

North Carolina Department of Public Instruction

October 24-27, 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 North Carolina Department of Public Instruction (NCDPI) the week of October 24-27, 2011. This was a comprehensive review of the NCDPI'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 team reviewed evidence of implementation of the State's Title III accountability system, State-level monitoring, technical assistance, and fiscal and administrative oversight with the State educational agency (SEA). During the onsite week, the ED team also visited three local educational agencies (LEAs) - Wake County Public Schools (WCPSS), Durham Public Schools (DPS), and Chapel Hill-Carrboro City Schools (CHCCS) - where they reviewed documentation and interviewed administrative and school staff.

Previous Audit Findings:

1. Finding 08-SA-77: Failure to Comply with Federal Suspension and Debarment Requirements

The NCDPI did not ensure that federal suspension and debarment requirements were met for subrecipients in the English Language Acquisition Grants program. The failure to comply with these requirements heightens the risk that the Department may have contracted with or provided funds to suspended or debarred subrecipients.

2. Finding 08-SA-78: Failure to Monitor for Federal Level of Effort Requirement

The NCDPI did not monitor to ensure that subrecipients of the English Language Acquisition Grants comply with Title III non-supplanting requirement, which is set out in section 3115(g) of the Elementary and Secondary Education Act. The NCDPI awarded \$12.2 million in funds to subgrantees in fiscal year 2008. Although the NCDPI performed fiscal and performance monitoring, it did not monitor subgrantee compliance with the supplement, not supplant requirement for this program.

Previous Monitoring Findings: ED last reviewed the Title III, Part A program in the NCDPI during the week of October 16-20, 2006. ED identified compliance findings in the following areas:

1. Allocations, Reallocations, and Carryover

NCDPI awarded subgrants to eligible LEAs that had experienced substantial increases in immigrant children and youth only if said eligible LEAs had also been approved by the State to receive a subgrant for limited English proficient students (LEPs). During the monitoring visit, it was brought to NCDPI's attention that it had not distributed immigrant children and youth subgrants as required under Section 3114 (d). NCDPI assured the monitoring team that it would change its process for awarding immigrant

children and youth subgrants as required.

2. Annual Measurable Achievement Objectives (AMAOs)

The State made AMAO determinations for school year 2005-2006, but at the time that the review was conducted, had not yet notified Title III subgrantees of their status. In NC, the annual AMAO report must be submitted to the State Board of Education for approval before subgrantees can be notified whether they met or did not meet the annual targets. The State was scheduled to submit the report to the State Board of Education in **December 2006.**

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	3

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 NCDPI’s procedures for monitoring Title III subgrantees are insufficient to ensure that Title III subgrantees are in compliance with all Title III programmatic and fiscal requirements. A previous audit finding for fiscal year 2008 indicated that the NCDPI did not monitor Title III subgrantees for compliance with the supplement, not supplant requirement in section 3115(g) of the ESEA. The NCDPI revised its monitoring instrument to include a review of Title III subgrantees for compliance with the supplement, not supplant requirement; however based on the fiscal findings in sections 3.1, 3.2, 3.4 and 3.4A, the State’s monitoring is still insufficient to ensure compliance with this requirement and other 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 NCDPI must review its monitoring procedures and instruments and make revisions necessary to ensure that it has an effective method to monitor all Title III subgrantees for compliance with all Title III programmatic and fiscal requirements. The NCDPI must provide to ED evidence of this review, including revised procedures, instruments, and monitoring schedules.

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	ELP Assessment sections 3113 and 3116	Met requirements	N/A
Element 1.3	Annual Measurable Achievement Objectives (AMAOs) sections 3122(a)(1)(2)(3) and 1111(b)(2)(B)	Finding	4
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 1.3 - AMAOs: AMAOs have been developed and AMAO determinations have been made for Title III-served LEAs.

