

New York State Education Department

December 13-17, 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 York State Education Department (NYSED) the week of December 13-17, 2010. This was a comprehensive review of the NYSED'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 five local educational agencies (LEAs) – New York City Department of Education (NYCDOE), Amsterdam City School District, Albany City School District, East Ramapo School District, and Brentwood Unified School District - 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 NYSED during the week of October 2-6, 2006. ED identified compliance findings in the following areas:

1. Element 3.2 – English Language Proficiency (ELP) Assessments: State guidance to LEAs regarding the use of multiple measures for limited English proficient (LEP) students to exit from language instruction educational programs was unclear. Some LEAs articulated that students could exit from programs for LEP students by taking the achievement assessment (grades 4, 8, and Regents for high school) in lieu of the New York State English as a Second Language Achievement Test (NYSESLAT). The ED team observed some confusion on the part of LEAs as to whether it was a local decision or State policy to exempt a student from the oral component of the NYSESLAT if she/he had passed the Regents exam or scored at the proficient level on the achievement assessments in grades 4 or 8.

2. Element 3.2 - ELP Assessments: The on-site review team observed different viewpoints in the State regarding whether all LEP students are assessed for identification purposes using the Language Assessment Battery-Revised (LAB-R). Some individuals indicated that an assessment might not be administered if the individual responsible for screening believes that a child's level of English proficiency is too low to provide any meaningful responses on the exam.

3. Element 3.4 – Annual Measurable Achievement Objectives (AMAOs): NY has not included more than 26,500 Title III-served LEP students in its AMAO determinations. The State did provide some information regarding the reasons why these students were not included: invalid test administration; student only had one year of test data; student was absent or had medical excuse exempting him/her from participation; or parent/child refusal. However, New York has not provided a comprehensive explanation of the number of students who were not included in the AMAO determinations due to each of these reasons, or other reasons.

4. Element 3.4 – AMAOs: Title III staff, Title I staff, and assessment directors at some LEAs had very limited or no understanding of the Title III AMAOs, including status of their district, parts of the AMAOs, and consequences for not meeting Title III AMAOs.

5. Element 3.5 – Data Collection: The NYSED did not provide ELP assessment data and AMAO analysis for LEP students in high school in the March 6, 2006 Consolidated State Performance Report.

6. Element 3.5 – Data Collection: The NYSED did not provide ELP assessment data in the March 6, 2006 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.

7. Element 4.1 – State-Level Activities: The coordinator and associates in the Office of Bilingual Education and Foreign Language Studies receive 100% of their salary from Title III funds, yet use their time to support both language instruction educational programs for LEP students and foreign language studies programs which serve non-LEP students.

8. Element 4.4 – Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth: One LEA in the State expressed uncertainty regarding its eligibility for an immigrant subgrant.

9. Element 6.1 – State Monitoring of Subgrantees: The NYSED's cycle for conducting desk monitoring and on-site monitoring of LEAs was unclear. The NYSED did not utilize a standard uniform process to evaluate LEAs' compliance with Title III requirements as part of the NYSED coordinated monitoring process. The State also lacks a standard format for the Title III portion of the monitoring report.

10. Fiscal Indicator 2.4: The NYSED did not ensure that the New York City Public Schools (NYCPS) maintained an inventory of Title III equipment. During the review, the NYCPS was unable to provide ED with a copy of the inventory.

11. Fiscal Indicator 2.4: The NYSED did not maintain, or ensure that its LEAs maintained a comprehensive, accurate, and current record of Title III equipment and supplies.

Out of a sample of six items selected for test at the SEA, the following five exceptions (84 percent of the test universe) were noted:

- One of the six items (17 percent of the test universe) on the equipment record at the central office could not be located.
- Three of the six items (50 percent of the test universe) on the equipment record contained an incorrect user assigned to the item.
- One of the six items (17 percent of the test universe) on the equipment record contained an incorrect location.

Out of a sample of fifteen items selected for test at the Yonkers Public Schools (YPS), four items (27 percent of the test universe) could not be located.

12. Other Fiscal Issues: The NYSED was not able to provide a detailed listing of disbursements containing the names of the vendors being paid.

