

# New Hampshire Department of Education

December 10-13, 2013

**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 Hampshire Department of Education (NHDOE) the week of December 10-13, 2013. Additionally, ED conducted monitoring calls with local educational agencies (LEAs) on December 2 and December 17, 2013. This was a comprehensive review of the NHDOE's administration of Title III, Part A, authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

During the review, the ED team conducted several monitoring activities. The ED team reviewed evidence of State-level monitoring and technical assistance, implementation of the State's Title III accountability system, and fiscal and administrative oversight with the State educational agency (SEA). The ED team also interviewed staff in four LEAs – Concord School District, Manchester School District, Nashua School District, and Plymouth School District (School Administrative Unit 48). Parents of Title III students, school administrators and teachers, and private school officials were also interviewed in Manchester School District and Nashua School District.

**Previous Audit Findings:** None

**Previous Monitoring Findings:** ED last reviewed the Title III, Part A program in the NHDOE during the week of September 21-24, 2009. ED identified compliance findings in the areas shown below. ED sent a letter to the NHDOE on September 20, 2010 stating that these findings were resolved.

- The NHDOE has not ensured that it meets requirements related to allocation of Title III subgrantee funds awarded under section 3114(a). The NHDOE allocates Title III funds for one fiscal year. The NHDOE has imposed a time restriction on Title III subgrantees' use of funds awarded under section 3114(a) which does not conform to the period of time allowed by section 421(b) of the General Education Provisions Act (GEPA). The NHDOE requires Title III subgrantees to expend all Title III funds during a one-year grant period. This restriction precludes Title III subgrantees from using funds for the 15-month period of availability plus a 12-month carryover period provided by GEPA.
- The NHDOE has not ensured that its Title III subgrantees use Title III funds to supplement, and not supplant Federal, State and local funds. One LEA (SAU #8) is using Title III funds to pay for secondary ESOL teachers who have the same duties and responsibilities as secondary ESOL teachers paid with State and local funds. The district was unable to adequately explain how the secondary English for Speakers of Other Languages (ESOL) teachers were supplementary to the district's ESOL core program, i.e., the program of language instructional educational services that the district would have to provide to limited English proficient (LEP) students even if it did not have a Title III subgrant.

- The NHDOE has not ensured that its Title III subgrantees comply with the non-supplanting requirements related to the annual English language proficiency (ELP) assessment required by section 1111(b)(7) and the identification and placement assessment used to meet the requirements of Title VI of the Civil Rights Act and LAU. One LEA (SAU #8) is using Title III funds for a tutor whose responsibilities include administering the annual ELP assessment. Another LEA (SAU #37) is using Title III funds to purchase an assessment used for identifying English language learners (ELLs) for placement into its language instruction educational programs.
- The NHDOE has not ensured that its Title III subgrantees comply with the requirement to annually assess the English proficiency of all LEP students in grades K-12. District personnel affirmed that one LEA (SAU #37) is not administering the annual ELP assessment to all LEP students at the high school level, particularly those students whose parents have refused services or who are enrolled in a technical high school.
- The NHDOE does not have a system for collecting information on the number of eligible LEP students enrolled in private schools located in areas served by its Title III subgrantees. As a result, the NHDOE is unable to determine whether Title III subgrantees are complying with the requirement to provide equitable services to private school LEP children and their teachers.
- The NHDOE has not ensured that all Title III subgrantees provide annual notifications to parents of LEP students that include all of the information required under section 3302(a)(1-8) of Title III. One LEA (SAU #8) has not complied with the annual parent notification requirements.

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

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

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

**Finding (1):** The NHDOE did not provide evidence that it ensures all LEAs in the State annually assess all identified LEP students for English language proficiency. Specifically, students with the most significant cognitive disabilities are removed from the data collection used to identify students for assessment. (Recurring finding from 2009 review)

**Citation:** Section 3113(b)(3)(D) of the ESEA requires Title III subgrantees to annually assess the English language proficiency of all LEP children participating in a program funded by the Title III LEP subgrants. Section 1111(b)(7) of the ESEA requires that all LEAs in the State annually assess the English language proficiency of all LEP children.

**Further action required:** The NHDOE must provide evidence to ED that it has developed and disseminated guidance regarding the assessment of LEP students with the most significant cognitive disabilities to all LEAs in the State, and implemented procedures to ensure that all LEAs in the State are complying with the requirement to annually assess the English language proficiency of all LEP children.