Finding: The NCDPI has not applied the specific consequences in section 3122(b)(4) of the ESEA to Title III subgrantees that fail to meet the AMAOs for 4 consecutive years. The NCDPI’s documents do not distinguish between the consequences for failure to meet AMAOs for 2 consecutive years and the consequences for failure to meet AMAOs for 4 consecutive years. Under both circumstances, the State requires Title III subgrantees to develop an improvement plan, which is only applicable to subgrantees that fail to meet AMAOs for two consecutive years. One subgrantee has failed to meet AMAO 3 every year since school year 2003-2004 and has only been required to develop an improvement plan. Another subgrantee that has not met AMAOs for seven years was notified of its AMAO status in a December 10, 2010 letter from the NCDPI that requested a “revised detailed district improvement plan that considers modification of curriculum, program and/or method of instruction...” The subgrantee was unaware of Title III consequences for failure to meet AMAOs for 4 consecutive years.

Citation: Section 3122(b)(4) requires a State educational agency that determines that an eligible entity has failed to meet the AMAOs for 4 consecutive years to require the entity to modify its curriculum, program, and method of instruction, or make a determination whether the entity should continue to receive funds related to the entity’s failure to meet the objectives, and require the entity to replace educational personnel relevant to the failure to meet the objectives.

Further Action Required: The NCDPI must revise its documents and procedures related to

Title III accountability to distinguish between the consequences for failure to meet AMAOs for 2 consecutive years and those for failure to meet AMAOs for 4 consecutive years. The revised documents and procedures must clearly demonstrate that the NCDPI will apply the specific consequences in section 3122(b)(4) of the ESEA to Title III subgrantees that fail to meet

AMAOs for 4 consecutive years. The State must submit to ED the revised documents and procedures.

Instructional Support			
Element Number	Description	Status	Page
Element 2.1	State-Level Activities section 3111 (b)(2)	Met requirements	N/A
Element 2.2	State Oversight and Review of Local Plans sections 3116(a) and 3115(c); EDGAR 34 CFR 76.770	Finding	5-6
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	Finding	6-7
Element 2.5	Parental Notification and Outreach section 3302	Met requirements	N/A

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)).

Finding: The NCDPI did not provide evidence that it has ensured that Title III subgrantees use Title III funds to implement high-quality language instruction educational programs (LIEP) that meet the requirements in section 3115(c). The NCDPI allows Title III subgrantees to use Title III funds for LIEPS that the State categorizes as either direct services or consultative services. The State describes direct services as “appropriate, consistent, face-to-face services.” Consultative services are described as “service delivery varies as deemed necessary based on formalized contacts with teachers of English language learners (ELLs) and other staff, including (but not restricted to) instructional modifications, State testing accommodations, periodic face-to-face instruction or counseling.” Staff at the NCDPI stated that students receiving consultative services are those who need more instruction from content teachers rather than English as a second language (ESL) teachers and that these students can be redesignated to receive direct ESL services, if needed.

Title III subgrantees indicated that they use various criteria for designating students for consultative services. As a result, students receive a wide range of services in terms of intensity and type. One subgrantee relies upon teachers to decide which students will receive consultative services based on whether they think students’ classes are too easy for them. Another subgrantee limits the number of students receiving consultative services for each teacher to 5 percent. In

addition, Title III subgrantees use different English language proficiency (ELP) assessment

scores to make decisions about which students are designated for consultative services. One Title III subgrantee indicated that a student with a reading score over a 4.0 on the ACCESS could receive consultative services while two other Title III subgrantees indicated that students who score a 5.0 in reading and less than a 5.0 in other domains are eligible for consultative services.

Citation: Section 3115(c) requires an eligible entity receiving funds under section 3114(a) to use the funds to increase the English proficiency of LEP students by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs in increasing English proficiency and student academic achievement in core academic subjects.

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 NCDPI must review its current practice of permitting Title III subgrantees to provide consultative services instead of direct services to LEP students, including the use of different criteria to identify LEP students for consultative services, and the different consultative services provided in order to assess whether this practice results in a high-quality language instruction educational program as required by section 3115(c) of the ESEA. The NCDPI must, as part of this review, determine how many Title III subgrantees are currently providing consultative services, the scope of the consultative services, and how many LEP students are receiving consultative services. The NCDPI must also determine whether each Title III subgrantee providing consultative services is offering a high-quality language instruction educational program based on scientifically based research and require those that are not to improve the quality of their program in order to continue to be eligible to receive Title III funds. The NCDPI must provide to ED the results of the review, communications with subgrantees regarding this review, and actions it will take to require program improvements by subgrantees.

