

Utah State Office of Education

April 27-May 1, 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 Utah State Office of Education (USOE) the week of April 27-May 1, 2009. This was a comprehensive review of the USOE'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 VII, Subtitle B of the McKinney-Vento Homeless Assistance Act. 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 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 two local educational agencies (LEAs) – Washington County School District (WCSD) and Salt Lake City School District (SLCSD) where 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 USOE during the week of October 16-21, 2005. ED identified compliance findings in the following areas:

- (1) Through district level interviews and evidence presented, the ED team determined that the districts did not have a clear understanding of the activities that are required to be carried out under Title III.
- (2) The USOE and LEAs did not present evidence of specific activities provided for immigrant children and youth. The ED team was not provided with information or evidence that immigrant funds are being used for the purposes specified in Title III.
- (3) The USOE self-monitoring instrument used by LEAs for all Federal programs has limited use in meeting the State's obligation to monitor Title III subgrantees.
- (4) The USOE had not submitted accurate targets, made annual measurable achievement objective (AMAO) determinations, nor notified districts/parents of the failure to meet AMAOs.
- (5) The USOE had not developed and fully implemented State English language proficiency (ELP) standards that are aligned with the achievement of State academic content and achievement standards in reading/language arts and mathematics.

- (6) The USOE did not submit sufficient evidence in the State Biennial Evaluation Report or the Consolidated State Performance Report for when and how a State ELP assessment aligned to State ELP standards will be fully implemented.

**Title III, Part A
Summary of Monitoring Indicators**

State Submissions			
Element Number	Description	Status	Page
1.1	State Submissions: Follow-up on areas identified through desk audit and document reviews.	Met Requirements	N/A
Fiduciary			
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). ▪ 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 Recommendation	4-5
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.	Findings	5
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
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	5-6
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 ELP assessments under sections 1111(b)(7) and 3113(b)(2) of the ESEA.	Recommendation	6

Monitoring Area 2: Fiduciary

Element 2.1 - Within State Allocations, Reallocations and Carryover: The SEA complies with required provisions.

Finding (1): The USOE has not met requirements for awarding immigrant subgrants. Although the USOE has developed a definition of “significant increase” for the 2009-2010 school year, it had not defined “significant increase” when it awarded immigrant subgrants for the 2008-2009 school year. Consequently, all LEAs that had immigrant children received an immigrant subgrant.

Citation: Section 3114(d)(1) of the ESEA requires that the determination of whether there has been a significant increase in the number of immigrant students in an LEA be based on a comparison of (1) the average number – over the preceding two fiscal years – of immigrant students enrolled in an LEA’s public and non-public elementary and secondary schools, and (2) the number of immigrant students enrolled in that LEA’s public and non-public elementary and secondary schools in the fiscal year immediately preceding the fiscal year for which the subgrant is to be made.

Further Action Required: The USOE must provide ED with evidence that, for the 2009-2010 school year, it has awarded immigrant subgrants consistent with its definition of “significant increase.” The State must provide ED with evidence that it has a process to allocate immigrant funds to eligible LEAs as required by section 3114(d)(1).

Finding (2): The USOE has not ensured that its LEAs are providing equitable services. The USOE does not provide grants to LEAs based on the total number of limited English proficient (LEP) students in public and private schools, nor does it require its LEAs to calculate equitable services.

Citation: Section 9501(a)(4) of the 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 USOE must ensure that its LEAs accurately calculate the amount of Title III funds required for equitable services consistent with the requirements of section 9501(a)(4). The USOE must also provide grants to LEAs based on the total number of LEP students in both public and private schools. The USOE 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 USOE must also provide ED with a description of how it will annually ensure the correct implementation of this requirement.

Recommendation: The ED team recommends that the USOE develop procedures to ensure the timely review and approval of all LEA applications for the 2009-2010 school year and beyond.

Interviews with LEAs' staff indicated that LEAs were not provided with notices of approval of Title III plans/budgets for the 2008-2009 school year until after January 1, 2009 or later.

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.

