

## **Kansas 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 Kansas Department of Education (KSDE) the week of May 28-31, 2013. This was a comprehensive review of the KSDE'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, ED 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) – Kansas City Kansas Public Schools and Topeka Public Schools, where they reviewed documentation and interviewed district and school staff. Emporia Public Schools was desk monitored on June 5, 2013.

**Previous Audit Findings:** None

**Previous Monitoring Findings:** ED last reviewed the Title III, Part A program in the KSDE during the week of October 20-23, 2008. ED identified compliance findings in the following areas. ED considers the previous monitoring findings resolved.

The KSDE did not provide documentation that explains the process it uses to determine that the State English for Speakers of Other Languages standards are aligned with the State academic content and student achievement standards in English language arts and mathematics.

The KSDE did not provide evidence that the English proficiency of all limited English proficient children is assessed on an annual basis.

The KSDE also did not provide sufficient evidence that its State ELP assessment is aligned with the State ELP standards.

The KSDE did not require LEAs that did not meet annual measurable achievement objectives (AMAOs) for two consecutive years to develop district improvement plans to ensure LEAs meet such objectives. On the list of LEAs reviewed by the ED team, five had not met the AMAOs for two consecutive years, and the KSDE staff indicated they had not required them to develop a district improvement plan.

The KSDE's procedure for collecting and calculating LEA data on the number or percentage of immigrant children and youth used to determine eligibility for immigrant funds was not accurate. The KSDE used two different data systems to calculate program eligibility resulting in some LEAs being designated as ineligible even though they met the State's definition of "significant increase."

The KSDE has a consolidated application for Federal and State funds that includes Title III activities and budget summaries in a three-year LEP plan. However, the KSDE did not require LEAs to revise or amend LEP plans when there was an increase of Title III funds. For example, the KSDE did not ensure that LEAs that are awarded funds under Section 3114(d)(1) address in their plan how these funds would be spent on activities that provided enhanced instructional opportunities for immigrant children and youth.

The KSDE's procedures for monitoring its LEAs for compliance with Title III of the ESEA were insufficient to ensure that all areas of noncompliance were identified and corrected in a timely manner. Although the KSDE has a plan to monitor all LEAs at least once every three years, the protocol used to monitor did not include all the essential requirements of the Title III statute.

The KSDE has not ensured that its LEAs are providing equitable services. The KSDE does not require its LEAs to calculate equitable services.

## 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; Education Department General Administrative Regulations (EDGAR) 34 CFR 80.40	Finding	3

### 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, 3116, 3121, 3122 and 3302 of the ESEA.

**Finding (1):** The KSDE’s “Local Consolidated Plan Monitoring Program Compliance Assessment” which the State uses as a monitoring instrument, did not include all Title III requirements such as the Teacher English Fluency required under section 3116(c) of the ESEA; failure to identify the local administrative cap under section 3114(a) of the ESEA; and failure to identify supplement not supplant provisions under section 3115(g) of the ESEA.

Additionally, in the State’s “Program Compliance Assessment for 2011-2012”, which indicates whether or not each compliance area was met, one subgrantee monitored received a recommendation for failure to notify parents within 30 days of the district’s receiving notification of not meeting AMAOs, rather than deem it a finding under section 3302(b) of the ESEA. Districts do not take any corrective actions if the State issues a recommendation.

Based on the findings described in 1.2, 1.3, 3.2 and 3.4, the State’s monitoring of subgrantees is insufficient to ensure compliance with all Title III requirements.

**Citation:** Section 80.40 of EDGAR requires grantees to monitor grant and subgrant activities to ensure compliance with applicable Federal requirements.

Section 9304(a) of the ESEA requires that the SEA ensure that (1) programs authorized under the ESEA are administered in accordance with all applicable statutes, regulations, program plans, and applications, and (2) the State will use fiscal controls and funds accounting procedures that will ensure the proper disbursement of and accounting for Federal funds.

Further Action Required: The KSDE must ensure that it monitors all Title III compliance requirements. The evidence should include a revised monitoring instrument comprising all applicable Title III requirements and a process to ensure compliance with each requirement.

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

### **Monitoring Area 1: Standards, Assessments and Accountability**

#### **Element 1.2 – English Language Proficiency (ELP) Assessment.**

**Finding (1):** The Kansas English Language Proficiency Assessment (KELPA), operational since 2005, does not align with the current ELP standards that were approved by the State Board in March 2011. A monitoring finding issued in the 2008 Title III monitoring report stated that the KSDE did not provide sufficient evidence that its State ELP assessment is aligned with the State ELP standards. This finding was not resolved.

