to modify its curriculum, program, and method of instruction, or make a determination on whether the subgrantee shall continue to receive funds related to its failure to meet such objectives, and require the subgrantee to replace educational personnel relevant to this failure.

Further Action Required: The TEA must provide ED with evidence that each LEA that has not met AMAOs for four consecutive years is implementing one of the specific sanctions required in section 3122(b)(4) of the ESEA by the beginning of the 2009-2010 school year.

Recommendation: The TEA does not ensure that all Title III-served ELLs are included in all AMAOs. Texas applied minimum group size accountability standards to determine which LEA would be made accountable and did not make AMAO determinations for each consortium member. AMAO cohorts were also developed on grade spans instead of time in program. Such practices are inconsistent with the AMAO provisions in Title III. In the notice of final interpretation 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 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 interpretation 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"> • Providing 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) shall use the funds to pay for activities that provide enhanced instructional opportunities for immigrant children and youth.</p>	Findings	11

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

Finding (1): The TEA did not have a process for ensuring that immigrant funds are used for their intended purpose under section 3114 of the ESEA. The TEA did not ensure that its LEAs submit annual plans or amendments for the Immigrant Children and Youth subgrant. The TEA did not ensure that LEAs that are awarded funds under section 3114(d)(1) of the ESEA address in their plan how these funds would be spent on activities that provide enhanced instructional opportunities for immigrant children and youth.

Citation: Section 3115(e) of the ESEA requires eligible entities to pay for activities that provide enhanced instructional opportunities for immigrant children and youth which may include: family literacy and parent outreach; provision of tutorials, mentoring and academic or career counseling; identification and acquisition of curricular materials; and other instructional services that are designed to assist immigrant children and youth to achieve in elementary and secondary schools in the United States.

Section 3116 of the ESEA requires LEAs to submit a plan to the SEA that, among other components, describes the programs and activities proposed to be developed, implemented, and administered.

Further Action Required: The TEA must submit to ED: 1) a plan with a timeline indicating how it will ensure that its LEAs conduct activities that provide enhanced instructional opportunities for immigrant children and youth, and 2) evidence that it has revised its LEA consolidated application so it requires the submission of an immigrant plan. The TEA must require LEAs seeking funds under section 3114(d)(1) of the ESEA to submit plans that are specifically targeted for the immigrant children and youth subgrant.

Finding (2): The TEA does not ensure that the appropriate students are included in the immigrant children and youth counts. The TEA does not include students born to military personnel outside the United States 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 TEA must change Element ID: E0797-Immigrant Indicator Code in the Public Education Information Management System (PEIMS) to reflect the Title III definition of State. The TEA must also provide ED with evidence that it counts the appropriate students in the immigrant children and youth counts.

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 Refer to Element 4.4	13
Element 5.2	Private School Participation: LEAs comply with ESEA requirements regarding participation of LEP students and teachers in private schools in Title III.	Met Requirements Refer to Element 2.1	13
Element 5.3	Teacher English Fluency: Certification of teacher fluency requirement in English and any other language used for instruction (section 3116).	Finding	13
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	14
Parental Notification			
Element 7.1	Parental Notification: Parental notification in an understandable format as required under section 3302 for identification and placement and for not meeting the State AMAOs.	Met Requirement	N/A

Monitoring Area 5: State Review of Local Plans

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: The TEA did not ensure LEAs use Title III (limited English proficient) LEP funds to support Title III LEP allowable activities. The TEA did not ensure that LEAs that are awarded funds under section 3114 address in their plans how these funds would be spent on activities that help students attain English proficiency, develop high levels of academic attainment in English, and help students meet the same challenging State academic content.

Citation: Section 3116 of the ESEA requires LEAs to submit a plan to the SEA that, among other components, describes the programs and activities proposed to be developed, implemented, and administered and describes how the LEAs will use the subgrant funds to meet AMAOs.

Further Action Required: The TEA must provide ED with evidence that it has revised its LEA consolidated application so it requires the submission of an LEP plan. The TEA must require LEAs to submit plans that are specifically targeted for the Title III program.

Element 5.2 – Private School Participation: LEAs comply with ESEA requirements regarding participation of LEP students and teachers in private schools in Title III.

Refer to Element 2.1.

Element 5.3 – Teacher English Fluency - Certification of teacher fluency requirement in English and any other language used for instruction (section 3116).

Finding: The TEA did not ensure that LEAs complied with the requirement that teachers in Title III funded programs be fluent in English and any other language of instruction. One LEA had a dual language program with core content instruction provided in Korean and Vietnamese, but it did not provide assurance that teachers teaching content in Korean and Vietnamese were fluent in Korean or Vietnamese.

Citation: Section 3116(c) of the ESEA requires eligible entities to include in their plans a certification that all teachers in any language instruction educational program for LEP children that is, or will be, funded by Title III are fluent in English and any other language used for instruction, including having written and oral communication skills.

Further Action Required: The TEA must provide ED with a description of the process it will use to ensure LEAs comply with the requirements under section 3116(c) regarding oral and written teacher language fluency in English and any other language of instruction.

Monitoring Area 6: State Monitoring of Subgrantees

Element 6.1 – State Monitoring of Subgrantees

Finding: The TEA did not ensure that its procedures for monitoring its LEAs for compliance with Title III of the ESEA were sufficient to ensure that all areas of noncompliance were identified and corrected in a timely manner. Although the TEA has a plan to monitor LEAs using a performance-based student evaluation and compliance audit, the monitoring process is based on LEA end-of-year responses to the Consolidated Grant Application (Refer to Element 5.1) which did not include all the essential requirements of the Title III statute.

Citation: Section 80.40 of the Education Department General Administrative Regulation (EDGAR) requires grantees to monitor grant and subgrant activities to ensure compliance with applicable federal requirements.

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

Further action required: The TEA must provide ED with a plan that indicates how it will amend its monitoring process to ensure that all requirements in the Title III statute are being met and evidence that the plan has been implemented.