



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Roger D. Breed
Commissioner of Education
Nebraska Department of Education
301 Centennial Mall, South 6th Floor
P.O. Box 94987
Lincoln, Nebraska 68509

JUL 20 2011

Dear Commissioner Breed:

During the week of May 10-12, 2011, a team from the U. S. Department of Education's (ED) Student Achievement and School Accountability Programs (SASA) office reviewed the Nebraska Department of Education's (NDE) administration of the Title III program authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended. Enclosed is a report based upon the review of the Title III program.

The report includes a brief description of the scope of the monitoring review, recommendations and findings, and required corrective actions resulting from the review. The NDE has 30 business days from receipt of this report to respond to all findings cited in the report. We will review the State's response to determine if all findings have been addressed sufficiently and request additional information, if necessary. We will allow 30 business days for the State to submit additional information or work with the State to identify a reasonable timeline that allows the State to address and correct all findings. A State that has significant unresolved non-compliance findings or findings that are repeated from one monitoring review to the next may have a condition placed on the grant award.

Please note that the findings cited in the report reflect the status of compliance in NDE at the time of the onsite review.

The ED team would like to thank Nancy Rowch for her hard work and assistance before and during the review. We look forward to continuing to work with you and your staff to address the needs of English language learners.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia A. McKee".

Patricia A. McKee
Acting Director
Student Achievement and
School Accountability Programs

Enclosure

cc: Nancy Rowch

Nebraska Department of Education

May 10-12, 2011

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 Nebraska Department of Education (NDE) the week of May 10-12, 2011. This was a comprehensive review of the NDE'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 two local educational agencies (LEAs): Schuyler Community Schools (SCC) and Omaha Public Schools (OPS) where they reviewed documentation and interviewed district, school staff and parents.

Previous Audit Findings: None

Previous Monitoring Findings: This was the second monitoring visit to Nebraska for Title III, Part A. The first visit was conducted in November 2007. ED identified a compliance finding in the following area:

- 1) The NDE did not provide data in the February 1, 2007 Consolidated State Performance Report regarding the academic achievement status of former Title III served LEP students for each of the two years after such students exit Title III-funded language instruction educational programs.

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

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.

Finding: The NDE has not ensured that Title III subgrantees have implemented the State ELP standards. The State has not provided training or professional development on implementation of the standards since 2004. Teachers in one of the LEAs visited were unable to discuss how the ELP standards have been implemented in their classrooms. Staff in another LEA indicated that the LEA is not using the ELP standards in elementary schools and is using its own version of the standards at the high school level.

Citation: Section 3113(b)(2) of the ESEA requires that each SEA plan establish standards and objectives for raising the level of English proficiency that are derived from the four recognized domains of speaking, listening, reading, and writing, and that are aligned with achievement of the challenging State academic content and student achievement standards described in section 1111(b)(1) of the ESEA.

Further Action Required: The NDE must develop and submit to ED a plan, including a timeline, which specifies the steps it will take to ensure that the ELP standards are implemented statewide. The plan must include a description of how the NDE will monitor for implementation of the ELP 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 NDE has not ensured that the English language proficiency of all LEP students is assessed on an annual basis. Staff in one LEA indicated that the annual ELP assessment is not administered to English language learners whose parents refuse Title III services.

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 NDE must provide written guidance to its Title III subgrantees about the requirement to assess annually the English language proficiency of all LEP students in grades K-12, and submit a copy of the guidance to ED. The State must also review all Title III subgrantees' practices and procedures related to administration of the annual ELP assessment and require corrective action, when necessary, to ensure compliance with the requirement to assess the ELP of all LEP students in grades K-12.

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

Finding (1): The NDE's decision rules for making AMAO determinations do not comply with section 3122(b)(1) of the ESEA, which requires States to hold Title III subgrantees accountable for meeting all three Title III AMAOs. It also does not require LEAs that fail to meet all the AMOS for 2 and 4 consecutive years to comply with the required accountability provisions. Rather, the State only requires compliance with accountability provisions in cases where an LEA does not meet a single objective for multiple years. For example, if an LEA did not meet AMAO 1 in year one, while meeting the other two AMAOs, and then did not meet AMAO 2 in year 2, while meeting the other AMAOs, it would not be considered as having failed to meet the AMAOs for two consecutive years. A Title III subgrantee, however, must meet all three AMAOs in any particular year.

Citation: Section 3122(b)(1) of the ESEA requires States receiving Title III funds to hold subgrantees accountable for meeting all annual measurable achievement objectives under subsection 3122(a). Subgrantees, to meet the AMAOs, must meet each of three AMAOs every year.

