

New Jersey Department of Education

September 10-13, 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 New Jersey Department of Education (NJDOE) the week of September 10-13, 2013. This was a comprehensive review of NJDOE'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 subgrantees –Newark Public Schools, Irvington School District, and Atlantic City School District - where they reviewed documentation and interviewed district and school staff. The ED team also conducted a desk review of Vineland Public Schools.

Previous Audit Findings: None

Previous Monitoring Findings: This was the second monitoring visit to New Jersey for Title III, Part A. The first visit was conducted in December 2007. ED identified a compliance finding in the following area:

- 1) The New Jersey Department of Education did not provide sufficient evidence that it has developed and implemented a monitoring plan to review and evaluate Local Educational Agency (LEA) compliance with Title III programmatic and fiscal requirements.

Monitoring Indicators for Title III, Part A

State Monitoring of Subgrantees			
Element Number	Description	Status	Page
	sections 3113—3116, 3121-3022 and 3302 of the ESEA; EDGAR 34 CFR 80.40	Finding	2

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: The NJDOE’s protocol for monitoring its Title III subgrantees for compliance with Title III of the ESEA does not adequately ensure that all areas of noncompliance are identified. Although the NJDOE has a plan to monitor Title III subgrantees using a consolidated approach for the 2012-13 school year, the protocol does not include all Title III fiscal components, immigrant children and youth student counts and program activities, or the Title III accountability 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 provide an assurance 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 NJDOE must ensure that it monitors Title III subgrantees for compliance with the Title III requirements. The NJDOE must submit as evidence to ED a monitoring process that addresses all Title III requirements including sample indicators and any applicable monitoring reports.

Monitoring Area 1: Standards, Assessments and Accountability

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

Element 1.2 – English Language Proficiency (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 (1): The NJDOE does not ensure that the English language proficiency of all LEP children is assessed on an annual basis. Based on interviews at four LEAs, districts do not assess the English language proficiency of LEP students whose parents refuse services.

Citation: Section 3113(b)(3)(D) of the ESEA requires States to ensure that Title III subgrantees annually assess the English language proficiency of all LEP children in grades K-12.

FurtherAction Required: The NJDOE must provide ED with evidence that it has informed its Title III subgrantees about the requirement to annually assess the English language proficiency of all LEP students in grades K-12. The State must also provide evidence that is has reviewed all Title III subgrantees’ practices and procedures related to the administration of the annual ELP assessment and required corrective action, when necessary, to ensure compliance with the requirement to annually assess the English language proficiency of all LEP students in grades K-12.

Finding (2): The NJDOE did not provide evidence that the English language proficiency of all LEP children is appropriately assessed by grade level. Based on a review of a sample of Assessing Comprehension and Communication in English State-to-State for English Language Learners (ACCESS for ELLs) District Frequency Reports in one of the State’s largest districts, reviewers found multiple instances of students being given the ELP assessment for a cluster above or below the student’s level.

Citation: Section 3113(b)(2) of the ESEA requires States to establish standards and objectives for raising the level of English proficiency that are derived from the four recognized domains of speaking, listening, reading, and writing, and that are aligned with achievement of the challenging State academic content and student academic achievement standards. In addition, States are required to ensure that all LEP students have their English proficiency assessed annually and that determinations on whether they have attained English proficiency are based on valid and reliable assessments. Sections 3113(b)(3)(D) and 3122(a)(3)(A)(ii) of the ESEA.

Further Action Required: The NJDOE must provide ED with evidence that it has informed its Title III subgrantees about the requirement to annually assess the English language proficiency of all LEP K-12 students by grade level using a valid and reliable assessment. The State must submit evidence that it has reviewed all Title III subgrantees' practices and procedures related to administration of the annual ELP assessment and require corrective action, when necessary, to ensure students are tested at the enrolled grade level.

Finding (3): The NJDOE does not ensure that subgrantees annually inform the parents of a limited English proficient child that continues to participate in a language instruction educational program (LIEP), as required by section 3302(a) of the ESEA. Based on interviews with SEA and LEA staff, as well as policy issued by the State on parental notification requirements (N.J.A.C. 6A:15-1.13), the State only requires that LEAs send letters to parents when a student is identified for participation in an LIEP, but not annually thereafter if they continue participating in the program.

Citation: Section 3302(a)(8) of the ESEA requires that each eligible entity using funds provided under this title to provide a language instruction educational program shall, not later than 30 days after the beginning of the school year, inform a parent or the parents of a limited English proficient child identified for participation in, or participating in, such program information pertaining to parental rights. This includes written guidance detailing the right that parents have to have their child immediately removed from such program upon their request, the options that parents have to decline to enroll their child in such program or to choose another program or method of instruction, if available, and to assist parents in selecting among various programs and methods of instruction, if more than one program or method is offered by the eligible entity.