Finding (1): The USOE has not ensured that its LEAs meet requirements related to the maximum percentage allowed for administrative costs. Several LEAs had allocated more than two percent of their allocations for indirect costs and, in addition, several had funded administrative positions, which brought the total allocations for administrative costs over the two percent permitted.

Citation: 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 indirect costs and direct costs associated with administering the Title III program.

Further Action Required: The USOE must provide ED with a detailed description of how and when it informed its LEAs of this requirement. This documentation must include letters to LEAs or agendas for technical assistance meetings. The USOE must also provide ED with a plan for how it will annually ensure the correct implementation of this requirement.

Finding (2): The USOE has not ensured that its LEAs meet requirements related to allowable use of Title III funds. The ED team reviewed several invoices for materials such as physical education equipment and science kits. LEAs' staff could not provide any documentation demonstrating that these materials were used solely for activities for Title III students.

Citation: Section 3115(a) of the ESEA indicates that LEAs may only receive Title III subgrants if they agree to expend the funds to improve the education of LEP children by assisting the children to learn English and meet challenging State academic content and student achievement standards.

Further Action Required: The USOE must ensure that its LEAs use Title III funds for activities that are consistent with section 3115. The USOE 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 USOE must also provide ED with a plan for how it will annually ensure the correct implementation of this requirement.

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: The SLCSO used Title III funds in prior years to carry out activities specified in a Title VI (Lau) corrective action plan approved by the Office for Civil Rights (OCR). Specifically, during the 2007-2008 school year, SLCSO used Title III funds to provide English language development (ELD) programs which were included in its corrective action plan with OCR. Limited English proficient students are assigned to ELD classes for 45 minutes daily

instruction with a teacher endorsed in English as a Second Language (ESL), Bilingual Education, or a teacher who is currently in a program working toward ESL endorsement.

Citation: Section 3115(g) of the ESEA prohibits an LEA from using Title III funds to pay for services that, in the absence of Title III funds, would have to be provided by other Federal, or State, or local funds. The use of Title III funds to pay for services that an LEA would have to provide even if it were not receiving a Title III grant violates the Title III non-supplanting requirement.

Further Action Required: The USOE must provide ED with a detailed statement explaining how the English language development program is supplemental and use of Title III funds to carry it out does not violate the non-supplanting requirement. This explanation needs to address the question of whether SLSCD would have to provide the particular English language development program services paid for with Title III funds in the absence of its Title III subgrant. In addressing this issue, the response should also explain the elements of the OCR approved corrective action plan that specifically address SLSCD's obligation under Lau to provide equal access for LEP children to its educational program and why the elements of the English language development program paid for with Title III funds go beyond Lau's equal access obligation.

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.

Recommendation: ED recommends that the USOE ensure that Title III subgrantees comply with the supplement, not supplant requirements regarding the use of Title III funds for assessment purposes. Several LEAs visited were found to be expending Title III funds on initial assessments or screeners. The Department issued guidance on October 2, 2008 related to the use of Title III funds for assessment purposes. The Department expects States and LEAs to comply with the guidance.

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.	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.	Finding Recommendation	8-9
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.	Finding	9

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

Element 3.2 – 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.

Finding (1): The USOE did not provide evidence that the English language proficiency of all LEP children is assessed on an annual basis. Data submitted on the Consolidated State Performance Report (CSPR) indicated that 12,883 LEP students were not tested.

Citation: Section 3113(b)(3)(D) of the ESEA requires States to ensure that LEAs receiving a subgrant under Title III annually assess the English proficiency of all Title III-served LEP children in kindergarten through grade 12. Section 1111(b)(7) requires that the English proficiency of all LEP students, not just Title III-served LEP students, be assessed annually.

Further Action Required: The USOE must provide ED with documentation of written guidance to its LEAs informing them of the requirement to assess the English proficiency of all LEP students (K-12).

Finding (2): The USOE did not provide sufficient evidence that its State ELP assessment is aligned with the 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). Although States may develop their own test or use a commercially developed ELP assessment, they must ensure that any ELP assessment that they use is aligned with State ELP standards.