13. Other Fiscal Issues: The YPS did not ensure that purchase orders were dated and approved prior to the order and delivery of goods and services. Currently, the YPS purchase orders are approved by being stamped by the Procurement Director, but not dated. Without a date included with the signature stamp, there may not be adequate control to ensure that funding is available before costs are incurred.

14. Other Fiscal Issues: The NYCPS did not ensure that disbursements were for Title III purposes. Title III funds were disbursed to Hudson Valley Resort & Spa in the amount of \$560.00 for conference-related fees. The supporting documentation did not provide an adequate description to justify the disbursement as a Title III-related expenditure.

15. Other Fiscal Issues: The NYCPS incurred charges for services at a time when funding was not available. A disbursement was made to WestEd in the amount of \$60,000 on May 2, 2006. The supporting documentation included a comment that stated, "Anna, not enough money to pay the attached." A new purchase order is referenced, but the purchase order was not approved until May 10, 2006.

16. Other Fiscal Issues: The NYCPS and the YPS incurred charges where the supporting documentation did not include such items as vendor's invoice, an accurate description of goods and services provided, disbursement, invoice number, vendor's Social Security number/Tax ID number, purchase order number, and signed and dated purchase order. For the NYCPS, a test sample universe of 81 transactions resulted in nine exceptions (11% of the test sample universe). For YPS, a test sample of 27 transactions resulted in 12 exceptions (44% of the test sample universe).

17. Other Fiscal Issues: Expenditures for the following YPS transactions contained adjustments/alterations to invoice and/or the purchase order/claimant's voucher without the initials of the person who altered the documents or any justification for the modification. Out of a test sample universe of 27 transactions, the 4 exceptions (15% of the test sample universe) were noted.

18. Other Fiscal Issues: Supporting documentation for the following YPS expenditures of Title III funds contained instances where the invoice date or date of the service performed preceded the expenditure's corresponding purchase order approval date. Out of a test sample universe of 27 transactions, the 4 exceptions (15% of the test sample universe) were noted.

Monitoring Indicators for Title III, Part A

State Monitoring of Subgrantees			
Element Number	Description	Status	Page
	State Monitoring of Subgrantees sections 3115, 3116, 3121, 3122, and 3302; EDGAR 34 CFR 80.40	Finding	4

State Monitoring of Subgrantees

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

Finding: The NYSED's procedures for monitoring its LEAs were insufficient to ensure that LEAs were operating in compliance with all Title III requirements. For example, evidence was not presented that demonstrated that, in the course of subgrantee monitoring, the NYSED reviewed Title III-funded activities and programs to determine if they were high-quality and based on scientifically based research and effective for LEP students. Additionally, subgrantee monitoring reports from the NYSED only contained references to the State Commissioner's Regulations Part 154 on State requirements for services to LEP students, but did not specifically refer to Title III requirements.

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

Further action required: The NYSED must demonstrate that it has an effective method to monitor all Title III compliance requirements, including staff and resources designated for this purpose. To accomplish this, the NYSED must provide evidence to ED that all LEAs receive periodic review specifically for compliance with Title III requirements. The NYSED must provide ED with copies of a sample of completed reports to LEAs for each of its levels of review (desk audits, targeted reviews, and comprehensive reviews) as well as corrective actions provided to the NYSED by a sample of its LEAs. Finally, the NYSED must provide a description of how it will incorporate in its monitoring procedures review of Title III-funded activities and programs to determine if they are high-quality and based on scientifically based research and effective for LEP students.

Standards, Assessments and Accountability			
Element Number	Description	Status	Page
Element 1.1	English Language Proficiency (ELP) Standards section 3113	Met requirements	N/A
Element 1.2	English Language Proficiency (ELP) Assessment sections 3113 and 3116	Finding, Recommendation	5-6
Element 1.3	Annual Measurable Achievement Objectives (AMAOs) sections 3122(a)(1)(2)(3) and 1111(b)(2)(B)	Findings	6-7
Element 1.4	Data Collection and Reporting sections 3121 and 3123; EDGAR 34 CFR 76.731	Met requirements	N/A

Monitoring Area 1: Standards, Assessments and Accountability

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 NYSED has not ensured that all of its LEAs annually assess the English language proficiency of all LEP students in grades K-12. Specifically, East Ramapo School District does not identify kindergarten students as LEP, and does not administer the annual ELP assessment to kindergarten students. The LEA reported that kindergarten students are all placed in mainstream classrooms and are not administered the annual ELP assessment until first grade.