Further Action Required: The NJDOE must inform its LEAs of the parental notification requirements for identification and placement in language instruction educational programs. The NJDOE must also include monitoring for parental notification for identification and placement in its Title III monitoring protocol and/or procedures. The NJDOE must provide to ED a copy of this guidance or communication and its revisions to the Title III monitoring protocol and/or procedures.

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

Finding (1): The NJDOE's method for making AMAO determinations does not comply with section 3122(a)(1) of the ESEA nor with the Title III Notice of Final Interpretations (NOI). The NJDOE's uses two cohorts for calculating AMAO 2, "Cohort 2A" (students enrolled in the Title III program for less than 1 year through 4 years) and "Cohort 2B" (students in the Title III program for 5 or more years). The guidance that NJDOE issued to districts on data procedures, titled *Reviewing Your District's Limited English Proficient Student AMAO Progress/Attainment Report Data for School Year 2011-12*, states that a district would have to meet the AMAO target in both cohorts to meet AMAO 2; however, NJDOE applies a n-size rule that allows LEAs from having to meet targets in both cohorts if either cohort has ten students or less. For 2012-2013, NJDOE would potentially exclude 574 students from AMAO 2. Furthermore, the NJDOE does not have a system in place to include all students in AMAO 1 if two assessment administrations are not consecutive.

Citation: Section 3122(a)(1) of the ESEA and Interpretation 3 of the NOI require States to include all Title III-served LEP students in AMAOs. 73 Fed. Reg. 61828, 61835 (October 17, 2008). Interpretation 6 of the NOI prohibits a State from applying its minimum group size to separate cohorts. 73 Fed. Reg. 61828, 61840 (October 17, 2008). Interpretation 4 of the NOI indicates that so long as a Title III-served LEP student has participated in two administrations of a State's annual ELP assessment, whether or not those assessments are administered consecutively, progress can be measured and included in AMAO1 determinations. 73 Fed. Reg. 61828, 61837 (October 17, 2008).

Further Action Required: The NJDOE must develop and submit to ED decision rules for making AMAO determinations that comply with the requirements in section 3122(a)(1) of the ESEA and the NOI. These decision rules must be applied to AMAO determinations for school year 2013-2014.

Finding (2): The NJDOE's procedures and timeline for making AMAO determinations did not ensure timely notification to Title III subgrantees that had not met the State's AMAO targets. The NJDOE did not notify subgrantees of their failure to meet the 2011-2012 AMAO targets until March or April 2013. Consequently, subgrantees that failed to make progress on the AMAOs were unable to develop Title III improvement plans until the spring of 2013. The State did not require districts to submit improvement plans until March 2013; therefore, improvement plans will not be implemented close enough in time following the AMAO failure to specifically address the factors that prevented the LEAs from achieving such objectives.

Citation: Section 3122(b)(2) of the ESEA requires 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 NJDOE must develop and submit to ED a plan, including a timeline, outlining the steps it will take to notify Title III subgrantees of their failure to meet the AMAOs to ensure subgrantees are able to make timely parental notifications and develop and implement improvement plans that address the specific factors that prevented achievement of the objectives. The NJDOE must provide evidence that the plan has been implemented.

Element 1.4 - Data Collection: The State has established and implemented clear criteria for the administration, scoring, analysis, and reporting components of its ELP assessments, and has a system for monitoring and improving the ongoing quality of its assessment systems. A data system is in place to meet all Title III data requirements, including capacity to follow Title III-served students for two years after exiting, and State approach to following ELP progress and attainment over time.

Finding: The NJDOE has not provided accurate guidance to its LEAs regarding which students are eligible for services under the immigrant children and youth grant program and has not ensured that it collects accurate immigrant data. In guidance issued by the State, titled *New Jersey Department of Education State Submission Student Data Handbook* (May 2012), the State does not include students from U.S. Territories in immigrant counts. Interviews with LEAs corroborated that LEAs do not include students from U.S. Territories in the count for services under the immigrant children and youth grant program. Section 3301(6) of the ESEA only excludes students born in the United States, the District of Columbia and Puerto Rico from being counted as immigrants.

Citation: 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.

Section 3301(14) of the ESEA defines “State” as each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Further Action Required: The NJDOE must provide ED with evidence that it has informed its LEAs about the immigrant children and youth definition to ensure that LEAs properly identify and include the appropriate students in their immigrant children and youth counts. The NJDOE must also provide evidence that it has provided training to districts on the Title III definition of immigrant children and youth and how to accurately report student immigrant counts.

Monitoring Area 2: Instructional Support

Indicator Number	Description	Status	Page
Element 2.2	State Oversight and Review of Local Plans sections 3116(a) and 3115(c) of the ESEA; 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 of the ESEA	Finding	7
Element 2.4	Private School Participation section 9501 of the ESEA	Recommendation	8

Element 2.3 - Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth: The subgrantee receiving funds under section 3114(d)(1) of the ESEA shall use the funds to pay for activities that provide enhanced instructional opportunities for immigrant children and youth.

