



January 14, 2013

Dr. Mike Kirst, President  
Members of the State Board of Education  
California State Board of Education  
1430 N Street, Suite 5111  
Sacramento CA 95814

**RE: Items 20 & 21: Local Control Funding Formula (LCFF) Regulations &  
Local Control Accountability Plan (LCAP) Template - (Corrected)**

Dear Dr. Kirst and Members of the State Board of Education,

Thank you for the opportunity to comment on the LCFF expenditure regulations and the LCAP Template. We want to acknowledge the progress made in addressing some of our concerns as specified in our November 5, 2013 correspondence. We especially appreciate that the proposed regulations call for LEAs to provide evidence in its LCAP on how funding is to be used to increase or improve services for undocumented pupils as compared to the services provided overall to pupils and the inclusion of a defined standard methodology for LEAs to calculate the supplemental and concentrations grants received each year until full implementation is reached. Both of these elements are critical to ensuring that the regulations comply with the LCFF statute.

However we believe that there are still serious omissions that need to be included in the proposed regulations and the LCAP template. These serious flaws must be addressed.

Below are our comments and recommendations. It is our hope that you will seriously consider our recommendations and revise the proposed regulations appropriately.

**I. LCFF PROPOSED REGULATIONS**

**A. General Comments**

1. The proposed regulations continue to make no distinction between the core services provided to every student through the base grant and the types of services supported by the supplemental and concentration funding.

2. Provisions clearly stating current obligations under state and federal law specific to English Learners (ELs) continue to be absent from the proposed regulations and template. At a minimum, any communication specific to the LCFF forwarded to district superintendents and school personnel should make very clear the current state and federal obligations with respect to both programs and funding of services provided to ELs (see attached letter). Districts must be reminded that they continue to be obligated to comply with specific mandates under 1) the Equal Educational Opportunities Act (EEOA); 2) Title III of ESEA; 3) Economic Impact Aid (EIA) funding restrictions (specific to carry over); (CR1) 4) Proposition 227; and 5) California Education Code provisions related to services to English Learners. Districts must ensure compliance with these obligations during the 2013-14 school year, build them into their LCAPs and adopt them by the local governing board for 2014 and thereafter.
3. Lastly, the proposed regulations fail to adequately address the role of the County Offices or of CDE in overseeing the implementation and compliance with both LCFF and the underlying state and federal obligations with respect to ensuring equal access to education for students classified as English Learners or Limited English Proficient students. This issue was raised at several of the public input sessions, but not included in the summary of testimony provided by staff. The State Board of Education (SBE) has an obligation to ensure an effective oversight and monitoring mechanism that is not dependent upon parent or student driven complaints. Additionally, as currently drafted the Title V regulations, though referred to in the LCFF, do not provide a mechanism for parents who are excluded from the LCAP process, or who feel that the budget and program decisions do not comport with LCFF requirements. SBE must commit to address these issues, if not in the context of these regulations, contemporaneous with their adoption.

We will work with the State Board of Education and staff to address many of these concerns during the process for approval of the permanent regulations. However, some flaws in the proposed regulations must be addressed immediately, in the emergency regulation process.

## **B. Specific Comments**

### **1. Creation of a Significant Loophole:**

Regulations guiding district wide, school wide and county wide uses of supplemental and concentration funds are too broad and do not ensure that these funds will not be expended on uses that should be funded via the base grant. **[Proposed Section 15496 (b)(1)(2)(3) (4)(5)]**

As proposed school districts with more than 55% unduplicated students may use supplemental and concentration grant funds for **any purpose**, as long as they can describe how those services meet the district's goals. A school district that has an enrollment below the 55% threshold may expend its supplemental funds on a district wide basis if they can describe how those services meet the district's goals.

Additionally, a school that has an enrollment of unduplicated pupils in excess of 40% of the school's total enrollment may expend its supplemental and concentration grant funds for **any purpose**, as long as those services are identified in the LCAP as being provided on a school wide basis and how those services are meeting the districts goals and statewide priorities. Schools with an enrollment of unduplicated pupils below the 40% can also use its concentration and supplemental funding in this manner.

County Offices of Education do not even have a "threshold" that they must meet in order to expend their concentration and supplemental funds for any purpose.