Further Action Required: The NDE must develop and submit to ED decision rules for making AMAO determinations that comply with the requirements in section 3122(b)(1) of the ESEA. These decision rules must be applied to AMAO determinations for school year 2010-2011. The NDE must provide evidence that the plan has been implemented.

Finding (2): The NDE did not provide evidence that it is requiring subgrantees that fail to meet Title III AMAOs for two consecutive years to develop an improvement plan that addresses the factors that prevented the subgrantee from achieving such objectives.

Citation: Section 3122(b)(2) of the ESEA requires a State that determines that an LEA has failed to meet Title III AMAOs for 2 consecutive years to 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 NDE 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 that specifically addresses the factors that prevented the LEAs from meeting Title III AMAOs. The NDE must provide evidence that the plan has been implemented.

Finding (3): The NDE did not provide evidence that it is applying the accountability provisions in section 3122(b)(4) of the ESEA to Title III subgrantees that have not met AMAOs for 4 consecutive years. The NDE was unable to provide evidence that it is requiring subgrantees in this category to modify their curriculum, program, and method of instruction or that it is making a determination whether it will withhold funds or require subgrantees to replace personnel.

Citation: Section 3122(b)(4) of the ESEA specifies that a State that determines that a subgrantee has not met AMAOs for 4 consecutive years must 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 relevant to this failure.

Further Action Required: The NDE must submit to ED evidence that it is holding subgrantees that have not met AMAOs for 4 consecutive years accountable using the specific sanctions required in section 3122(b)(4).

Finding (4): The NDE did not make timely AMAO determinations for school year 2009-2010. The NDE did not notify subgrantees of their failure to meet Title III AMAOs for school year 2009-2010 until December 2010. Therefore, Title III subgrantees that failed to meet the AMAOs for 2009-2010 were unable to comply with the requirement to inform parents of such failure not later than 30 days from when the LEA became aware of the failure and start to design and implement corrective action in cases where AMAO failure was for two or four consecutive years until the school year was nearly half over.

Citation: Section 3302(b) of the ESEA requires that each eligible entity that is using Title III funds to provide an LIEP and that has failed to meet the AMAOs must separately inform parents of such failure no later than 30 days after such failure occurs.

Section 3122(b)(2) of the ESEA requires a State that determines that an LEA has failed to meet Title III AMAOs for 2 consecutive years to 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 NDE must develop and submit to ED a plan, including a timeline, outlining the steps it will take to notify Title III subgrantees of their failure to meet the AMAOs in a timely manner to ensure subgrantees are able to make timely parental notifications and develop and implement improvement plans that address the specific factors that prevented achievement of the objectives. The NDE must provide evidence that the plan has been implemented.

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 NDE has not ensured that LEAs properly identify immigrant children and youth based on the definition in section 3114(d)(1) of the ESEA. The NDE's definition of immigrant children and youth includes students born in Puerto Rico.

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 NDE must update its Nebraska Student and Staff Record System (NSSRS) to reflect the definition of State under the Title III immigrant program so that the immigrant children and youth definition is consistent with section 3301(6) of the ESEA. The NDE must also provide ED with evidence that it has informed its LEAs about the change to ensure that LEAs properly identify and include the appropriate students in their immigrant children and youth counts. The NDE must submit to ED evidence that it has informed Title III subgrantees of the correct definition of State and that it has a process to verify subgrantees' counts of immigrant children and youth.

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	Finding Recommendation	5-6
Element 2.3	Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth sections 3114 and 3115	Finding	6
Element 2.4	Private School Participation section 9501	Refer to 3.1	6
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) of the ESEA).

Finding: The NDE has not implemented application review and approval procedures that ensure Title III funds are used for the intended purpose. The NDE’s consolidated application does not require LEAs applying for Title III funds to provide the information in section 3116(b) of the ESEA.

Citation: Section 3116 of the ESEA requires LEAs to submit a plan to the SEA that describes the programs and activities proposed to be developed, implemented, and administered under the subgrant.

Further Action Required: The NDE must revise its LEA consolidated application to require LEAs to submit local plans under section 3114(a) of the ESEA that meet the requirements of section 3116 of the ESEA. The NDE must require LEAs to submit plans that are specifically targeted for the Title III program. The NDE must provide ED with a copy of its revised LEA consolidated application.

Recommendation: ED recommends that the NDE reexamine its process and timeline for reviewing and approving subgrantee local plans to ensure that funds are awarded in a more timely manner. The NDE did not give final approval of Title III local plans for school year

2010-2011 until November and December 2010 and has not given final approval until February in previous school years, well after the start of the school year.