**Finding (2):** The NHDOE did not provide evidence that it ensures all subgrantees comply with parental notification requirements related to the identification and placement of students participating in or identified for participation in a Title III language instruction educational programs (LIEP). The SEA monitoring protocol requests that LEAs submit a sample of parent notification letters, and the *2013-2014 Title III Application Instructions* enumerates the required elements. However, the subgrantee parental notification letters reviewed by ED, as well as the template posted on the SEA’s website, did not contain all of the information required under section 3302(a)(1-8) of the ESEA. Specifically, the notifications did not include how the Title III program meets the objectives of the individualized education program, in the case of a child with a disability. (Recurring finding from 2009 review)

Citation: Section 3302(a) of the ESEA states that LEAs using Title III funds to provide a language instruction educational program (LIEP) must provide parents with a notification of the child's identification and placement in an LIEP, with detailed requirements for the contents of that notice. In the case of a child with a disability, the notice must address how the program meets the objectives of the child's individualized education program (IEP).

Further action required: The NHDOE must provide evidence to ED that the State 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, particularly with regard to students with disabilities who have IEPs.

### **Element 1.3 – AMAOs**

**Finding (1):** The NHDOE did not provide evidence that it has accurately applied the accountability requirements in section 3122(b) of the ESEA to Title III subgrantees that have not met AMAOs for two or four consecutive years. The NHDOE requires districts that have not met their AMAOs for two or four years to develop plans that address the accountability requirements in section 3122(b). However, the rubric provided by the SEA (*New Hampshire Department of Education, Evaluating English Learners Improvement Plans for Districts Not Meeting AMAOs for Two Plus Consecutive Years*) does not explicitly reflect the different two and four year accountability requirements under Title III. Furthermore, the SEA is currently making determinations for improvement plan status based on an LEA missing the same AMAO for 2 or more consecutive years. The Title III statute and the Notice of Final Interpretations (NOI) require that missing any AMAO target in a school year, for 2 or more consecutive years, triggers an improvement plan and that missing any AMAO target in a school year, for 4 or more consecutive years, triggers sanctions, as set forth in the law.

Citation: Section 3122(b)(2) of the ESEA requires that, if a subgrantee has not met AMAOs for two consecutive years, the SEA must require the subgrantee to develop an improvement plan that will ensure that the subgrantee meets the AMAOs and that specifically addresses the factors that prevented the subgrantee from meeting the AMAOs. Section 3122(b)(4) of the ESEA requires that, if a subgrantee has not met AMAOs for four consecutive years, the State must require the subgrantee to modify its curriculum, program, and method of instruction, or make a determination of whether the subgrantee should continue to receive funds, and require it to replace educational personnel relevant to the failure to meet AMAOs. Interpretation 10 of the NOI indicates that not meeting any one of the three AMAO targets in a given school year constitutes not meeting AMAOs. 73 Fed. Reg. 61828, 61844 (October 17, 2008).

Further action required: The NHDOE must develop and submit to ED a plan, including a timeline, that demonstrates that it will accurately apply Title III accountability provisions to subgrantees that fail to meet AMAOs. The plan must demonstrate that the NHDOE will apply the different accountability provisions in section 3122(b) of the ESEA to subgrantees that fail to meet AMAOs for two or four consecutive years. The plan must also include a description of how the NHDOE will provide the required technical assistance to subgrantees during the development of the improvement plans and throughout implementation.

**Finding (2)**: The NHDOE did not provide evidence that it ensures its subgrantees understand how the SEA holds eligible entities in consortia accountable for meeting all AMAOs described in section 3122 of the ESEA. In one LEA visited, the subgrantee was participating in a consortium (for the 2013-14 school year) but was not aware of how participating LEAs would be held accountable for their performance on AMAOs. In addition, the SEA's guidance on consortia in the *2013-2014 Title III Application Instructions* contains information that appears contradictory. The document states that the SEA "aggregate[s] the data from all LEAs in a consortium to determine if the consortium as a whole met each of the Title III AMAOs." However, consortia members are instructed in the *2013-2014 Title III Application Instructions* to determine how the consortium will meet all Title III requirements, including "participation in an improvement plan if the consortium as a whole, or individual LEAs within the consortium, fail to meet Title III AMAOs for two consecutive years." Therefore, it is unclear whether consortia have discretion in creating improvement plans for individual LEAs, even if AMAOs are determined for the consortium as a whole.

**Citation**: Interpretation 9 of the NOI indicates that States must hold consortia accountable for meeting AMAOs, but the State has discretion about whether to treat consortia members as a single entity or as separate entities for the purpose of calculating the three AMAOs required under Title III. The State must develop decision rules for making AMAO determinations that maximize accountability for consortia. 73 Fed. Reg. 61828, 61843 (October 17, 2008).

