

Arizona State Department of Education

December 13-17, 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 **Arizona Department of Education (ADE)** the week of **December 13-17, 2009**. This was a comprehensive review of the ADE's administration of the Title III, Part A program, which is 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 State-level monitoring and technical assistance, implementation of the State's Title III accountability system, and fiscal and administrative oversight with the State educational agency (SEA). The ED team also visited four local educational agencies (LEAs) – Cartwright School District (CSD), Mesa Public Schools (MPS), Tucson Unified School District (TUSD) and the American Charter School Foundation/Leona Group - where they reviewed documentation and interviewed district and school staff.

Previous Audit Findings: None

Previous Monitoring Findings: This was the first monitoring visit of Arizona for Title III, Part A.

Monitoring Indicators for Title III, Part A

State Monitoring of Subgrantees			
Element Number	Description	Status	Page
	State Monitoring of Subgrantees sections 3115, 3116, and 3121; EDGAR 34 CFR 80.40	Finding	2

State Monitoring of Subgrantees

State Monitoring: The State has a process to monitor subgrantees and the evaluation components of the monitoring plan to address the requirements under sections 3113, 3115, 3121, 3122 and 3302 of the ESEA.

Finding: The ADE's procedures for monitoring its Title III subgrantees for compliance with Title III of the ESEA were insufficient to ensure that all areas of noncompliance were identified. Although the ADE has a plan to monitor Title III subgrantees using a consolidated approach for the 2009-10 school year, the plan does not include all Title III fiscal components, immigrant children and youth student counts and program activities, or the Title III accountability system.

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

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

Further Action Required: The ADE must submit to ED its plan for reviewing and revising its monitoring protocol to ensure that it includes all Title III requirements. Once the monitoring protocol has been revised, ADE must submit to ED the timeline for implementation and evidence of implementation.

Standards, Assessments and Accountability			
Element Number	Description	Status	Page
Element 1.1	English Language Proficiency (ELP) Standards section 3113	Recommendation	3
Element 1.2	English Language Proficiency (ELP) Assessment sections 3113 and 3116	Finding	3
Element 1.3	Annual Measurable Achievement Objectives (AMAOs) sections 3122(a)(1)(2)(3) and 1111(b)(2)(B)	Findings Recommendation	4
Element 1.4	Data Collection and Reporting sections 3121 and 3123; EDGAR 34 CFR 76.731	Finding	4-5

Monitoring Area 1: Standards, Assessments and Accountability

Element 1.1 - ELP Standards: The State provided evidence of a process that complies with section 3113 of the ESEA.

Recommendation: Although the ADE demonstrated that the English language proficiency standards were correlated to the content areas, ED recommends that the ADE continue to refine its ELP standards so that they are fully aligned with the achievement of State academic content standards.

Element 1.2 – ELP Assessment: The State provided evidence of a process that complies with section 3113 of the ESEA and evidence that an ELP assessment has been administered to all K-12 limited English proficient (LEP) students in the State.

Finding: The ADE did not provide evidence that the English language proficiency of all LEP children is assessed on an annual basis. Students whose parents have refused Title III services are not included in the annual ELP assessment. Also, in TUSD, some students with disabilities are routinely excluded from the annual ELP assessment.

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: Further efforts must be made so that the ADE assesses all LEP students for English language proficiency and is able to document and monitor the number of students that did not participate in the AZELLA, and the reasons for their non-participation. The ADE must provide written guidance to its Title III subgrantees informing them of the requirement to annually assess the English language proficiency of *all* limited English proficient students (K-12). A copy of the guidance, the timeline, and process used for implementation must be provided to ED. The ADE must also develop a means of documenting reasons for student non-participation in the AZELLA and provide evidence of this system to ED.

Element 1.3 - AMAOs: AMAOs have been developed and AMAO determinations have been made for Title III-served LEAs.

Finding (1): The ADE did not provide evidence that it has a plan to hold subgrantees that failed to make progress toward meeting AMAOs for two consecutive years to develop an improvement plan that will address the factors that prevented the subgrantee from achieving such objectives.

Citation: Section 3122(b)(2) of the ESEA requires that if a State determines that an LEA has failed to make progress toward meeting Title III AMAOs for 2 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 ADE must develop and submit to ED a plan, including a timeline, outlining the steps it will take to ensure that subgrantees not meeting AMAOs for 2 consecutive years develop an improvement plan. The plan needs to specifically address the factors that prevented the LEAs from meeting Title III AMAOs and provide evidence that the plan has been implemented.

Finding (2): The ADE did not provide evidence that it is holding subgrantees that have not met AMAOs for 4 consecutive years accountable consistent with the requirements in section 3122(b)(4). The ADE is unable to demonstrate that it is requiring subgrantees in this category to modify their curriculum, program, and method of instruction or make a determination 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.

