

Florida Department of Education

May 28-31, 2013

Scope of Review: The U.S. Department of Education's (ED) Student Achievement and School Accountability Programs office, Title III State Consolidated Grant Group monitored the Florida Department of Education (FLDOE) the week of May 28-31, 2013. This was a comprehensive review of the FLDOE's administration of the Title III, Part A program, which is authorized by the Elementary and Secondary Education Act of 1965, as amended (ESEA).

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 three local educational agencies (LEAs) – Orange County School District, School District of Hillsborough County, and School District of Palm Beach County, where they reviewed documentation and interviewed district and school staff. As part of the review, the ED team also conducted a desk monitoring review of Duval County School District on May 14, 2013.

Previous Audit Findings: None

Previous Monitoring Findings: ED last reviewed the Title III, Part A program in the FLDOE during the week of March 23-27, 2009. ED identified compliance findings in the areas shown below. ED sent a letter to the FLDOE on July 11, 2012 stating that these findings were resolved. ED identified compliance findings in the following areas:

1. Element 1.1 – State Submissions (Finding (1)): The FLDOE did not submit data for section 1.6.3.6.4 - Monitored Former Limited English Proficient Students Results for Science - of the Consolidated State Performance Report (CSPR) for the 2007–2008 school year.
2. Element 1.1 – State Submissions (Finding (2)): The FLDOE did not submit data for section 1.6.6.2 – Professional Development Activities of Subgrantees Related to the Teaching and Learning of limited English proficient (LEP) students - of the CSPR for the 2007–2008 school year.
3. Element 2.1 – Within State Allocations, Reallocations and Carryover: The FLDOE has not ensured that it meets requirements related to reallocation of Title III subgrantee funds awarded under section 3114(a) (non-immigrant funds). The FLDOE requires Title III subgrantees to expend these Title III funds within one fiscal year. LEA funds that are not spent in this first year are then reallocated to other Title III subgrantees. In most cases, Title III subgrantees are not permitted to carry over unspent funds to the next fiscal year.

4. Element 2.2 – Within District Allocations, Reallocations and Carryover: The FLDOE has not ensured that its Title III subgrantees meet requirements related to the maximum percentage allowed for administrative costs. Miami-Dade Public Schools and Broward Public Schools (BPS) exceeded the maximum two percent allowed for administrative costs. Both LEAs had allocated the entire two percent of their allocations for indirect costs and, in addition, had funded administrative positions such as secretaries, clerks, coordinators, and supervisors.
5. Element 2.4 – Supplement, not Supplant – General: The FLDOE has not ensured that its Title III subgrantees meet requirements related to supplement, not supplant. Staff from GPS indicated that it has allocated Title III funds for a summer program for LEP students. The State Statute 1008.25 reads... “if the student's reading deficiency, as identified in paragraph (a), is not remedied by the end of grade 3, as demonstrated by scoring at Level 2 or higher on the Statewide assessment test in reading for grade 3, the student must be retained.” Students retained under the provisions of paragraph (5)(b) must be provided intensive interventions in reading to ameliorate the student's specific reading deficiency, as identified by a valid and reliable diagnostic assessment. This intensive intervention must include effective instructional strategies, participation in the school district's summer reading camp, and appropriate teaching methodologies necessary to assist those students in becoming successful readers, able to read at or above grade level, and ready for promotion to the next grade. The two programs will occur at the same time, and the LEA indicated that it plans on having the third grade LEP students, including those who are required to participate in summer school by virtue of not having passed the FCAT, participate in the summer school for LEP students instead. Consequently, Title III funds will be used for a summer school program that is mandated by the State.
6. Element 3.2 – English Language Proficiency (ELP) Assessment (Finding (1)): The FLDOE did not provide evidence that the English language proficiency of all LEP children is assessed on an annual basis. According to the CSPR for the 2007–2008 school year, nearly 40,000 LEP students Statewide and nearly 20,000 Title III-served LEP students were recorded as non-participants on the Comprehensive English Language Learning Assessment (CELLA). During the onsite review, Student Achievement through Language Acquisition (SALA) staff made concerted efforts to gather data regarding non-participation; however, further efforts must be made so that the FLDOE is able to document and monitor the number of students that did not participate in the CELLA, and the reasons for their non-participation.
7. Element 3.2 – ELP Assessment (Finding (2)): The FLDOE did not provide sufficient evidence that it has a process in place to ensure that the CELLA is aligned with the State ELP standards.
8. Element 3.2 – ELP Assessment (Finding (3)): The FLDOE permits some students in grades 3-12 to take an out-of-grade level “functional” version of the CELLA. Furthermore, districts interviewed were not able to articulate with certainty whether a student would need to take an on-grade level version of the CELLA in order to exit from English for Speakers of Other Languages (ESOL) services.