As proposed, the **regulations create a significant loophole** and undermine one of the fundamental goals of the LCFF by allowing funding generated by the unduplicated pupils be spent on increasing or improving services for the general student population (i.e non-unduplicated pupils). For example, under the current language, a district could use all of its concentration and supplemental funds to purchase iPads for all district students by justifying that this expenditure will help meet its goals for all students, including unduplicated pupils. Use of concentration and supplemental funds for improving a standard program is an inappropriate use of these funds and does not meet the intent of the LCFF statute that the additional funds generated by unduplicated pupils should be directed, first and foremost to improving the educational experience (via services and programs) of unduplicated pupils and should not be treated as "base funding" for the core/standard program.

**Recommendation:**

Insert language in proposed Section 15496 that:

a. Establishes higher district wide and school wide thresholds that capture LEAs and schools serving significant concentration of unduplicated students. Districts, schools and charter schools with less than 40% enrollment of unduplicated students should not be allowed to implement district wide, school wide or charter school wider programs with concentration or supplemental funding without a showing that such an expenditure is the only means of accomplishing the goals and priorities for unduplicated students. LCFF anticipates specific actions by education agencies for these subgroups which result in improved achievement in the priority areas. (See sections 52072(b)(1) which applies to Districts, 52072.5 which applies to COE and sections 47605.6(b)(5)(A)(ii) and 6405.6(b)(5)(B) which apply to charter schools). It is critical that the allocation of

supplemental and concentration funding for programs applicable to these students provide a means of ensuring that funds are spent for the educational well-being of unduplicated students. The legislative incorporation of the Title I restrictions on such programs indicates a desire for specific direction and limits comparable to those applicable to Title I funding. Accordingly it is appropriate to track the requirements of Title I including the assumption that the enrollment of 40% of unduplicated student is the minimum acceptable threshold for LEA wide programs.<sup>1</sup> This change should be implemented immediately by amending the proposed emergency regulations.

b. Establishes criteria for determining whether a service meets the standards for “most effective use of funds”.

c. Establishes stronger provisions stating that supplemental and concentration funds can be used for district wide and school wide services **only if** the service demonstrably provides a differential benefit to unduplicated pupils in order to address unduplicated pupil goals, and

## 2. Potential for Supplanting of Title III Funding:

The proposed regulations and LCAP template **allows for the supplanting** of Title 1 and Title III federal funds with LCFF funds.

Title I and Title III funds are to “supplement” core services provided to low-income and to English Learner pupils. Title III requirements are very specific and are different from other program requirements. Specifically, the State needs to demonstrate that Title III funds are to supplement the level of Federal, State and local public funds. As drafted the regulations and template may be used by districts and schools to justify using **only Title I & Title III funds for** basic/core services provided to low-income and English Learner pupils. The proposed regulations and template need to clearly demonstrate that Title I and Title III funds will supplement – not supplant – the use of core, concentration and supplemental funding under LCFF. This issue is of particular concern given the current proposal that districts, schools and COEs with less than 40% of unduplicated students may, nonetheless, use all of their concentration and supplemental funding for a general program. Given the unique needs of English Learners, if concentration and

1. In fact, the use of the 40% Title I standard already dilutes the concentration necessary to justify a generalized use of the funds because LCFF aggregates English Learners, students eligible for free or reduced-price meals and foster youth. It is estimated that a majority of school districts meet or exceed the 40% threshold and could implement district wide programs using that standard.

supplemental funding is not used to develop programs addressing those needs and designed to help those students meet the goals and priorities set out in the LCAP, then the only funding available for that will be Title III funding. This diversion of funding specifically allocated to the most needy students is inconsistent with both the LCFF and Title III and Title I program requirements. The failure of the regulations to provide clarity about this, and to require accountability for the use of these separate funding sources is inconsistent with the transparency the LCFF is supposed to promote. It also raises serious questions about California's compliance with Title I and Title III requirements. The State's failure to ensure that districts were not using Title III to supplant local funds – including EIA/LEP funds - was one of the negative findings of the U.S. Department of Education when it reviewed the CDE's administration of Title III. (See attached April 16-18, 2013 USDOE correspondence).