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 NCDPI has not ensured that Title III subgrantees fully comply with the requirements in section 9501(c) of the ESEA for timely and meaningful consultation with private schools in the design and development of programs and services for eligible LEP students, teachers, and other educational personnel. One Title III subgrantee indicates in its letter to private school officials that a home language survey and testing on the ACCESS are eligibility requirements for LEP children in private schools to receive Title III services. A subgrantee may not require a private school to administer a home language survey or an English language proficiency assessment as a condition for equitable participation of private

school students. This same subgrantee indicated on its private school intent form that Title III funds may not be used for ELP assessment. The letter from another Title III subgrantee only offers professional development for private school teachers. Decisions about what services will be provided to LEP students, teachers, and other educational personnel must be made during consultation between the subgrantee and private school officials.

Citation: Section 9501(c)(1) of the ESEA requires LEAs to consult with private school officials during the design and development of the programs on issues such as —

- (A) how the children's needs will be identified;
- (B) what services will be offered;
- (C) how, where, and by whom the services will be provided;
- (D) how the services will be assessed and how the results of the assessment will be used to improve those services;
- (E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel and the amount of funds available for those services; and
- (F) how and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers.

Further Action Required: The NCDPI must develop written guidance and provide technical assistance to Title III subgrantees regarding the requirements in section 9501 of the ESEA. This guidance and technical assistance must emphasize the requirement for timely and meaningful consultation with private school officials on the issues specified in section 9501(c) (1) of the ESEA. The State must also review all Title III subgrantees' letters to private school officials to ensure the letters accurately reflect the requirements in section 9501 of the ESEA. The NCDPI must provide evidence to ED that it has issued guidance and provided technical assistance to all Title III subgrantees, as well as a sample of subgrantee letters to private school officials that were reviewed by the State.

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	Met requirements	N/A
Element 3.4	Supplement, Not Supplant – General section 3115(g)	Findings	9-10
Element 3.4A	Supplement, Not Supplant – Assessment sections 1111(b)(7) and 3113(b)(2)	Finding	10-11

Monitoring Area 3: Fiduciary

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

Finding: The NCDPI used Title III funds to pay the salary of an SEA staff member whose duties and responsibilities are not related to Title III. A semi-annual time and effort certification form indicates that between July 1, 2010 and December 31, 2010, the staff member spent 100 percent time on school improvement and 100 percent on Race to the Top between January 1, 2011 and June 30, 2011. Documentation provided by the State indicates that this position is included in the Title III budget for school year 2011-2012, as well.

Citation: OMB Circular A-87 requires that in order for costs to be allowable under Federal awards, they must be necessary and reasonable to operate the Federal program.

Further Action Required: The NCDPI must immediately remove this expenditure from the 2011-2012 Title III budget so that Title III funds are not used to support SEA staff that do not have duties and responsibilities for implementation of the Title III program. The NCDPI must provide ED with evidence that it has taken this action, such as Title III budget documents with staff salaries and other documentation that demonstrates that Title III funds are no longer used to support SEA staff that does not have duties and responsibilities for implementation of the Title III program. The NCDPI must also submit an assurance that it will not use Title III funds to support SEA staff and activities that are not specific to implementation of the Title III program.

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 (1): The NCDPI has not ensured that Title III subgrantees comply with the 2 percent cap on administrative costs. Two Title III subgrantees exceeded the 2 percent cap on administrative funds, which includes direct and indirect costs.

Citation: Section 3115(b) of the ESEA requires that each eligible entity receiving funds under section 3114(a) of the ESEA for a fiscal year use not more than 2 percent of such funds for administrative costs.