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

Further Action Required: The ADE must provide ED with evidence that it will hold subgrantees that have not met AMAOs for 4 consecutive years accountable using the specific sanctions required in section 3122(b)(4).

Recommendation: In 2008-9 the State mandated that only LEP students who had been in school for 150 days during each academic year would be considered for inclusion in AMAO 2, the target for proficiency. This provision is not consistent with section 3122 and the final notice of interpretation issued on October 17, 2008, 73 FR 61828.

Element 1.4 - 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: The ADE's procedure for collecting LEA data on the number or percentage of immigrant children and youth did not demonstrate that all of the appropriate students are included in the immigrant children and youth counts. Although the State has a mechanism which enables districts to correct the count information, one of the districts (MPS) indicated it did not fully understand how to collect information on the number of immigrant students, and how it would provide the information to the State.

Citation: Section 3114(d) of the ESEA requires States to award subgrants to eligible entities in the State that have experienced a significant increase. The calculation is made by comparing the current increase in the number of immigrant children and youth, in public and nonpublic elementary and secondary schools in the geographic areas under the jurisdiction of, or served by, the entity, to the average of the two preceding fiscal years.

Further Action Required: The ADE must develop and submit to ED a detailed plan that delineates the steps it will take to ensure accurate and timely collection of data on the number or percentage of immigrant children and youth from all LEAs. The ADE must submit evidence demonstrating how its new data system will enable the State to determine LEAs eligible for immigrant funds. The ADE must provide evidence that it has a process that ensures funds awarded under section 3114(d)(1) are awarded to eligible entities based on the State definition of "significant increase" and that the State provides training to districts on the Title III definition of immigrant and how to report student immigrant counts. Refer to section 2.3 and 3.1.

Instructional Support			
Element Number	Description	Status	Page
Element 2.1	State-Level Activities section 3111 (b)(2)	X	X
Element 2.2	State Oversight and Review of Local Plans sections 3116(a) and 3115(c); EDGAR 34 CFR 76.770	Recommendation	6
Element 2.3	Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth sections 3114 and 3115	Finding	6-7
Element 2.4	Private School Participation section 9501	X	X
Element 2.5	Parental Notification and Outreach section 3302	X	X

Monitoring Area 2: Instructional Support

Element 2.2 – State Oversight and Review of Local Plans: The SEA ensures that its LEAs comply with the provision for submitting an application to the SEA (section 3116(a)).

Recommendation: ED recommends that the ADE reexamine its processes for reviewing and approving subgrantee local applications to ensure that subgrants are made in a timely manner. TUSD had not yet submitted a budget for approval for the SY 2009-10 at the time of the visit.

Element 2.3 - 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.

Finding: The ADE 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 ADE has not provided guidance to its LEAs regarding allowable activities under immigrant grants.

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 ADE 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 2009-10 school year, and 2) evidence that it has revised its LEA consolidated application so it requires the submission of an immigrant plan. The ADE must require LEAs seeking funds under section 3114(d)(1) to submit plans that are specifically targeted for the immigrant children and youth subgrant.

Fiduciary			
Element Number	Description	Status	Page
Element 3.1	State Allocations, Reallocations and Carryover section 3111(b); 20 USC 6821(b)(3); sections 3114(a)-(d)	Finding	8
Element 3.2	District Allocations, Reallocations and Carryover section 3115	Findings	9
Element 3.3	Maintenance of Effort sections 1120A and 9021	X	X
Element 3.4	Supplement, Not Supplant – General section 3115(g)	Finding, Recommendation	10
Element 3.4A	Supplement, Not Supplant – Assessment sections 1111(b)(7) and 3113(b)(2)	X	X

Monitoring Area 3: Fiduciary

Element 3.1 – State Allocations, Reallocations and Carryover: The SEA complies with required provisions.

Finding: The ADE has not ensured that it has used accurate information for allocating its immigrant subgrants. Staff from both MPS and CSD did not fully understand how data on immigrant students are collected at the LEA and reported to the State.

Citation: Section 3114(d) of the ESEA requires SEA to reserve not more than 15 percent of its Title III formula grant to award subgrants to eligible entities in the State that have experienced a significant increase, as compared to the average of the two preceding fiscal years, in the percentage or number of immigrant children and youth, who have enrolled, during the fiscal year preceding the fiscal year for which the subgrant is made, in public and nonpublic elementary schools and secondary schools in the geographic areas under the jurisdiction of, or served by, such entities.

Section 3301(6) of the ESEA defines immigrant children and youth as individuals who: are aged 3 through 21; were not born in any State; and have not been attending one or more schools in any one or more States for more than three full academic years.