During the May 2013 monitoring visit, KSDE stated that it intends to adopt new ELP standards in the 2013-2014 school year. The new ELP standards will correspond to the college and career ready content standards. If KSDE adopts new ELP standards, it will be required to develop and implement an assessment that is aligned with the new standards.

Citation: Section 3122(a)(3)(ii) of the ESEA requires States to ensure that LEAs use assessments that are valid and reliable assessments of English proficiency consistent with section 1111(b)(7). Although States may develop their own test or use a commercially-developed English language proficiency assessment, in order to ensure adequate assessment validity, they must ensure that any English language assessment that they use is aligned with the English language proficiency (ELP) standards.

Further Action Required: The KSDE must provide ED with evidence that the ELP standards correspond to State’s college and career ready content standards. KSDE must also submit a timeline that reflects its plan to implement an assessment that is aligned with its ELP standards and evidence of their commitment to implement the plan.

**Finding (2):** The KSDE 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. The subgrantee parental notification letters that were reviewed in two LEAs did not contain all of the information required under section 3302(a) (1-8) of the ESEA. The notifications did not include the specific exit requirements, graduation rates and in the case of a child with a disability, how such program meets the objectives of the individualized education program of the child.

**Citation:** Section 3302(a) of the ESEA states that each eligible entity using Title III funds to provide a language instruction educational program shall, within 30 days after the beginning of the school year, provide notice to parents that includes the reasons for the identification and placement in a language instruction educational program, the child's level of English proficiency, how such level was assessed, and the status of the child's academic achievement, as well as the method of instruction used in the program and how the program will meet the educational strengths and needs of the child. Additionally, an entity must show how such a program will specifically help the child learn English and meet age appropriate academic achievement standards for grade promotion and graduation and comply with the specific exit requirements for such program, the expected rate of transition from such program into classrooms that are not tailored for limited English proficient children, and the expected rate of graduation from secondary schools. In the case of a child with a disability, a program must show how such a program meets the objectives of the individualized education program of the child and information pertaining to parental rights that includes written guidance.

**Further Action Required:** The KSDE must provide evidence to ED that the State that has notified its subgrantees of the Title III parental notification requirements for students identified for placement in language instruction educational programs. The State must ensure that the subgrantees are meeting the Title III parental notification requirements under section 3302(a)(1-8) of the ESEA.

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

**Finding (1):** The KSDE's procedures and timeline for making all three AMAO determinations do not ensure timely notification to Title III subgrantees that have not met the State's AMAOs. As a result, Title III subgrantees are not able to implement improvement plans that address the specific factors that existed at the time of the failure.

- The KSDE did not formally notify those subgrantees of their failure to meet the 2011–2012 AMAOs until November 2012. Therefore, the subgrantees that did not meet the Title III AMAOs were not able to develop and implement the two-year Title III Improvement plan approved by the State until February of 2013.
- Additionally, one district that did not meet AMAOs for 2009–2010 and 2010–2011 did not receive full approval of the improvement plan until February

2, 2012, therefore, the plan was not implemented until late in the 2011–2012 school year.

**Citation:** Under section 3122(b)(2) of the ESEA, States must require subgrantees that did not meet Title III AMAOs to develop improvement plans that specifically address the factors that prevented the entity from achieving such objectives.

**Further Action Required:** The KSDE must require the subgrantees that have not met AMAOs for two consecutive years must develop Title III improvement plans, so that these plans are put in place close enough in time to the school years, during which the entity failed to meet AMAOs in order to address the specific factors that existed at the time of the failure, which prevented the entity from achieving its objectives. The KSDE must provide evidence to ED that it has revised its improvement plan timeline and communicated this information in writing to its subgrantees.

**Finding (2):** The State has not ensured that the LEAs separately inform parents of children identified for or participating in a Title III-funded language instruction educational program of the school's failure to meet AMAOs no later than 30 days after such failure occurs. For example, one subgrantee with a substantial number of English learners (ELs) was notified on November 2012 by the KSDE of the subgrantee's failure to meet the AMAOs for the 2011–2012 school year but did not inform parents of such failure until January 21, 2013.

**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 KSDE must develop and implement procedures to ensure parents of children identified for participation or participating in a Title III language instruction educational program receive timely notification of the LEA's failure to meet AMAOs. The State must submit the procedures to ED and evidence that these procedures have been implemented beginning with AMAO violations relating to school year 2012–2013. This evidence may include copies of letters provided to parents.