Further Action Required: The USOE must provide ED with evidence that its ELP assessment is aligned with its ELP standards.

Element 3.4 – Annual Measurable Achievement Objectives

Finding: The USOE did not hold accountable LEAs that did not meet AMAOs for two or four consecutive years. On the list of LEAs reviewed by the ED team, fourteen LEAs had not met AMAOs for two consecutive years and ten LEAs had not met AMAOs for four consecutive years.

Citation: Section 3122(b) 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 it meets such objectives. The improvement plan must specifically address the factors that prevented the LEA from achieving the AMAOs. If a State determines that an LEA has failed to make progress toward meeting AMAOs for four consecutive years, the State must require it to modify its curriculum, program, and method of instruction, or make a determination whether the LEA should continue to receive

funds related to its failure to meet AMAOs, and require the LEA to replace educational personnel relevant to its failure to meet AMAOs.

Further Action Required: The USOE 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 or four consecutive years develop an improvement plan that specifically addresses the factors that prevented the LEA from meeting AMAOs. The USOE must also provide ED evidence that this plan has been implemented.

Recommendation: The ED team found that there was some confusion at one of the LEAs that had appealed the State's AMAO determination regarding whether this LEA had, in fact, met AMAOs. ED recommends that the State indicate on the LEA appeals form the status of all three AMAOs, along with any revised AMAO decision.

Element 3.5 – Data Collection

Finding: The USOE did not ensure that its procedure for collecting and calculating LEA data on the number of LEP students used to determine eligibility for Title III funds was accurate. The USOE included former LEP students in its Title III LEP calculations to determine Title III funding allocations, which resulted in some LEAs receiving Title III funds for students who exited the Title III program.

Citation: Section 3114(a) of the ESEA requires States to award subgrants for a fiscal year by allocating to each eligible entity in the State having a plan approved under section 3116 an amount that bears the same relationship to the amount received under the grant and remaining after making such reservation as the population of LEP children in schools served by the eligible entity bears to the population of LEP children in schools served by all eligible entities in the State.

Further Action Required: The USOE must provide ED with a detailed plan that delineates the steps it will take to ensure accurate and timely collection of data on LEP students from all LEAs. The USOE must also provide ED with evidence that it has developed and implemented a process to ensure that funds awarded under section 3114 are awarded to eligible entities based on the number of eligible LEP students.

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>	Finding	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: The USOE did not have a process for ensuring that immigrant funds are used for their intended purpose. The LEAs visited were unable to specify how they use funds awarded under this section to enhance instructional opportunities for immigrant children and youth. Additionally, the USOE has not provided guidance to its LEAs regarding immigrant grants, or required LEAs to submit plans or budgets for these funds. LEAs have combined the immigrant funds with the regular Title III grant funds.

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 USOE 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 evidence that this plan has been implemented for the 2009-2010 school year, and 2) evidence that it has revised its LEA consolidated application so it requires the submission of an immigrant plan. The USOE must require LEAs seeking funds under section 3114(d)(1) to submit plans that are specifically targeted for the immigrant children and youth subgrant.

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)).	Met Requirements 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.	Met Requirements	N/A
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.	Finding	13-14

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)).

Refer to Element 4.4.

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 USOE 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 Spanish, but it did not provide assurance that teachers teaching content in Spanish were fluent in Spanish.

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 USOE 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 7: 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.

Finding: The USOE has not ensured that all Title III subgrantees separately inform parents of their failure to meet AMAOs not later than 30 days after such failure occurs.

Citation: Section 3302(b) of the ESEA requires eligible entities that have failed to make progress on the AMAOs described in section 3122 for any fiscal year for which Title III, Part A is in effect shall separately inform a parent or the parents of a child identified for participation in such program, or participating in such program, of such failure not later than 30 days after such failure occurs.

Further Action Required: The USOE must provide ED with evidence that Title III subgrantees complied with the requirement to notify parents of the failure to meet AMAOs as required by section 3302(b), beginning with AMAO determinations made for the 2008-2009 school year.