**Further action required**: The NHDOE must provide evidence to ED that it has developed and disseminated clear guidance regarding its decision rules for making AMAO determinations for consortia to all LEAs in the State. The NHDOE must also provide evidence that it has developed and implemented procedures to ensure that consortia members are being held accountable for meeting all AMAOs described in section 3122 of the ESEA .

## Monitoring Area 2: Instructional Support

Indicator Number	Description	Status	Page
Element 2.2	<b>State Oversight and Review of Local Plans</b> sections 3116(a) and 3115(c) of the ESEA; EDGAR 34 CFR 76.770	Recommendation	6
Element 2.3	<b>Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth</b> sections 3114 and 3115 of the ESEA	Findings	6-7
Element 2.4	<b>Private School Participation</b> section 9501 of the ESEA	X	N/A

### Element 2.2 - State Oversight and Review of Local Plans

**Recommendation:** For all the districts visited, there were significant differences in the quality of Language Instruction Educational Programs (LIEPs) designed to teach LEP students. In one LEA, a high percentage of students at the high school level were refusing services. To address this trend, the LEA now offers program models that students can select, with parental input, which assigns students to a period of directed study or gives students the option to attend the English language tutor room for assistance during their free period. However, in the same LEA, some of the teachers providing direct content area instruction to LEP students reported that they did not receive specialized training to serve the needs of this population. In two LEAs visited, parents expressed concerns that the policy of busing LEP students to a centralized school that was not the assigned neighborhood school led to an undue burden on parents and students because the bus stop was at a further location, contributing to a high number of parents refusing services. For one of the LEAs, this issue of a high number of parents refusing needed services was identified as an area of concern by the SEA in its own 2011 monitoring cycle. The SEA cited this LEA on the high number of parents refusing needed services.

In addition to civil rights requirements for providing ELs with LIEPs, Title III requires that LEAs use their subgrants to provide high-quality LIEPs and high-quality professional development (section 3115(c)). The NHDOE is advised to evaluate how its method for reviewing subgrantee plans, its process for monitoring subgrantees, and its planned technical assistance can best support LEAs in implementing high-quality LIEPs.

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

**Finding (1):** The NHDOE has not ensured that it collects accurate data on immigrant children and youth. The NHDOE's current ESOL database and collection of student information from "beginning of year" (BOY) reports only reflect information on students identified as LEP, and not students who meet the statutory definition of immigrant children and youth. Therefore, data

on immigrant children and youth who are not identified as English learners are excluded from the data collection at the LEA and SEA level, and not included in the counts to determine yearly LEA eligibility for immigrant subgrants, potentially excluding students from services. Furthermore, representatives at one LEA were not clear on the specific elements of the definition of immigrant children and youth, as set forth in section 3301(6). It is unclear whether LEAs are identifying the correct population of eligible immigrant children and youth.

Citation: Under section 3114(d)(1) of the ESEA, States award Title III immigrant subgrants to LEAs 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. Section 3301(6) of the ESEA defines “immigrant children and youth” as individuals who (A) are aged 3 through 21; (B) were not born in any State; and (C) have not been attending one or more schools in any one or more States for more than 3 full academic years.

Further action required: The NHDOE must provide ED with evidence that it has revised its data collection procedures. The NHDOE must also demonstrate that it has provided training or guidance to districts on the Title III definition of immigrant children and youth and how to accurately report student immigrant counts, to ensure that LEAs identify and include the appropriate students in immigrant children and youth data submitted to the SEA.

**Finding (2):** The NHDOE procedures for reviewing Title III immigrant children and youth plans do not ensure that such plans meet statutory requirements. Specifically, the *Local Compliance Plan 2013-14* for one district that was only awarded a Title III immigrant children and youth grant lists the required and allowable activities for the LEP formula subgrant under section 3115(c-d), not the immigrant subgrant activities listed under section 3115(e). Because the statutorily authorized uses of the immigrant subgrants are different in scope from those under the LEP subgrants, immigrant students may not be receiving the services best suited to their needs (e.g., family literacy, career counseling, etc.).

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. LEAs may use the immigrant subgrants for any of the activities authorized in section 3115(e).

Further action required: The NHDOE must provide evidence to ED that its procedures for reviewing subgrantee immigrant children and youth plans ensure that such plans meet the correct statutory requirements. The NHDOE must also provide evidence that the plans have been implemented.