Finding: The NJDOE did not demonstrate that its procedures for reviewing subgrantee plans ensure that the immigrant grant is implemented properly. The SEA does provide separate plan templates for the different grants. However, in one LEA visited, the approved plans and budget for the LEP subgrant and the immigrant subgrant were the same even though the grants have different requirements and are meant to address different needs. As a result, the LEA used funds allocated for the immigrant children and youth program to serve the general LEP population.

Citation: Section 3115(e) of the ESEA states that an eligible entity receiving funds under section 3114(d)(1) shall use the funds to pay for activities that provide enhanced instructional opportunities for immigrant children and youth.

Further Action Required: The NJDOE must require LEAs seeking subgrants under section 3114(d)(1) of the ESEA to submit plans that specifically target immigrant children and youth. The NJDOE must develop and submit to ED a plan, including a timeline, outlining the steps the SEA will take to ensure that LEAs receiving immigrant children and youth subgrants conduct activities that provide enhanced instructional opportunities for immigrant children and youth and evidence that this plan has been implemented.

Element 2.4 - Private School Participation: subgrantees comply with ESEA requirements regarding participation of LEP students and teachers in private schools in Title III.

Recommendation: The NJDOE submitted evidence that it provided guidance on meaningful consultation to ensure LEAs conduct timely and meaningful consultation with appropriate private school officials during the design and development of the Title III program; however, New Jersey's Chapter 192 rule, which provides nonpublic school students with auxiliary services such as compensatory education, English as a second language, and home instruction, appears to be linked too closely to Title III. For example, private schools must first request services under Chapter 192 in order to be eligible for Title III funds. ED recommends NJDOE review its *Chapter 192 & 193 Programs for Nonpublic School Students 2013-2014* document to ensure private schools are not required to meet the State's rules and policies before they are eligible to receive Title III services.

Monitoring Area 3: Fiduciary

Indicator Number	Description	Status	Page
Element 3.1	State Allocations, Reallocations and Carryover section 3111(b) of the ESEA; 20 USC 6821(b)(3); sections 3114(a)-(d) of the ESEA	X	N/A
Element 3.2	District Allocations, Reallocations and Carryover section 3115 of the ESEA	X	N/A
Element 3.3	Maintenance of Effort sections 1120A and 9021 of the ESEA	X	N/A
Element 3.4	Supplement, Not Supplant section 3115(g) of the ESEA	Finding	9-10

Element 3.4 - Supplement, Not Supplant: The SEA ensures that the LEA complies with the provision related to supplement, not supplant under section 3115(g) of the ESEA.

Finding: The NJDOE has not required its LEAs to comply with Title III supplement, not supplant requirements related to the use of Title III funds to pay for the State’s annual English language proficiency (ELP) assessment, ACCESS for ELLs. The NJDOE issued guidance for school years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014, which states that LEAs may use Title III funds for the portion of the ACCESS for ELLs test that is above and beyond the cost of State-approved language proficiency tests that would have been used to satisfy State and Title I requirements if the LEAs were not required to administer the ACCESS for ELLs test. The guidance further states the amount of Title III funds that LEAs may use to pay for the tests. In 2009-2010, the guidance stated that LEAs may use up to \$15.00 per student to purchase the tests; in 2013-2014, the guidance states that LEAs may use up to \$12.00 per student to purchase the test. During the onsite review, the NJDOE stated that the per-student costs are based on the difference between the costs of the State’s previous ELP assessment and the costs for the ACCESS for ELLs.

A State or an LEA that is a Title III subgrantee cannot, without violating the non-supplanting requirement in section 3115(g) of the ESEA, use Title III funds to pay for the costs of administering annual ELP assessments because Title I requires States to administer annual ELP assessments to all students identified as limited English proficient (LEP). States and LEAs, in the absence of Title III funds, would still be required to administer an annual ELP assessment under Title I.

Citation: Section 3115(g) of Title III of the ESEA provides as follows:

SUPPLEMENT, NOT SUPPLANT -- Federal funds made available under this subpart shall be used so as 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 limited English proficient children and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.

Section 1111(b)(7) of the ESEA requires States and LEAs to provide for an annual assessment of English proficiency (measuring students' oral language, reading, and writing skills in English) of all students with limited English proficiency in the schools served by the State educational agency.

OMB Circular A-133 provides that a supplanting violation is presumed when an institution uses Federal funds to provide services that it is required to make available under other Federal, State, or local laws.

Further Action Required: The NJDOE must immediately disseminate revised guidance to its LEAs regarding the use of Title III funds to administer the annual ELP assessment. The guidance must clearly state that Title III funds may not be used to pay for the ACCESS for ELLs or any other costs related to administration of the annual ELP assessment. The NJDOE must also require an amended budget for school year 2013-2014 from any LEA that has received approval or proposes to use Title III funds to purchase or administer the ACCESS for ELLs. The amended budgets must exclude purchase or any activity associated with the administration of the annual ELP assessment.