



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

JAN 24 2011

Honorable Hanna Skandera
Secretary of Education
New Mexico Public Education Department
Jerry Apodaca Education Building
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

Dear Secretary Skandera:

During the week of December 7-9, 2010, a team from the U. S. Department of Education's (ED) Student Achievement and School Accountability Programs (SASA) office reviewed the New Mexico Public Education Department (NMPED) 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 NMPED 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 New Mexico at the time of the onsite review.

The ED team would like to thank Gladys Herrera-Gurule 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,

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

Enclosure

Cc: Gladys Herrera-Gurule

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New Mexico Department of Education

December 7-9, 2010

Scope of Review: The U.S. Department of Education's (ED) Student Achievement and School Accountability Programs (SASA) office, Title III State Consolidated Grant Group monitored the New Mexico Public Education Department (NMPED) the week of December 7-9, 2010. This was a comprehensive review of the NMPED'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 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) – Gallup-McKinley Consolidated Schools (GMCS) and Los Lunas Schools (LLS) - where they reviewed documentation and interviewed district and school staff.

Previous Audit Findings: None

Previous Monitoring Findings: ED last reviewed the Title III, Part A program in the NMPED during the week of December 4-7, 2006. ED identified compliance findings in the following areas:

Element 2.1 – Reservation of Funds

Finding: The NMPED has procedures in place to comply with the reservation of funds to account for State administration, technical assistance, immigrant activities, and the allocation and reallocation of funds. However, the procedures are not strictly adhered to with respect to the reallocation of funds. Of the four years' distribution verified, none of the final allocation sheets corresponds to the total funded authority issued by ED. The Education Department General Administrative Regulations (EDGAR) requires accurate records be kept for the distribution and expenditure of government funds.

Element 2.2 – Allocations, Reallocations, and Carryover

Finding: The NMPED complies with the procedures on how to allocate the funds for the LEP and immigrant portions of the grant, but does not comply with the reallocation provisions. The amounts in final allocations table do not agree with the total amount drawn down from the ED GAPS system. The drawdowns for FY 2003 (the last fiscal year for which funds have expired) show that all of the funds were drawn down. However, the final allocation table shows that not all of the funds were allocated.

Element 2.4 – Equipment and Real Property

Finding: Neither the NMPED nor the LEAs reviewed could produce or furnish equipment/supply listings.

Element 2.5 – Other Fiduciary Items

Other items reviewed under the Improper Payments Information Act of 2002 that were not specifically included in Elements 2.1, 2.2, 2.3, and 2.4 above:

NMPED Disbursements:

Finding: Of forty transactions reviewed, two disbursements were found to have invoices that did not have invoice numbers. This situation may inadvertently allow for the possibility of duplicate payments being made.

Albuquerque School District Disbursements:

Finding: Of twenty-six transactions reviewed one disbursement was found to be missing documentation to support the purchases. This payment was for items on a purchase card. All purchases made on the purchase card should be supported by approved requests for supplies and supported by receipts.

Element 3.1 - ELP Standards

Finding: The NMPED has not aligned State English Language Proficiency (ELP) standards to the achievement of State academic content and student academic achievement standards in mathematics.

Element 3.2 - ELP Assessments

Finding: District-level officials raised concerns about the validity and reliability of the New Mexico English Language Proficiency Assessment (NMELPA) for grades K-2. At the exit conference, State officials acknowledged these concerns.

Element 3.3 – New English Language Proficiency Assessment

Finding: The NMPED has not yet conducted a comparability analysis between the LAS, IPT and Woodcock Munoz assessment instruments and the new NMELPA ELP assessment. See, Element 3.2

Element 3.4 – Annual Measurable Achievement Objectives (AMAOs)

Finding: The NMPED did not make AMAO determinations for the 2005-2006 school year because it had not established comparability of the previously administered ELP tests (LAS, IPT, and Woodcock Munoz) and the NMELPA, and therefore, could not calculate the “making progress” AMAO comparing ELP data from 2004-2005 to 2005-2006.

Element 7.1– Parental Notification

Finding: The New Mexico Public Education Department did not provide sufficient evidence that subgrantees met the requirement to notify parents of failure to meet Title III AMAOs. During the on-site review, it was confirmed that the NMPED did not provide guidance to LEAs on the notification that must be sent to parents of LEP students in Title III-served LEAs that failed to meet Title III AMAOs.

Monitoring Indicators for Title III, Part A

Standards, Assessments and Accountability

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

Monitoring Area 1: Standards, Assessments and Accountability

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

Finding (1): The NMPED did not make timely 2009-2010 AMAO determinations. Districts were not notified until January 29, 2010 of their final AMAO determinations. Therefore, the subgrantees that failed to make progress on the AMAOs are unable to develop Title III improvement plans until the spring.