**Recommendation (s):**

a Establish a new subsection in Section 15496 that clearly states concentration and supplemental funds are to be used for improved or increased services provided directly to unduplicated pupils.

b. Insert language in proposed Section 15496 (c) requiring that COEs disapprove LCAPs and budgets that fail to demonstrate Title I and Title III funds are not used for LCFF core, concentration and supplemental funding.

c. Insert language in proposed Section 15496 (c) clarifying that COEs are authorized to review LEAs to determine whether they met the proportionality standard proposed in the regulations regardless of which "threshold" they meet. The proposed language only refers to LEAs falling below the specified thresholds.

**3. COE and CDE Monitoring of Districts and Schools regarding Title III:**

As was stated in the "General Comments" section, the proposed regulations fail to adequately address the role of the County Offices or of CDE in overseeing the implementation and compliance with both LCFF and the underlying state and federal obligations with respect to ensuring equal access to education for students classified as English Learners or Limited English Proficient students. The proposed regulations and template do not provide clear guidance or direction regarding the monitoring of districts or schools by COEs or by the CDE as required by Title III.

Again, this was a major concern of the USDOE when they performed its review of CDE's administration of the Title III program. A finding of their review included "The CDE monitoring reports from recent onsite reviews do not address Title III use of funds and supplement, not supplant issues separately from the Economic Impact Aid-Limited English Proficient (EIA\_LEP) (the State's categorical program to help LEP students)".

While the EIA is no longer a categorical program, as proposed, LEAs have the ability to supplant Title III funds because there is no clear direction that the LCFF concentration and supplemental funds are to “supplement” and not supplant core funding of services and programs provided to English Learners.

**Recommendation:** Insert another section (Section 51948) that states districts and schools must comply with current federal law and regulations specific to English Learners and that COEs are authorized to review LCAPs to ensure federal funds are not supplanting LCFF funding for unduplicated students. Additionally language should be inserted referring to Sections 3113-3116, 3121-3022 and 3302 of the ESEA: and 34 CFR 80.40 regarding the CDE’s responsibility specific to monitoring of subgrantees as specified.

#### **4. Districts and Schools Falling Below Specified Thresholds Given Same Use of Supplemental and Concentration Funds:**

Why create “thresholds” at the district wide and school wide levels, when districts and schools with less than the specified “thresholds” can also spend their concentration and supplemental funds for any purpose?

**Recommendation:** Eliminate language allowing districts and schools that fall below the specified thresholds of 55% and 40% respectively to expend their concentration and supplemental funds for any purpose.

## **II. LOCAL CONTROL ACCOUNTABILITY PLAN (LCAP) TEMPLATE**

### **A. Specific Comments**

#### **1. Proposed Template Reinforces Significant Loophole:**

The proposed template would allow such goals to be no different than those established by the LEA for all students. Thus the proposed language does not treat the use of supplemental and concentration funds for unduplicated pupils any differently than the base dollars made available to address the standard program.

**Recommendation(s):** Section 3: Actions, Services and Expenditures (Item 20, Attachment 3, pages 12-18) must correct this significant flaw in addition to making the specified revisions to the proposed regulations as mentioned above.

- a. (page 13-Instructions) Insert language that clearly states that supplemental or concentration funds used for district wide, schools wide or county wide manner, must not supplant Title I or Title III funds.

- b. (page 14-Instructions: #8) It is unclear as to the guidance provided here. Does the inclusion of “any services” include services/programs funded with Title I or Title III funds? Again be clear as to the need to avoid “supplanting” by use of federal funds.
- c. (page 15, C) This instruction refers to districts and schools that fall below the specified thresholds. Why are we allowing these districts and schools to be able to expend their supplemental and concentration funds in the same manner for LEAs that exceed the specified thresholds? It does not make sense.

**2, Section 15497 (Item 20, Attachment 3, page 7)** In the last paragraph, bottom of page, reference should also be made to Title III of the ESEA statute since Title III is specific regarding services/programs for EL students.

**3.State Priorities-A. Conditions of Learning: Implementation of State Standards (Item 20, Attachment 3, page 8)** State priority 2 [EC Section 52060 (d)(2)] clearly refers to English Language Development Standards in addition to the academic content and performance standards adopted by the SBE. Insert “and the English Language Development Standards” after the words “performance standards”.

**4. State Priorities-A. Conditions of Learning: Course Access (Item 20, Attachment 3, page 8).** Insert “For Secondary “ at the beginning of the sentence so that it is clear that pupils at the secondary level need to have a broad course of study as specified. Insert an additional sentence stating that pupils at the elementary level shall also have access to a broad course of study pursuant to state priority 7.