Citation: Section 3113(b)(3)(D) of the ESEA requires subgrantees to annually assess the English language proficiency of all LEP children participating in a program funded under this subpart. When students are not assessed for identification as LEP and appropriately placed in language instruction educational programs, the State is unable to ensure that the LEA is annually assessing all LEP students on the State English language proficiency assessment. Section 1111(b)(7) requires that all LEP students have their English language proficiency assessed on an annual basis.

Further action required: The NYSED must inform East Ramapo School District in writing that it must administer the annual ELP assessment to all students in grades K-12 identified as LEP. The NYSED must require the LEA to develop and implement procedures for the 2010-2011 school year and thereafter to ensure that all kindergarten students identified as LEP are administered the annual ELP assessment. The NYSED must provide to ED a copy of the written notification to East Ramapo and evidence that the LEA has implemented these new procedures. Additionally, the NYSED must provide technical assistance to East Ramapo School District regarding the LEA's responsibilities to provide services to students identified as LEP, and provide to ED evidence of this technical assistance, such as meeting agendas or presentation materials.

Finally, the NYSED must also communicate written information regarding the K-12 ELP assessment requirement to all LEAs in the State, and develop and carry out procedures to ensure that all LEAs in the State are abiding by this requirement. The NYSED must provide to ED evidence of NYSED communication to LEAs and evidence that the aforementioned procedures have been implemented.

Recommendation: The NYSED is advised to coordinate across the SEA to improve its knowledge base on and document information on LEP students who are not assessed for English language proficiency on the NYSESLAT. This information, if shared systematically across the agency, could assist the SEA in reducing the number of LEP students who are not tested for English language proficiency.

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

Finding (1): The NYSED reported that it does not issue subgrantee AMAO determinations until January or February of each year. As a result, subgrantees that do not meet AMAOs for two consecutive years are not required to develop and implement an improvement plan until fall of the subsequent school year.

Citation: Section 3122(b)(2) of the ESEA indicates that SEAs must require subgrantees that do not meet Title III AMAOs for two consecutive years to develop an improvement plan. This improvement plan must specifically address the factors that prevented the subgrantee from meeting AMAOs.

Further action required: The NYSED must revise its timeline for subgrantees that have not met AMAOs for two consecutive years to develop Title III improvement plans, so that these plans are put in place in the school year after the second year of failure to meet AMAOs. The NYSED must provide evidence to ED that it has revised its improvement plan timeline accordingly, and communicated this information in writing to subgrantees.

Finding (2): The NYSED did not ensure that subgrantees that have not met AMAOs for four consecutive years modify the curriculum, program, and method of instruction for LEP students, or make a determination as to whether these subgrantees should continue to receive funds, and require them to replace educational personnel relevant to their failure to meet AMAOs. In Amsterdam City School District, school staff did not demonstrate awareness of the areas in which the LEA had not met AMAOs, or how the LEA had modified the curriculum, program, and method of instruction, despite having not met AMAO targets for five consecutive years.

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

Further action required: The NYSED must communicate in writing to all subgrantees regarding this requirement. For those subgrantees that have not met AMAOs for four consecutive years, the NYSED must review subgrantee modifications to curriculum, program, and method of instruction, or make a determination as to whether these subgrantees should continue to receive funds, and require them to replace educational personnel relevant to failure to meet AMAOs. The NYSED must provide evidence to ED that it has communicated this information in writing to all subgrantees, and reviewed subgrantee compliance with the four-year consequences outlined above.

Instructional Support			
Element Number	Description	Status	Page
Element 2.1	State-Level Activities section 3111 (b)(2)	Recommendation	7
Element 2.2	State Oversight and Review of Local Plans sections 3116(a) and 3115(c); EDGAR 34 CFR 76.770	Finding	7-8
Element 2.3	Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth sections 3114 and 3115	Met requirements	N/A
Element 2.4	Private School Participation section 9501	Findings	8-9
Element 2.5	Parental Notification and Outreach section 3302	Findings	9-10

Monitoring Area 2: Instructional Support

Element 2.1 – State-Level Activities: Using funds retained at the State level, the State carries out one or more activities noted in section 3111(b)(2) of the ESEA.