<b>Instructional Support</b>			
<b>Element Number</b>	<b>Description</b>	<b>Status</b>	<b>Page</b>
Element 2.2	<b>State Oversight and Review of Local Plans</b> sections 3116(a) and 3115(c); EDGAR 34 CFR 76.770	Recommendation	7
Element 2.3	<b>Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth</b> sections 3114 and 3115	Met requirements	X
Element 2.4	<b>Private School Participation</b> section 9501	Met requirements	X

### **Monitoring Area 2: Instructional Support**

#### **Element 2.2 – State Oversight and Review of Local Plans.**

Recommendation: In the Local Consolidated Applications submitted by the districts to the State, it is recommended that the State require subgrantees to provide further information and descriptions regarding the two required activities of professional development and language instruction educational programs versus just a checklist. Section 3116(b)(1) specifically requires that each local plan provide a description of the programs and activities proposed to be developed, implemented, and administered under the subgrant. ED recommends that a more detailed description would assist the State in implementing its monitoring responsibilities.

<b>Fiduciary</b>			
<b>Element Number</b>	<b>Description</b>	<b>Status</b>	<b>Page</b>
Element 3.1	<b>State Allocations, Reallocations and Carryover</b> section 3111(b); 20 USC 6821(b)(3); sections 3114(a)-(d)	Met requirements	X
Element 3.2	<b>District Allocations, Reallocations and Carryover</b> section 3115	Recommendations	8 & 9
Element 3.3	<b>Maintenance of Effort</b> sections 1120A and 9021	Met requirements	X
Element 3.4	<b>Supplement, Not Supplant – General</b> section 3115(g)	Findings	9

### **Monitoring Area 3: Fiduciary**

**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 KSDE has not ensured that its Title III subgrantees meet requirements related to the maximum percentage allowed for administrative costs. One LEA interviewed included administrative positions funded under Title III, which exceeded the two percent administrative amount.

**Citation:** Section 3115(b) of the ESEA requires each eligible entity receiving funds under section 3114(a) for a fiscal year to use not more than two percent of such funds for the cost of administering the subgrant. This restriction applies to all direct and indirect costs associated with administering the Title III subgrant.

**Further action required:** The KSDE must inform its LEAs about the two percent restriction on administrative costs under Title III. The KSDE must also submit evidence that it has developed procedures to annually ensure that LEAs do not exceed the two percent cap on the cost of administering the subgrant.

**Recommendation:** One district interviewed was unaware of the date that the Title III funds were available. ED recommends that the State provides sufficient guidance as to when district allocations are available.

**Recommendation:** ED recommends the KSDE address standards and procedures for using Federal funds on a timely basis. All three LEAs visited were not spending their carryover first. This could result in LEAs that are unable to liquidate carryover funds within the period of availability. Additionally, the federal grant funds have a limited life in which to be used by grant recipients; the Tydings Amendment allows districts to obligate funds within 27 months of the federal obligation to the State.

Recommendation: In two LEAs interviewed, each district was spending more than the public school per-pupil allocation on private school services for private school ELs. It appears that these districts are allocating a disproportionate amount of Title III funds to meet the needs of private school ELs. ED recommends that the State provide guidance to districts as to their legal obligations under Title III, including the achievement objectives and accountability requirements relating to their services to public school children. The State could also clarify the requirements regarding services to private schools: the ESEA provides that, “to the extent consistent with the number of eligible children in areas served,” LEAs are to consult with private schools, and provide services to private school students “on an equitable basis.” The statute further clarifies “equitable” by stating that expenditures for eligible private school children and their teachers are to be equal to those spent on public school children, “taking into account the number and educational needs of the children . . .” (ESEA 9501).

Recommendation: In one LEA, Title III funds are used to purchase Pre-LAS test materials to identify Pre-K students; it is unclear if that LEA provides a Pre-K Title III Program. The SEA should provide oversight to ensure funds are spent on allowable costs.

### **3.4 Supplement, Not Supplant – General:**

**Finding (1):** The KSDE has not ensured that its LEAs comply with the Title III supplement, not supplant provision as evidenced by the following:

- One LEA used Title III funds to provide written translations and interpreters to translate correspondence and interpret for EL parents during the Family Advocacy Nights. The Family Advocacy Night is for all students, therefore the LEA should use State or local funds for these translations and interpreters.
- One LEA transferred an employee from a security guard position to an EL teacher’s aide position in February of the 2012-2013 school year. Each employee performed EL teacher aide duties for only six months of a 12-month contract, yet 65 percent of the contract was paid for with Title III funds. A teacher’s aide contract was not issued; rather, the LEA paid out the security guard contract using Title III funds. These facts raise questions about whether the use of funds was allowable under Title III.
- One LEA used Title III funds to purchase general office supplies.

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 KSDE must develop and provide ED with a detailed plan, including a timeline for ensuring that its Title III subgrantees comply with Title III non-supplanting requirements. The plan must address how the State will annually ensure that its Title III subgrantees comply with Title III non-supplanting requirements.