**5. State Priorities- B. Pupil Outcomes-Pupil Achievement (Item 20, Attachment 3, page 9).** The information specified should also be disaggregated by unduplicated pupils. At the end of the sentence add “ disaggregated by unduplicated pupil”.

**6. Section 2: Goals and Progress Indicators (Item 20, Attachment 3, page 11)** Again, reference should be made to Title III of the ESEA since there are specific requirements under Title III and because some districts have developed EL Master Plans that should be also be considered in developing the LCAP. Insert language that requires providing information of services to ELs and which of these services/programs are over and above what is required in the Single Plan for Student Achievement.

This should be an additional guiding questions as well:

“What are the services/programs provided to English Learners?”.

“Identify improved or increased services beyond those identified in the Single Plan for Student Achievement that have been provided to English Learners”.

Please note that our recommendations regarding the template for Item 20 are also recommendations for the template in Item 21, Attachment 3.

Again thank you for the opportunity to provide input to these very important documents. California has the opportunity to make real educational “equity and civil rights” by promulgating LCFF expenditure regulations that will provide increased and improved services and programs to unduplicated pupils in need of those services; our low-income, Foster youth and English Learner pupils. In implementing this most historical legislation, school districts require very clear guidance regarding its implementation and the “buy in” from the public and parents needs to occur. Please make this happen and request that staff revise the proposed regulations and LCAP template so that the aforementioned concerns are addressed.

Sincerely,

Cynthia Rice  
Director of Litigation,  
Advocacy & Training  
CRLA

Shelly Spiegel Coleman  
Executive Director  
Californians Together

Jan Gustafson Corea  
Executive Director  
California Association for  
Bilingual Education



ATTACHMENT 1

- 1 • The State Board of Education has illustrated changes to the original text in the  
2 following manner: text originally proposed to be added is underlined.  
3

4 **Title 5. EDUCATION**

5 **Division 1. California Department of Education**

6 **Chapter 14.5. Local Control Funding Formula**

7 **Subchapter 1. Local Control Funding Formula Spending Regulations for**  
8 **Supplemental and Concentration Grants and Local Control and Accountability**  
9 **Plan Template**

10 **Article 1. Local Control and Accountability Plan and Spending Requirements for**  
11 **Supplemental and Concentration Grants**

12  
13 **§ 15494. Scope.**

14 (a) This chapter applies to all local educational agencies (LEAs) as defined in  
15 section 15495(a).

16 (b) Funding restrictions specified in Education Code section 42238.07 apply to local  
17 control funding formula (LCFF) funds apportioned on the basis of unduplicated pupils  
18 pursuant to Education Code sections 2574, 2575, 42238.02, and 42238.03.

19 (c) The local control and accountability plan (LCAP) shall demonstrate how services  
20 are provided according to this chapter to meet the needs of unduplicated pupils and  
21 improve the performance of all pupils in the state priority areas.

22 NOTE: Authority cited: Sections 42238.07 and 52064, Education Code. Reference:  
23 Sections 2574, 2575, 42238.01, 42238.02, 42238.03, 42238.07, 47605, 47605.5,  
24 47606.5, 48926, 52052, 52060-52077, and 64001, Education Code; 20 U.S.C. Section  
25 6312.

26  
27 **§ 15495. Definitions.**

28 In addition to those found in Education Code sections 2574, 42238.01, and  
29 42238.02, the following definitions are provided:

1 (a) “Local control and accountability plan (LCAP)” means the plan created by an LEA  
2 pursuant to Education Code sections 47606.5, 52060, or 52066, and completed in  
3 conformance with the LCAP and annual update template found in section 15497.

4 (b) “Local educational agency (LEA)” means a school district, county office of  
5 education, or charter school.

6 (c) “Prior year” means one fiscal year immediately preceding the fiscal year for which  
7 an LCAP is approved.

8 (d) “Services” as used in Education Code section 42238.07 may include, but are not  
9 limited to, services associated with the delivery of instruction, administration, facilities,  
10 pupil support services, technology, and other general infrastructure necessary to  
11 operate and deliver educational instruction and related services.