9. Element 5.2 – Private School Participation: The FLDOE does not have a mechanism to collect information on the number of private school LEP students served by Title III subgrantees. Consequently, the FLDOE cannot determine whether, to the extent consistent with the number of eligible children in the areas served by the LEA, the LEA has provided services to private school LEP children, their teachers, and other educational personnel on an equitable basis.
10. Element 6.1 – Monitoring: The FLDOE’s procedures for monitoring its Title III subgrantees for compliance with Title III of the ESEA were insufficient to ensure that all areas of noncompliance were identified. Although the FLDOE has a plan to monitor Title III subgrantees using a consolidated approach of the LEAs identified for desk monitoring for the 2008–2009 year, four of eight did not receive any Title III funds, and of the LEAs identified for onsite monitoring for the 2008-2009 year, three of eight did not receive any Title III funds.
11. Element 7.1 – Parental Notification: The FLDOE has not ensured that all Title III subgrantees provide notifications to parents of LEP students that include all of the information required under section 3302(a)(1-8) of Title III. During the onsite review, several parents in BPS noted that they had not received information from their child’s school regarding placement in a language instruction educational program. Additionally, the parental notification form used in GPS did not include all of the information required under section 3302.

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	X	N/A

Standards, Assessments and Accountability			
Element Number	Description	Status	Page
Element 1.1	English Language Proficiency (ELP) Standards section 3113	Recommendation	4
Element 1.2	ELP Assessment sections 3113 and 3116	Findings	4-5
Element 1.3	Annual Measurable Achievement Objectives sections 3122(a)(1)(2)(3) and 1111(b)(2)(B)	Finding	5-6
Element 1.4	Data Collection and Reporting sections 3121 and 3123; EDGAR 34 CFR 76.731	X	N/A

Monitoring Area 1: Standards, Assessments and Accountability

Element 1.1 – English Language Proficiency (ELP) Standards:

Recommendation: The FLDOE has developed new draft English language development (ELD) standards for grades K-1 and plans to develop new ELD standards for grades 2-12 by the 2013–2014 school year. Once the FLDOE develops new ELD standards for grades 2-12, the SEA must provide evidence to ED that these ELD standards are aligned with the achievement of State academic content and student academic achievement standards as required under section 3113(b)(2) of the ESEA.

Element 1.2 – ELP Assessment:

Finding (1): LEA and school personnel interviewed reported that student scores on the State ELP assessment, the Comprehensive English Language Learning Assessment (CELLA), are not valid inferences of students’ proficiency in English due to similarities between test items on the two forms of this assessment. LEA and school personnel reported that the test items on the two forms of the assessment are similar to the extent that students report memorizing test items from previous administrations, thereby potentially compromising the validity of the assessment.

Citation: Section 3122(a)(3)(ii) of the ESEA requires States to ensure that LEAs use assessments that are “valid and reliable assessment[s] of English proficiency consistent with section 1111(b)(7)” of the ESEA.

Further action required: The FLDOE must provide evidence to ED that the SEA has ensured that the CELLA produces assessment results that are valid inferences of students’ proficiency in English. The FLDOE must develop and provide to ED a detailed plan and timeline for ensuring that the assessment is valid and that similarities in test items do not compromise the validity of the test or, to the extent that validity of the assessment may be compromised by such similarities, that those validity issues will be addressed.