Recommendation: Representatives from several LEAs visited, as well as State-level documents, indicate that there may be a large number of LEP students who are also identified as students with disabilities as compared to the national average. It is recommended that the SEA study these data as well as identification practices and instructional programs in its LEAs to ensure that LEP students who may be students with disabilities are appropriately identified and served.

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)).

Finding: The NYSED did not demonstrate that its procedures for reviewing subgrantee plans are sufficient to ensure that such plans include activities that meet statutory requirements. Specifically, the NYSED's current practice of not fully reviewing the local plans of Title III LEAs that are in 'good standing' is not sufficient to ensure that subgrantees propose appropriate activities that meet Title III requirements with budgets and narratives that reflect allowable expenses.

Citation: Section 3116 of the ESEA requires eligible entities desiring subgrants from the SEA to submit a plan containing information that the SEA requires, including, among other information, a description of programs and activities to be implemented. Additionally, EDGAR 34 CFR 76.770 requires States to have procedures for reviewing and approving applications for subgrants and amendments to those applications and for performing other administrative responsibilities the State has determined are necessary to ensure compliance with applicable statutes and regulations.

Further action required: The NYSED must ensure that its procedures for reviewing subgrantee plans are sufficient to ensure that such plans include activities that meet statutory requirements. To accomplish this, the NYSED must develop a comprehensive plan to enhance its procedures for review of Title III plans, and submit to ED evidence of these changes. The aforementioned plan must include a timeline, implementation steps, staff, and resources.

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(1): The NYSED did not ensure that subgrantees conduct timely and meaningful consultation with appropriate non-public school officials regarding how Title III services are assessed and how the results of the assessment will be used to improve these services. On the contrary, the NYSED provided guidance to LEAs that it "strongly recommends" that the NYSESLAT be used as a means of assessing the effectiveness of Title III services provided to LEP students enrolled in participating non-public schools. Based on the State's guidance, East Ramapo School District requires non-public schools to administer the NYSESLAT. Additionally, the LEA utilizes a 'compliance checklist' which reinforces the understanding among non-public school representatives that they must utilize the NYSESLAT to assess effectiveness of services.

Citation: Section 9501(c)(1)(D) of the ESEA indicates that to ensure timely and meaningful consultation, an LEA shall consult with appropriate non-public school officials during the design and development of the funded program, on issues such as how the services will be assessed and how the results of the assessment will be used to improve those services.

Further action required: The NYSED must revise its written guidance to subgrantees regarding section 9501(c)(1)(D) requirements, and also provide technical assistance to subgrantees regarding these requirements, with a focus on components of the consultation process that must be conducted with non-public school officials. The NYSED must provide to ED evidence of the written guidance and agendas and other materials from technical assistance sessions.

Finding(2): The NYSED did not ensure that subgrantees exercised proper oversight in administering third-party contracts utilized to serve LEP students in non-public schools. Specifically, in East Ramapo School District, LEA and non-public school representatives were unable to demonstrate that there was a contract administration system that included records on the number of mentor-tutors for non-public school students, student contact hours, and number of students identified as LEP.

Citation: EDGAR 34 CFR 80.36(b)(2) requires grantees and subgrantees to maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Further action required: The NYSED must revise its written guidance to subgrantees to reflect information on oversight of third-party contracts, and also provide technical assistance to subgrantees regarding this requirement. The NYSED must also ensure, through its monitoring of subgrantees, that third-party contracts are reviewed to ensure they meet Federal requirements. The NYSED must provide evidence to ED of the aforementioned written guidance, materials from technical assistance sessions, and processes for subrecipient monitoring that incorporate review of third-party contracts.

Recommendation: ED recommends that the NYSED provide technical assistance to LEAs regarding consultation with non-public school officials on providing services to non-public school LEP students, and professional development to their non-public school teachers or other educational personnel that are high-quality and demonstrated to be effective for LEP students. In East Ramapo School District, all of the services provided with Title III funds to non-public school LEP students did not appear to be designed specifically for LEP students.