12 (e) “State priority areas” means the priorities identified in Education Code sections  
13 52060 and 52066. For charter schools, “state priority areas” means the priorities  
14 identified in Education Code section 52060 that apply for the grade levels served or the  
15 nature of the program operated by the charter school.

16 (f) “to improve services” means to grow services in quality.

17 (g) “to increase services” means to grow services in quantity.

18 (h) “unduplicated pupil” means any of those pupils to whom one or more of the  
19 definitions included in Education Code section 42238.01 apply, including low income,  
20 foster youth, and English learner.

21 NOTE: Authority cited: Sections 42238.07 and 52064, Education Code. Reference:  
22 Sections 2574, 2575, 42238.01, 42238.02, 42238.03, 42238.07, 47605, 47605.5,  
23 47606.5, 48926, 52052, 52060-52077, and 64001, Education Code; 20 U.S.C. Section  
24 6312.

25  
26 **§ 15496. Requirements for LEAs to Demonstrate Increased or Improved Services**  
27 **for Unduplicated Pupils in Proportion to the Increase in Funds Apportioned for**  
28 **Supplemental and Concentration Grants.**

29 (a) An LEA shall provide evidence in its LCAP to demonstrate how funding  
30 apportioned on the basis of the number and concentration of unduplicated pupils,  
31 pursuant to Education Code sections 2574, 2575, 42238.02, and 42238.03 is used to

1 support such pupils. This funding shall be used to increase or improve services for  
2 unduplicated pupils as compared to the services provided to all pupils in proportion to  
3 the increase in funds apportioned on the basis of the number and concentration of  
4 unduplicated pupils as required by Education Code section 42238.07(a)(1). An LEA  
5 shall include in its LCAP an explanation of how expenditures of such funding meet the  
6 LEA's goals for its unduplicated pupils in the state priority areas. An LEA shall  
7 determine the percentage by which services for unduplicated pupils must be increased  
8 or improved above services provided to all pupils in the fiscal year as follows:

9 (1) Estimate the amount of the LCFF target attributed to the supplemental and  
10 concentration grants for the LEA calculated pursuant to Education Code sections  
11 42238.02 and 2574 in the fiscal year for which the LCAP is adopted.

12 (2) Estimate the amount of LCFF funds expended by the LEA on services for  
13 unduplicated pupils in the prior year that is in addition to what was expended on  
14 services provided for all pupils. The estimated amount of funds expended in 2013-14  
15 shall be no less than the amount of Economic Impact Aid funds the LEA expended in  
16 the 2012-13 fiscal year.

17 (3) Subtract subdivision (a)(2) from subdivision (a)(1).

18 (4) Multiply the amount in subdivision (a)(3), by the most recent percentage  
19 calculated by the Department of Finance that represents how much of the statewide  
20 funding gap between current funding and full implementation of LCFF is eliminated in  
21 the fiscal year for which the LCAP is adopted.

22 (5) Add subdivision (a)(4) to subdivision (a)(2).

23 (6) Subtract subdivision (a)(5) from the LEA's total amount of LCFF funding pursuant  
24 to Education Code sections 42238.02 and 2574, as implemented by Education Code  
25 sections 42238.03 and 2575 respectively, excluding add-ons for the Targeted  
26 Instructional Improvement Grant program and the Home to School Transportation  
27 program, in the fiscal year for which the LCAP is adopted.

28 (7) Divide the amount in subdivision (a)(5) by the amount in subdivision (a)(6).

29 (8) If the calculation in subdivision (a)(3) yields a number less than or equal to zero  
30 or when LCFF is fully implemented statewide, then an LEA shall determine its  
31 percentage for purposes of this section by dividing the amount of the LCFF target

1 attributed to the supplemental and concentration grant for the LEA calculated pursuant  
2 to Education Code sections 42238.02 and 2574 in the fiscal year for which the LCAP is  
3 adopted by the remainder of the LEA's LCFF funding, excluding add-ons for the  
4 Targeted Instructional Improvement Grant program and the Home to School  
5 Transportation program.