Finding (2): The FLDOE has not provided evidence that all of its subgrantees annually assess the English language proficiency of all LEP students in grades K-12. The FLDOE reported in its Consolidated State Performance Report for the 2011-2012 school year that 8,129 LEP students Statewide were not assessed on the CELLA. Additionally, subgrantees interviewed were unable to provide justification for the number of students not assessed on the CELLA.

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. Section 1111(b)(7) requires that all LEP students have their English language proficiency assessed on an annual basis.

Further action required: The FLDOE must develop and provide to ED a detailed plan and timeline for ensuring that all LEAs in the State are abiding by these requirements. The FLDOE is advised to further refine its data verification procedures so that the SEA can verify reasons for student non-assessment on the CELLA and follow up with LEAs to identify any patterns of non-assessment.

Finding (3): The FLDOE has not ensured that subgrantees notify parents regarding their rights to decline Title III services and have their child removed from the Title III program or to choose another program or method of instruction, if available.

Citation: Section 3302(a) of the ESEA states that each eligible entity using Title III funds to provide a language instruction educational program shall inform a parent or parents of LEP children identified for participation in, or participating in, this program, regarding parental rights that includes written guidance detailing the right that parents have to have their child immediately removed from such program upon their request; and the options to decline to enroll their child in such program or to choose another program or method of instruction, if available. This notification must be provided not later than 30 days after the beginning of the school year, or for a child who has not been identified for participation in such program prior to the beginning of the school year, within two weeks of the child being placed in such a program.

Further action required: The FLDOE must provide evidence to ED that Title III subgrantees have notified parents regarding their rights to decline Title III services and have their child removed from the Title III program or to choose another program or method of instruction, if available.

The State must ensure that the subgrantees are meeting these Title III parental notification requirements under section 3302(a)(8) of the ESEA.

Element 1.3 – Annual Measurable Achievement Objectives (AMAOs):

Finding: The FLDOE includes some students who no longer receive Title III services in AMAO1 and AMAO2 calculations. Specifically, those students who exit from English learner (EL) services on or after September 1 via the EL committee, as permitted by State rule, still participate in the CELLA while they are considered monitored ELs and are also included in Title III AMAOs.

Citation: Section 3122(a)(1) of the ESEA requires SEAs receiving Title III funds to develop AMAOs for Title III-served LEP children.

Further action required: The FLDOE must revise its method for making AMAO determinations so that only students receiving EL services are included in these determinations pursuant to section 3122(a)(1). This change must take effect beginning with AMAO determinations made for the 2012–2013 school year. The FLDOE must submit to ED an assurance by the SEA and data to demonstrate that this change has been implemented.

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

Monitoring Area 2: Instructional Support

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

Finding: The FLDOE has not applied an appropriate comparison of years in determining significant increase required under section 3114(d)(1) of the ESEA. The SEA has awarded Title III immigrant children and youth grants to LEAs that have had a significant increase in the percentage or number of immigrant children and youth over the average of the two preceding fiscal years. Although all of the LEAs that received these subgrants had a significant increase in immigrant students, due to incorrect application of the formula, Florida was looking at the wrong years when making immigrant subgrants.

Citation: Section 3114(d)(1) of the ESEA requires SEAs to award immigrant subgrants to eligible entities in the State that have experienced a significant increase, as compared to the average of the two preceding fiscal years, in the percentage or number of immigrant children and youth, who have enrolled during the fiscal year preceding the fiscal year for which the subgrant is made, in public and nonpublic schools in the geographic areas of such entities.