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 NMPED must develop and submit to ED a plan, including a timeline, outlining the steps it will take to ensure that subgrantees are notified of their failure to make progress on the AMAOs in a more timely manner and provide evidence that improvement plans are developed and implemented earlier.

Finding (2): The NMPED did not provide evidence that it is holding subgrantees that have not met AMAOs for 2 consecutive years accountable as required by section 3122(b)(2) of the ESEA. The districts submitted school-level improvement plans and only described very general activities at the LEA or subgrantee level.

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 NMPED 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 the NMPED must also provide evidence that the plan has been implemented.

Finding (3): The NMPED did not provide evidence that it is holding subgrantees that have not met AMAOs for 4 consecutive years accountable as required by section 3122(b)(4) of the ESEA. The NMPED was 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 connected 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 NMPED 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 4 consecutive years are held accountable using the specific sanctions required in section 3122(b)(4) and provide evidence that the plan has been implemented.

Recommendation: After 2012, the state's AMAO 2 (attainment of ELP) target does not reflect annual increases, as required by Title III. The NMPED is not required to make any changes right now however the State must change their AMAO targets to be consistent with the AMAO provisions in Title III by the time the State makes 2012 AMAO determinations. At that time, the State must submit an electronic copy of the revised section of New Mexico'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 by ED.

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 NMPED did not provide evidence that LEAs properly identified students as immigrant children and youth as required by section 3114(d)(1) of ESEA. Although the State understands the Title III definition of "immigrant children and youth", the LEAs were using the Student Teacher Accountability Reporting System (STARS) definition of immigrant children

and youth which includes students born in another country and/or not on U.S. territory to non-U.S. citizens rather than the Title III definition which includes students 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 3 full academic years.

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 NMPED must provide ED with evidence that it properly identifies students in the immigrant children and youth counts and that the State provides training to districts on the Title III definition of immigrant and how to report student immigrant counts to the State.

Instructional Support			
Element Number	Description	Status	Page
Element 2.1	State-Level Activities section 3111 (b)(2) of the ESEA	X	N/A
Element 2.2	State Oversight and Review of Local Plans sections 3116(a) and 3115(c) of the ESEA; EDGAR 34 CFR 76.770	Finding	7
Element 2.3	Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth sections 3114 and 3115 of the ESEA	Findings	7
Element 2.4	Private School Participation section 9501 of the ESEA	Finding	9
Element 2.5	Parental Notification and Outreach section 3302 of the ESEA	Findings	9

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 NMPED did not provide evidence the LEAs submit a comprehensive plan to the SEA that describes the programs and activities proposed to be developed, implemented, and administered with Title III funds. These plans also do not describe how the LEA will use the subgrantee funds to meet AMAOs. Currently, each school submits an individual plan and the LEA only submits a description of general activities.

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

Further Action Required: The NMPED must provide evidence to ED that it has revised its process for LEAs to submit comprehensive plans to the SEA that describes the programs and activities proposed to be developed, implemented, and administered with Title III funds and provide evidence that the plan has been implemented.

Element 2.3 - Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth

Finding (1): The NMPED did not provide evidence that the LEAs awarded funds under section 3114(d)(1) of the ESEA use the funds for activities that provide enhanced instructional opportunities for immigrant children and youth. The LEAs visited were unable to specify how

they use funds awarded under this section to enhance instructional opportunities for immigrant children and youth. One district was purchasing technology that was not specifically targeted towards the needs of the immigrant student population.

Citation: Section 3116 of the ESEA requires LEAs to submit a plan to the SEA that, among other things, describes the programs and activities proposed to be developed, implemented, and administered by LEAs with funds awarded under section 3114 of the ESEA, including Section 3114(d).

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.

Further Action Required: The NMPED must submit to ED a plan with a timeline indicating how it will ensure that its LEAs submit comprehensive plans to the SEA that describes the activities that provide enhanced instructional opportunities for immigrant children and youth, and evidence that this plan has been implemented.

Finding (2): The NMPED did not provide evidence that the LEAs that were eligible for immigrant children and youth funds received them in a timely manner. One district visited was awarded funds under section 3114(d)(1) of the ESEA in March 2010. Thus students did not have full access to Title III services under the immigrant children and youth program until most of the school year had passed.

Citation: Section 3114(d) of the ESEA requires SEAs to reserve no more than 15 percent of their Title III grant awards for subgrants to LEAs to serve immigrant children and youth.

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

Further Action Required: The NMPED must provide evidence to ED that it has revised its application process for immigrant subgrants to ensure that the immigrant funds are distributed earlier. The State also needs to ensure that immigrant plans are reviewed for immigrant activities and corresponding budgets. The NMPED needs to submit a copy of its revised application process to ED.

Finding (3): The NMPED's procedures for awarding Title III immigrant subgrants did not comply with Title III requirements. The State awarded funds comparing two consecutive years of the immigrant children and youth counts rather than using the specific process required in section 3114 of the ESEA.