6 (b) This subdivision identifies the conditions under which an LEA may use funds  
7 apportioned on the basis of the number and concentration of unduplicated pupils for  
8 districtwide, schoolwide, countywide, or charterwide purposes: Pursuant to Education  
9 Code section 42238.07(a)(2), an LEA may demonstrate it has increased or improved  
10 services for unduplicated pupils under subdivision (a) of this section by using funds to  
11 upgrade the entire educational program of a school site, a school district, a charter  
12 school, or a county office of education as follows:

13 (1) A school district that has an enrollment of unduplicated pupils in excess of 55  
14 percent of the district's total enrollment in the fiscal year for which an LCAP is adopted  
15 or in the prior year may expend supplemental and concentration grant funds on a  
16 districtwide basis. A school district expending funds on a districtwide basis shall do all of  
17 the following:

18 (A) Identify in the LCAP those services that are being provided on a districtwide  
19 basis.

20 (B) Describe in the LCAP how such services are **principally** directed towards  
21 **servicing unduplicated pupils and effective in** meeting the district's goals for its  
22 unduplicated pupils in the state priority areas.

23 (2) A school district that has an enrollment of unduplicated pupils that is **at least 40 per**  
24 **cent but** less than 55 percent of the district's total enrollment in the fiscal year for which  
25 an LCAP is adopted or in the prior year may expend supplemental grant funds on a  
26 districtwide basis. A school district expending funds on a districtwide basis shall do all of  
27 the following:

28 (A) Identify in the LCAP those services that are being provided on a districtwide  
29 basis.

30 (B) Describe in the LCAP how such services are **principally** directed towards  
31 meeting the district's goals for its unduplicated pupils in the state priority areas.

1 (C) Describe how these services are the most effective use of the funds to meet the  
2 district's goals for its unduplicated pupils in the state priority areas.

3 (3) A school district that has an enrollment of unduplicated pupils at a school that is  
4 in excess of 40 **55** percent of the school's total enrollment in the fiscal year for which an  
5 LCAP is adopted or in the prior year may expend supplemental and concentration grant  
6 funds on a schoolwide basis. A school district expending funds on a schoolwide basis  
7 shall do all of the following:

8 (A) Identify in the LCAP those services that are being provided on a schoolwide  
9 basis.

10 (B) Describe in the LCAP how such services are **principally** directed towards  
11 **servng unduplicated pupils and effective** in meeting the district's goals for its  
12 unduplicated pupils in the state priority areas.

13 (4) A school district that has an enrollment of unduplicated pupils **that is at least 40**  
14 **percent** but less than **55 40** percent of the school site's total enrollment in the fiscal  
15 year for which an LCAP is adopted or in the prior year may expend supplemental and  
16 concentration grant funds on a schoolwide basis. A school district expending funds on a  
17 schoolwide basis shall do all of the following:

18 (A) Identify in the LCAP those services that are being provided on a schoolwide  
19 basis.

20 (B) Describe in the LCAP how such services are **principally** directed towards  
21 meeting the district's goals for its unduplicated pupils in the state priority areas.

22 (C) Describe how these services are the most effective use of the funds to meet the  
23 district's goals for its unduplicated pupils in the state priority areas.

24 (5) A county office of education **school site or program or charter school that**  
25 **has an enrollment of unduplicated pupils at a that is in excess of 55 percent of**  
26 **total** enrollment in the fiscal year for which an LCAP is adopted **may** expending  
27 supplemental and concentration grant funds on a countywide basis or a charter school  
28 expending supplemental and concentration grant funds on a charterwide basis. **A**  
29 **County Office of Education or Charter school expending supplemental or**  
30 **concentration grant funds on a countywide or charterwide basis** shall do all of the  
31 following:

1 (A) Identify in the LCAP those services that are being provided on a countywide or  
2 charterwide basis.

3 (B) Describe in the LCAP how such services are *principally* directed towards  
4 *servicing unduplicated pupils and effective* in meeting the county office of education's  
5 or charter school's goals for its unduplicated pupils in the state priority areas.