Further action required: The FLDOE must revise its application of the formula for Title III immigrant children and youth grants so that awards are made to LEAs that experienced a significant increase in the percentage or number of immigrant children and youth who enrolled during the fiscal year preceding the year in which grants were made as compared to the average of the two preceding years. This change must take effect for grants made for the 2014–2015 school year. The FLDOE must submit to ED evidence that its formula has been correctly applied, including counts of students that met the Title III immigrant definition for the 2011–2012 through 2013–2014 school years; the SEA’s current definition of ‘significant increase;’ and a list of LEAs receiving immigrant subgrants for the 2014–2015 school year.

Element 2.4 – Private School Participation:

Recommendation: The FLDOE is advised to review its procedures used to ensure that Title III subgrantees conduct timely and meaningful consultation with private school officials as required under section 9501(c)(1) of the ESEA. Of subgrantees visited during this review, all but one subgrantee provided sufficient evidence that meaningful consultation had occurred. In this subgrantee, there were no private schools participating in Title III and subgrantee representatives acknowledged that they had not followed up with private school representatives to fully carry out the consultation required under section 9501(c)(1) of the ESEA.

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	9
Element 3.2	District Allocations, Reallocations and Carryover section 3115	Finding	9-10
Element 3.3	Maintenance of Effort sections 1120A and 9021	X	N/A
Element 3.4	Supplement, Not Supplant section 3115(g)	Finding	10

Monitoring Area 3: Fiduciary

Element 3.1 – State Allocations, Reallocations and Carryover:

Finding: Although the FLDOE indicated that it permits Title III subgrantees to have a period of twenty-seven months to obligate appropriated funds beginning as early as July 1 of the Federal fiscal year, LEA representatives from two LEAs reported that Title III funds were only available for 12 months and that funds had to be returned to the SEA if they were not expended within 12 months.

Citation: The Tydings Amendment, section 421(b) of the General Education Provisions Act, 20 U.S.C. 1225(b), states that funds are available for obligation for the fiscal year for which they were appropriated, plus a carryover period of one additional fiscal year.

Further action required: The FLDOE must ensure that Title III subgrantees have a period of twenty-seven months to obligate appropriated funds beginning as early as July 1 of the Federal fiscal year. The FLDOE must submit to ED evidence that the SEA has ensured this requirement has been met.

Element 3.2 – District Allocations, Reallocations and Carryover:

Finding: The FLDOE has not provided oversight of activities and budgets for Title III immigrant subgrants sufficient to ensure that these subgrantees expend Title III immigrant grant funds on activities that are allowable, allocable, necessary and reasonable. One subgrantee did not provide evidence that procedures are in place to ensure that equipment purchased with Title III immigrant children and youth grant funds are utilized for the students for whom they were purchased. Specifically, this subgrantee purchased 25 computers ‘for classroom use’ with immigrant grant funds, but indicated that schools are allowed flexibility regarding how and where these computers are used, including in a classroom, library, or office.

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

Further action required: The FLDOE must provide to ED a description of how it will annually ensure funds Title III immigrant children and youth subgrant funds are used for activities that are reasonable, necessary, and allocable. The FLDOE must develop and provide to ED a detailed plan and timeline for ensuring that subgrant funds are used for these activities.

Element 3.4 - Supplement, Not Supplant:

Finding: The FLDOE has not ensured that Title III subgrantees comply with Title III supplement, not supplant requirements. Several instances of supplanting were identified during the review, including:

- One subgrantee used Title III funds to purchase textbooks for reading classes required by State law.
- One subgrantee used Title III immigrant grant funds to support oral translation of general district communications, including emergency messages.
- One subgrantee used Title III immigrant grant funds for media carts, but was unable to provide evidence that the carts were a supplemental purchase.
- Subgrantees visited did not provide position descriptions for Title III-funded staff that indicated that duties and responsibilities were supplemental. Although subgrantee staff did provide evidence through interviews that the work performed is supplemental, written job descriptions of bilingual paraprofessionals, resource teachers, and bilingual counselors funded by subgrantees as part of core services for ELs were the same as job descriptions as those for Title III-funded staff.

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 FLDOE must develop and provide to ED a detailed plan and timeline for ensuring that Title III subgrantees comply with the Title III non-supplanting requirements.