### Monitoring Area 3: Fiduciary

Indicator Number	Description	Status	Page
Element 3.1	<b>State Allocations, Reallocations and Carryover</b> section 3111(b) of the ESEA; 20 USC 6821(b)(3); sections 3114(a)-(d) of the ESEA	Recommendation	8
Element 3.2	<b>LEA Allocations, Reallocations and Carryover</b> section 3115 of the ESEA	X	N/A
Element 3.3	<b>Maintenance of Effort</b> sections 1120A and 9021 of the ESEA	X	N/A
Element 3.4	<b>Supplement, Not Supplant</b> section 3115(g) of the ESEA	Findings	8-9

#### Element 3.1 – State Allocations, Reallocations and Carryover

**Recommendation:** The NHDOE is advised to review its process for reallocating funds, as it does not appear to be transparent to Title III subgrantees. Specifically, the funds drawn down for a particular grant period (of 2 years) awarded to an LEA are not necessarily drawn from the same federal grant funding period, and the period of availability for a particular subgrant does not align with a particular federal funding period of availability, per the Tydings amendment. In one LEA visited, the staff interviewed believed that funds for a particular grant period were available beyond 27 months, due to their interpretation of this process. There was also variance across LEAs in terms of their understanding of the deadline to apply for reallocated funds and the date by which such funds would need to be expended.

#### Element 3.4 – Supplement, Not Supplant

**Finding (1):** The NHDOE has not ensured that subgrantees comply with the Title III supplement, not supplant requirement. Specifically, the SEA’s stated “regulation” -- that Title III funds must be matched by at least 50% local funds in order to be considered supplemental for personnel costs -- triggers the presumption of supplanting. In one LEA visited, the subgrantee was switching between general funds and Title III personnel codes for the same positions every few months to comply with what the LEA perceived to be an SEA requirement. Instead of preventing supplanting, as intended, this practice triggers a supplanting problem.

**Citation:** Section 3115(g) of the ESEA prohibits an LEA from using Title III funds to support services or activities that it would provide in the absence of a Title III subgrant. Title III funds must supplement the level of Federal, State, and local public funds in an LEA.

**Further action required:** The NHDOE must develop and provide ED with a plan and timeline for ensuring that its Title III subgrantees comply with the Title III non-supplanting provision. The

plan should include a review of the NHDOE's policy on matching funds for Title III personnel costs to ensure correct implementation of the supplement, not supplant requirement.

**Finding (2):** The NHDOE does not comply with the Title III supplement, not supplant provision, as evidenced by the job description for the Title III State Director, whose salary is paid 100 percent by Title III funds. In addition, State activities funds are being used for activities not allowable under section 3111(b)(2). Among other duties, the Title III Director:

- Evaluates and advises local education agencies through consultation, information and materials dissemination, and technical assistance and training of state and federal requirements for compliance with Civil Rights legislation and recommends policies and procedures for implementation to prevent discrimination complaints and costly litigation;
- Develops and implements policies and procedures to prevent national origin (and other civil rights) discrimination in the state's and local education agencies employment practices: hiring, assignment, promotion, transfer, termination, and payment to ensure compliance. To develop, coordinate and deliver professional development activities;
- Reviews court decisions, literature and memos/bulletins in the broad fields of Civil Rights, ESEA Law, and education to keep abreast of jurisdictional and educational issues for information dissemination within the Department and to local agencies, to enable them to maintain compliance; and
- Prepares communication to disseminate pertinent ESEA information and civil rights directives to local education agencies, ignorance of which could result in costly litigation and/or recision of federal funding.

These duties are not specific to the Title III services that the SEA is required to provide. These are services that would need to be provided to fulfill the SEA and LEAs' civil rights obligations under Title VI of the Civil Rights Act and non-Title III ESEA requirements.

**Citation:** Section 3115(g) of the ESEA prohibits an LEA from using Title III funds to support services or activities that it would provide in the absence of a Title III subgrant. Title III state-level activities are limited to the activities listed in section 3111(b)(2): professional development activities relating to teaching LEP children, administration of the Title III subgrants, and technical assistance to LEAs receiving those subgrants.

**Further action required:** The NHDOE must ensure that Title III funds are not used to support non-Title III related duties and responsibilities. The NHDOE must provide ED with evidence that it will use Title III funds only for allowable Title III costs and not for other purposes or to supplant other funding. Such evidence can include budget documents, revised job descriptions, or other documentation that demonstrates that Title III funds are no longer utilized to support non-Title III related activities.