Further Action Required: The ADE must ensure that it utilizes accurate information for allocating immigrant subgrants and that its LEAs have procedures and processes in place to accurately collect data on immigrant students. The ADE must provide ED with evidence that it has provided guidance on this issue to its LEAs. The ADE must provide ED with a detailed description of how and when it informed its LEAs of this requirement. This documentation may

include letters to LEAs or agendas for technical assistance meetings. The ADE must also provide ED with a description of how it will ensure that its LEAs have processes and forms in place to accurately collect data on immigrant children.

Element 3.2 – District Allocation, 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.

Finding (1a): The ADE has not ensured that its Title III subgrantees meet requirements related to the maximum percentage allowed for administrative costs. A Title III specialist from the American Charter School Foundation/Leona Group is paid 100 percent from Title III instructional funds. However, the job description for the specialist position indicated that the specialist is doing work related to administrative tasks of the Title III subgrant. Subgrantees may not exceed the two percent administrative cap on administration.

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

Further Action Required: The ADE must provide ED with a detailed description of how it has informed its Title III subgrantees of the two percent administrative costs restriction on LEAs. The ADE must also provide ED with a description of how it will annually ensure the correct implementation of the two per cent administrative cost restriction.

Finding (1b): If personnel funded under Title III are performing administrative duties and also instructional activities, they must keep time and effort records to demonstrate their time. These were not available during the time of the visit.

Further Action Required: The State must ensure that Title III subgrantees use Title III funds to only compensate employees for allowable Title III activities. Personnel costs funded with Title III funds must be supported by the documentation required by OMB Circular A-87, Attachment B, Section 8. The salaries of employees who work on more than one cost objective, e.g., Title III and non-Title III activities or Title III administrative and non-administrative activities, must be supported by appropriate time distribution records.

Citation: OMB Circular A-87, Attachment B.

Finding (2): The ADE has not ensured that its LEAs meet Federal requirements related to “allowable costs.” A teacher in CSD has been paid 100 percent from Title III funds for the last several years; however, this has not been the funding source for her entire career. CSD used Title III funds for all of her sick leave buy-out rather than paying a proportionate share.

Citation: The Education Department General Administrative Regulations (EDGAR), 34 C.F.R. section 80.22 indicates that employee benefits are an allowable cost under a Federal grant "to the

extent the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit." In addition, such benefits must be allocable to Title III — that is, the costs must be relative to the benefits received. A cost that is allocable under a particular award may not be charged to another award to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the award, or for other reasons.

OMB Circular A-87 provides that "Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component."

Further Action Required: The ADE must ensure that its LEAs meet this requirement and in making payments for unused leave when an employee retires or is terminated are "allocated as a general administrative expense to all activities of the governmental unit or component". The ADE must provide ED with a detailed description of how and when it informed its Title III subgrantees of this requirement. This description must include evidence that the ADE provided technical assistance to its LEAs on this issue. The ADE must also provide ED with a description of how it will annually ensure the correct implementation of this requirement.

Element 3.4 - 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 ADE has not ensured its LEAs meet Federal requirements related to supplement, not supplant as evidenced by the following:

- MPS staff indicated that Title III funds are used for State required training that is required for LEAs to carry-out, such as Rounds 1A and 1B Structured English Immersion (SEI) training, ELD (English Language Development) Round II teacher training, SEI endorsement 15 hour provisional course, and the SEI endorsement 45 hour completion course.
- MPS indicated in its approved Title III application that it is using Title III funds to purchase chairs for State mandated SEI classes.
- TUSD staff indicated that Title III funds are utilized to pay for classes that are required for graduation for English language learner (ELL) high school students who are unable to take these courses due to the requirement to enroll in State mandated SEI classes. These courses are for "original credit" and are provided to non-ELL students with local 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 ADE must provide ED with a detailed description of how and when it informed its Title III subgrantees of the supplement, not supplant requirement. This documentation could include letters to Title III subgrantees or agendas for technical assistance meetings. The ADE 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 ADE provide technical assistance to its LEAs related to what is mandated and what is “highly desirable” under the State’s SEI program as well as what State funds are available to fund these activities in order to ensure Title III funds are not inappropriately used. The LEA indicated a lack of full knowledge regarding some of the requirements under the State’s SEI program, and did not know about State funds that could have been used to fund various activities related to the SEI program.

For example, CSD indicated in its Title III application that it is using Title III funds to pay for “Round 2 training” for principals. The ADE staff indicated that this is not State mandated training; however, it is highly desirable for the LEA to conduct this training. The ADE staff also indicated that this is an activity that CSD should have applied for under the State’s Structured English Immersion (SEI) budget, in order to receive funding for that activity from State SEI funds.