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 NDE has not ensured that immigrant children and youth funds are used for activities that provide enhanced instructional opportunities for immigrant children and youth. The LEAs awarded immigrant funds under section 3114(d) of the ESEA were not required to describe in their local plans how these funds would be used to carry out the activities in section 3115(e) of the ESEA. Additionally, one district visited was using immigrant children and youth funds to serve LEP students that were not immigrant children rather than its immigrant students.

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 describes the programs and activities proposed to be developed, implemented, and administered under a subgrant.

Further Action Required: The NDE must revise its LEA consolidated application to require LEAs seeking funds under section 3114(d)(1) of ESEA to submit plans that are specifically targeted for immigrant children and youth. The NDE must submit the revised consolidated application to ED and a plan that describes how the State will ensure that LEAs awarded funds under the immigrant program conduct activities that provide enhanced instructional opportunities for immigrant children and youth. The plan must be implemented during school year 2011-2012.

2.4 Private School Participation

Refer to section 3.1

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	7
Element 3.2	District Allocations, Reallocations and Carryover section 3115	Finding	9
Element 3.3	Maintenance of Effort sections 1120A and 9021	X	X
Element 3.4	Supplement, Not Supplant – General section 3115(g)	Finding	9
Element 3.4A	Supplement, Not Supplant – Assessment sections 1111(b)(7) and 3113(b)(2)	Finding	10

Monitoring Area 3: Fiduciary

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

Finding: The NDE did not provide evidence that it allocates Title III funds to LEAs based on the population of LEP children in public and private schools. Currently, the State does not require LEAs to collect and report the number of LEP and immigrant students enrolled in 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 LEP students attending schools served by an LEA, including those LEP students attending private schools.

Further action required: The NDE must require LEAs to establish a process for determining LEP student counts in private schools and develop procedures for LEAs to report such counts to the State for Title III allocation purposes. The NDE must provide ED with a detailed description of the process and how and when it will inform its LEAs of this requirement and how it will implement the process and verify the counts submitted by LEAs.

Element 3.2-- 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.

Finding: The NDE has not ensured that Title III subgrantees comply with the 2 percent cap on administrative costs, which includes direct and indirect costs associated with administering their Title III programs. One approved LEA's Title III plan, dated April 23, 2011, has a set-aside of 4.2 percent for administrative costs. In addition, this subgrantee did not include the cost of cell phones, which are used for administrative purposes, in calculating administrative costs. Another LEA did not differentiate between administrative activities and technical assistance activities, which resulted in administrative costs higher than the allowable 2 percent. This LEA also uses Title III funds to pay for a director who spends 15 percent of her time administering the program; therefore, administrative costs were calculated incorrectly because this amount was not included.

Citation: Section 3115(b) of the ESEA requires that Title III subgrantees receiving funds under section 3114(a) for a fiscal year use not more than 2 percent of the funds for the cost of administering the subgrant. This includes all indirect costs and direct costs associated with administering the Title III program.

Further Action Required: The NDE must provide Title III subgrantees with information and guidance on the administrative costs restriction. The NDE must submit to ED evidence, such as letters to Title III subgrantees and agendas for technical assistance meetings, which include a discussion of this issue. The NDE must also provide ED with a description of how it will annually review LEA plans to ensure compliance with the administrative cost restriction.

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 NDE has not ensured that its Title III subgrantees comply with Title III supplement, not supplant requirements. One subgrantee used Title III funds to provide all translation services, including those required under *Lau*, which must be provided even if an LEA does not receive Title III funds.

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

Further Action Required: The NDE must provide guidance about Title III non-supplanting requirements to Title III subgrantees and submit to ED a detailed description of how and when it informed its Title III subgrantees of the supplement, not supplant requirement as it relates to the use of Title III funds for translation services. The NDE must also provide ED with a description of how it will annually ensure Title III subgrantees comply with the non-supplanting requirement.

Element 3.4A-- Supplement, Not Supplant – Assessment: The SEA ensures that the LEA complies with the provision related to supplement, not supplant under section 3115(g) of the ESEA.

Finding: The NDE has not ensured that its LEAs comply with supplement, not supplant requirements concerning the use of Title III funds to assess the English language proficiency of ELP students. One subgrantee used Title III funds to pay for the costs of administering the State's annual English language proficiency assessment, which is required in section 1111(b)(7) of the ESEA. The use of Title III funds for this purpose constitutes a violation of the Title III non-supplanting requirements in section 3115 (g) of ESEA.

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

Further Action Required: The NDE must provide ED with a detailed description of how and when it informed its Title III subgrantees of supplement, not supplant requirements as it relates to the annual English language proficiency assessment. The NDE must also provide ED with a description of how it will monitor Title III subgrantees to ensure compliance with the supplement, not supplant requirements.