Citation: Section 3114 of the ESEA requires the SEA to award subgrants under section 3114(d)(1) to eligible entities in the State that have experienced a significant increase, as

compared to the average of the 2 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.

Further Action Required: The NMPED must submit to ED a revised LEA immigrant children and youth application process that ensures funds awarded under 3114(d)(1) of the ESEA are awarded to eligible entities based on Title III requirements.

Element 2.4 - Private School Participation: LEAs comply with ESEA requirements regarding participation of LEP students and teachers in private schools in Title III.

Finding: The NMPED did not provide evidence that all Title III subgrantees in the State conduct timely and meaningful consultation with appropriate private school officials during the design and development of Title III plans. The two districts visited had failed to consult with its private schools or the consultation conducted by the districts was not adequate to meet the consultation requirement.

Citation: Section 9501 of the ESEA requires LEAs to comply with ESEA requirements regarding participation of LEP students attending private schools and their teachers in LEA Title III programs.

Further Action Required: The NMPED must develop and implement a plan to ensure that Title III subgrantees conduct timely and meaningful consultation with private school officials, and meet all requirements for services to private school students described in section 9501 of the ESEA. The NMPED must submit this plan and evidence of its implementation to ED.

Element 2.5 – Parental Notification and Outreach: Parental notification in an understandable format as required under section 3302 of the ESEA for identification and placement and for not meeting the State AMAOs.

Finding (1): The NMPED did not provide evidence that all Title III subgrantees separately inform all parents of Title III LEP students of their failure to meet AMAOs not later than 30 days after such failure occurs. Both districts visited were only notifying parents of Title III LEP students in schools that did not meet their AMAOs rather than all the parents of Title III LEP students in the district.

Citation: Section 3302(b) of the ESEA requires eligible entities that have failed to make progress on the AMAOs described in section 3122 of the ESEA 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 NMPED must provide ED with evidence that Title III subgrantees comply with the requirement to notify parents of the failure to meet AMAOs as required by section 3302(b) of the ESEA.

Finding (2): The NMPED did not provide evidence that the notification to parents of LEP students identified for participation in a language instruction educational program supported with Title III funds contains all of the information required in section 3302 of the ESEA. Both districts only send parents of LEP students' initial identification and placement letters and do not send annual notification to parents of LEP students participating in a language instruction educational program supported with Title III funds.

Citation: Section 3302(a)(8) of the ESEA requires each eligible entity using funds provided under Title III to provide a language education instructional program to provide, not later than 30 days after the beginning of the school year, information pertaining to parental rights that includes written guidance detailing the right that parents have to have their child immediately removed from such program upon their request, the options that parents have to decline to enroll their child in such program or to choose another program or method of instruction, if available, and to assist parents in selecting among various programs and methods of instruction, if more than one program or method is offered by the eligible entity.

Further Action Required: The NMPED must provide ED with evidence that Title III subgrantees comply with the requirement to notify parents of LEP student's participating in a language instruction educational program and that the notification includes the information required in section 3302(a)(8) of the ESEA.

Fiduciary			
Element Number	Description	Status	Page
Element 3.1	State Allocations, Reallocations and Carryover section 3111(b) of the ESEA; 20 USC 6821(b)(3); sections 3114(a)-(d) of the ESEA	X	N/A
Element 3.2	District Allocations, Reallocations and Carryover section 3115 of the ESEA	X	N/A
Element 3.3	Maintenance of Effort sections 1120A and 9021 of the ESEA	X	N/A
Element 3.4	Supplement, Not Supplant – General section 3115(g) of the ESEA	Finding	11
Element 3.4A	Supplement, Not Supplant – Assessment sections 1111(b)(7) and 3113(b)(2) of the ESEA	X	N/A

Monitoring Area 3: Fiduciary

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 NMPED was not able to demonstrate that its subgrantees fully complied with Title III's supplement, not supplant requirement. Both districts visited were using Title III funds to support primary reading programs (Linda Moodbell, Estrellitas). It was not clear how these activities were supplemental to activities supported with State, local, or other Federal funds that would otherwise have been available in the absence of a Title III subgrant.

Citation: Section 3115(g) of the ESEA requires LEAs to using Title III funds to supplement State, local, and other Federal funds that, in the absence of a Title III subgrant, would have been available to provide services to ELL and immigrant children and youth.

Further Action Required: The NMPED must provide ED with a detailed description of how and when it informed its Title III subgrantees of supplement, not supplant requirements. This documentation must include letters to Title III subgrantees of their obligation to comply with the non-supplanting requirement and use funds only for costs that are reasonable and necessary to carry out their Title III subgrant. The NMPED must provide ED with evidence that the State has ensured that LEAs have complied with this requirement.