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

Finding (1): The NYSED did not provide sufficient evidence that it has ensured that all subgrantees comply with parental notification requirements related to the identification and placement of students participating in or identified for participation in Title III language instruction educational programs. Additionally, subgrantee parental notification letters that were reviewed did not contain all of the information required under section 3302(a)(1-8) of the ESEA.

Citation: Section 3302(a) of the ESEA requires subgrantees to provide parents of LEP children participating in or identified for participation in a Title III-funded program with notification regarding such placement. This section of the ESEA describes eight types of information that must be included in such notifications.

Further action required: The NYSED must provide updated written guidance to its subgrantees notifying them of parental notification requirements for identification and placement in language instruction educational programs. The NYSED must also include monitoring for parental notification for identification and placement in its Title III monitoring protocol and/or

procedures. The NYSED must provide to ED a copy of this guidance and its revisions to the Title III monitoring protocol and/or procedures.

Finding (2): The NYSED did not provide sufficient evidence that it has ensured that all subgrantees that failed to meet AMAOs separately informed parents of children identified for or participating in a Title III-funded language instruction educational program of such failure not later than 30 days after it occurred.

Citation: Section 3302(b) of the ESEA requires subgrantees that failed to make progress on AMAOs to separately inform parents of children identified for or participating in a Title III-funded language instruction educational program of such failure not later than 30 days after it occurred.

Further action required: The NYSED must provide written guidance to its subgrantees regarding parental notification requirements for failure to meet AMAOs, and must include monitoring for parental notification for failure to meet AMAOs in its Title III monitoring protocol and/or procedures. The NYSED must provide to ED a copy of this guidance and its revisions to subgrantee monitoring protocol and/or procedures.

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	11
Element 3.2	District Allocations, Reallocations and Carryover section 3115	Finding	11-12
Element 3.3	Maintenance of Effort sections 1120A and 9021	Finding	12-13
Element 3.4	Supplement, Not Supplant – General section 3115(g)	Findings	13-14
Element 3.4A	Supplement, Not Supplant – Assessment sections 1111(b)(7) and 3113(b)(2)	Met requirements	N/A

Monitoring Area 3: Fiduciary

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

Finding: The NYSED has not ensured that Title III subgrantee awards are made in a timely manner so that subgrantees have sufficient time to implement proposed activities during the school year for which the grant was made. Specifically, 2009 Grant Award Notifications for LEAs visited included NYSED approval dates that ranged from November (East Ramapo School District) to March (Amsterdam School District and New York City) for the 2009-2010 school year.

Citation: Section 3114(a) of the ESEA requires SEAs to award subgrants for a fiscal year by allocating awards to each eligible entity in the State with an approved plan. Additionally, EDGAR 34 CFR 76.702 requires a State to use fiscal controls and fund accounting procedures that ensure proper disbursement of and accounting for Federal funds.

Further action required: The NYSED must develop and implement a comprehensive corrective action plan, including a timeline, implementation steps, staff, and resources, to ensure that Title III subgrantee awards are made in a timelier manner. The NYSED must submit to ED this plan, along with evidence of implementation beginning with grant awards for the 2011-2012 school year.

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 NYSED has not ensured that Title III subgrantees abide by the 2% maximum percentage permitted for administrative costs, as evidenced by the following:

- In the NYCDOE, in the non-public schools budget of \$6.9 million, there is an Educational Administrator budgeted for \$105,500 and a Secretary for \$53,000. The administrator of the Office of Non-Public Schools in the NYCDOE indicated that these positions consist of an administrator who helps plan professional development and manages record keeping, among other duties. The Secretary oversees vendor payment, contracts, meeting agendas, and most other general administrative activities. These positions appear to be administrative; however, the LEA has categorized them as direct costs, and also claims a 2% indirect cost rate on the subgrant. If these positions, or a portion of these positions, were included in the budget as administrative expenses, the 2% administrative cap would be exceeded.
- In Brentwood Unified School District, the LEA had hired an administrator to manage the Title III program; however, the LEA did not count the administrator's salary toward the 2% administrative costs, and instead utilized all of the administrative costs for indirect costs.

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 2% of the subgrantee's total Title III expenditures in that fiscal year. This includes all direct and indirect costs associated with administering the Title III program.