Further Action Required: The NCDPI must develop and submit to ED additional procedures to ensure Title III subgrantees comply with the 2 percent administrative cap. These procedures must be integrated into the State’s application and review procedures, monitoring procedures and budget amendment procedures. In addition, the NCDPI must submit to ED approved itemized budgets for all Title III subgrantees for school year 2011-2012 as evidence that Title III subgrantees are in compliance with this requirement.

Finding (2): The NCDPI has not ensured that Title III subgrantees use Title III funds for technology purchases that are reasonable and necessary for Title III program implementation. One Title III subgrantee used Title III funds to purchase 80 computers for ESL teachers, but was unable to sufficiently explain how the computers contribute to the overall objective of providing a LIEP and sufficient information about how these computers are used to provide services to LEP students. Also, see section 3.4.

Citation: 2CFR 225 (Office of Management and Budget (OMB) Circular A-87 requires that in order for costs to be allowable under Federal awards, they must be reasonable, necessary, and allocable.

Further Action Required: The NCDPI must develop and submit to ED decision rules for reviewing and approving Title III subgrantees’ request to use Title III funds for technology purchases. The decision rules must ensure that technology purchases using Title III funds are reasonable, necessary and directly related to approved activities to be carried out as part of the Title III LIEP.

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 NCDPI has not ensured that its LEAs comply with Title III supplement, not supplant requirements as evidenced by the following:

- One Title III subgrantee used Title III funds for translation and interpretation for non-Title III related activities. The subgrantee indicated that Title III funds are used for interpretation during IEP meetings, translation of student handbooks, and any other documents disseminated by schools.

- One Title III subgrantee used Title III funds for translation of school system materials, routine parent teacher conferences, and demographic information on particular schools.
- One Title III subgrantee used Title III funds to pay 100 percent of the salary of a support staff member who provides transitional support for families, including registering students, coordinating the WIDA-ACCESS Placement Test (W-APT) testing, arranging for appointments with counselors, distributing lunch forms, and preparing school calendars and parent handbooks.
- One Title III subgrantee used Title III funds to purchase 80 computers for ESL teachers. The subgrantee indicated that the LEA purchased computers for content teachers, but not for ESL teachers.
- One Title III subgrantee used Title III funds to pay the salaries of two teachers who provide literacy instruction in the ESL academy. These teachers may provide sheltered instruction in content areas classes for which LEP students earn credit.

Citation: Section 3115 (g) of the ESEA requires Title III funds 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 NCDPI must develop and disseminate guidance and provide technical assistance related to the supplement, not supplant requirements to Title III subgrantees. The NCDPI must submit evidence that it has provided this guidance to Title III subgrantees. Additionally, the NCDPI must submit to ED a description of how it will incorporate into its LEA application and review procedures checks and balances to ensure the State does not approve LEA budgets that include expenditures that violate Title III supplement, not supplant provisions.

Element 3.4A - Supplement, Not Supplant – Assessment: The SEA has met requirements related to supplement, not supplant and use of Title III funds to develop and administer State ELP assessments under sections 1111(b)(7) and 3113(b)(2) of the ESEA.

Finding: The NCDPI has not ensured that Title III subgrantees comply with the supplement, not supplant requirements related to the use of Title III funds for assessment purposes as evidenced by the following:

- One Title III subgrantee used Title III funds to pay consultants to administer the W-APT to incoming kindergarten students.
- One Title III subgrantee used Title III funds to pay 100 percent of the salary of a lead instructional coach whose duties included working on schedules and helping teachers complete forms for accommodations for content assessments.

- One Title III subgrantee used Title III funds to pay 90 percent of the salaries of staff at the LEA's intake center for centralized testing.

Citation: Section 3115(g) of the ESEA requires Title III funds to 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 NCDPI must develop and disseminate guidance and provide technical assistance to Title III subgrantees on the supplement, not supplant requirements as they pertain to the use of Title III funds for assessment purposes. The NCDPI must submit evidence that it has provided this guidance to Title III subgrantees. Additionally, the NCDPI must submit to ED a description of how it will incorporate checks and balances into its LEA application and review procedures to ensure the State does not approve LEA budgets that include expenditures that violate Title III supplement, not supplant provisions.