Further action required: The NYSED must develop and implement a comprehensive corrective action plan, including a timeline, implementation steps, staff, and resources, to ensure that Title III subgrantees abide by the 2% cap on use of administrative funds. The NYSED must submit to ED this plan, along with evidence of implementation.

Element 3.3 - 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.

Finding: The NYSED has not provided sufficient evidence that it has established formal processes in order to ensure that LEAs comply with the MOE fiscal requirement. Specifically, the State was unable to provide complete information regarding which funding sources were included in MOE determinations, and did not demonstrate evidence that it has a process in place to address any MOE exceptions.

Citation: Section 9521 of the ESEA indicates that an LEA may receive funds under a covered program for any fiscal year only if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. Because Title III is a covered program, as defined in section 9101(13) of the ESEA, SEAs are

required to ensure that all of their LEAs meet MOE requirements or, if an LEA is not able to meet its MOE requirement, the LEA faces loss of a portion of its Federal funds.

Further action required: The NYSED must provide evidence to ED that, for Title III subgrants for the 2011-2012 year, it has: 1) established procedures to ensure that LEAs comply with the MOE fiscal requirement, and 2) established a process to address any LEA MOE exceptions.

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 (1): The NYSED did not provide sufficient evidence that subgrantees are complying with the supplement, not supplant requirement, as evidenced by the following:

In Amsterdam City School District, the LEA did not provide sufficient documentation to indicate that the following activities were supplemental:

- Teachers were paid to attend LEP student meetings.
- The LEA utilized Title III funds for a \$600 telephone, along with telephone installation costs.
- More than \$3,000 was spent on book purchases.

Citation: Section 3115(g) of the ESEA indicates that Title III funds shall be used to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for LEP children and immigrant children and youth and in no case to supplant such Federal, State and local public funds.

Further action required: The NYSED must develop and implement a comprehensive corrective action plan, including a timeline, implementation steps, and staff, to annually ensure correct implementation of the supplement, not supplant requirement. As part of this plan, the NYSED must provide updated written guidance to its subgrantees regarding the supplement, not supplant requirement, and include monitoring of this requirement in its protocol and/or procedures used to monitor subgrantees for implementation of Title III. The NYSED must submit to ED this plan, along with evidence of implementation.

Finding (2): The NYSED did not provide sufficient evidence of oversight of Title III subgrantee plans and budgets to ensure that, when Title III funds are used to support instructional personnel, these individuals provide supplemental services to LEP students. Specifically, the NYSED indicates in its guidance to subgrantees that, "Title III may be used to hire staff for the purpose of reducing class size; the narrative must explicitly include reduced class size as an instructional strategy." The NYSED did not provide sufficient evidence; however, of how it reviews subgrantee plans and amendments to ensure that any personnel funded using Title III funds provide supplemental services.

Citation: Section 3115(g) of the ESEA indicates that Title III funds shall be used to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for LEP children and immigrant children and youth and in no case to supplant such Federal, State and local public funds.

Further action required: The NYSED must develop and implement procedures to ensure that, if Title III funds are used to support instructional personnel, these individuals provide supplemental services to LEP students. The NYSED must submit to ED evidence that these procedures have been developed and implemented.

Finding (3): The NYSED did not ensure that its LEAs comply with Title III non-supplanting provisions related to the use of Title III funds for assessment purposes, as evidenced by the following:

In Amsterdam School District, the LEA provided the following purchase orders related to assessment costs:

- Translation for the New York State social studies test.
- Thai interpretation for the New York State mathematics exam.
- Stipends for individuals to interpret and proctor the State English language proficiency assessment (NYSESLAT).

Citation: Section 3115(g) of the ESEA indicates that Title III funds shall be used to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for LEP children and immigrant children and youth and in no case to supplant such Federal, State and local public funds.

Further action required: The NYSED must develop and implement a comprehensive corrective action plan, including a timeline, implementation steps, and staff, to annually ensure correct implementation of the supplement, not supplant requirement as it pertains to assessment. As part of this plan, the NYSED must provide updated written guidance to its subgrantees regarding the supplement, not supplant requirement as it pertains to both achievement and English language proficiency assessments, and include monitoring of this requirement in its protocol and/or procedures used to monitor subgrantees for implementation of Title III. The NYSED must submit to ED this plan, along with evidence of implementation.