6 *(C) Describe how these services are the most effective use of the funds to*  
7 *meet the County Office of Educations' or Charter School's goals for its*  
8 *unduplicated pupils in the state priority areas.*

9 (c) County superintendent of schools oversight of demonstration of proportionality: In  
10 making the determinations required under Education Code section 52070(d)(3), the  
11 county superintendent of schools shall review any descriptions provided under  
12 subdivisions ~~(b)(1)(A)-(B); (b)(2)(A)-(C), (b)(3)(A)-(B), b((4)(A)-(C) and b(5)(A)-(C)~~  
13 ~~(1)(B), subdivisions (b)(2)(B) and (b)(2)(C), or subdivisions (b)(3)(B) and (b)(3)(C) or~~  
14 ~~subdivisions (b)(4)(B) and (b)(4)(C)~~ when determining whether the LEA has fully  
15 demonstrated that it will increase or improve services for unduplicated pupils under  
16 subdivision (a). If a county superintendent of schools does not approve an LCAP  
17 because the LEA has failed to meet its proportionality requirement as specified in this  
18 section, it shall provide technical assistance to the LEA in meeting that requirement  
19 pursuant to Education Code section 52071.

20 NOTE: Authority cited: Sections 42238.07 and 52064, Education Code. Reference:  
21 Sections 2574, 2575, 42238.01, 42238.02, 42238.03, 42238.07, 47605, 47605.5,  
22 47606.5, 48926, 52052, 52060-52077, and 64001, Education Code; 20 U.S.C. Section  
23 6312.

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1-2-14 [California Department of Education]



ATTACHMENT 2

California Department of Education  
Executive Office  
SBE-002 (REV. 01/2011)

## MEMORANDUM

**DATE:** November 6, 2013

**TO:** MEMBERS, State Board of Education

**FROM:** TOM TORLAKSON, State Superintendent of Public Instruction

**SUBJECT:** ESEA, Title III, Part A: Response and Update to United States Department of Education's Monitoring Report

### Summary of Key Issues

The United States Department of Education (ED) conducted a comprehensive review of the California Department of Education (CDE) administration of Title III, Part A-English Language Acquisition, Language Enhancement, and Academic Achievement Act, authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended in April 2013.

On June 24, 2013, the CDE and State Board of Education (SBE) staff received a copy of the final California Title III Monitoring Report regarding the ED visit to California in April 2013.

Action was taken at the September 2013 SBE meeting authorizing the CDE to coordinate with the SBE liaison to review and provide input for the final response to the monitoring report. In addition, the CDE requested an extension of time to submit a response which was granted by the ED.

On October 10, 2013, the CDE sent the ED the first quarterly response (Attachment 1).

There was no fiscal impact on the Title III program and its operations as a result of this review. However, the ED has granted conditional approval for California's consolidated application for 2013–14 funding while findings are being resolved.

Due to the volume and readability of some of the documents, the attachments related to the ED response have not been posted. The attachments will be made available upon request to the CDE, Language Policy and Leadership Office.

### Attachment(s)

Attachment 1: October 9, 2013, Letter and Report from Deputy Superintendent of Instruction and Learning Support Branch to the United States Department of Education Regarding the Response to the Title III Monitoring Visit. (22 Pages)



CALIFORNIA  
DEPARTMENT OF  
EDUCATION

**TOM TORLAKSON**  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

October 9, 2013

Supreet Anad  
U.S. Department of Education  
Title III Office  
400 Maryland Avenue, SW, LBJ #3W118  
Washington, DC 20202-6135

Dear Ms. Anad:

Subject: Title III Monitoring Report

Please find enclosed the California Department of Education (CDE) Response to the April 16–18, 2013, Title III Monitoring Visit. The enclosed report is our first quarterly report to respond to findings identified in the report issued to the CDE on June 24, 2013.

If you have any questions regarding this response, please contact Karen Cadiero-Kaplan, Director, English Learner Support Division, by phone at 916-319-0938, or by e-mail at [kcadierokaplan@cde.ca.gov](mailto:kcadierokaplan@cde.ca.gov).

Sincerely,

/S/

Lupita Cortez Alcalá, Deputy Superintendent  
Instruction and Learning Support Branch

LCA:kck  
Enclosure

## California Department of Education

April 16–18, 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 California the week of April 16, 2013. The California State Board of Education (SBE) is the governing and policy-making body of the California Department of Education (CDE). The SBE is the entity eligible to receive federal funds while the CDE administers federal programs. This was a comprehensive review of the CDE’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 five local educational agencies (LEAs); Sacramento City Unified School District (SCUSD), Los Angeles Unified School District (LAUSD), Ventura Unified School District (VUSD), San Francisco Unified School District (SFUSD), and Stockton Unified School District (SUSD).

### Monitoring Indicators for Title III, Part A

#### Overarching Requirement–State Monitoring of Subgrantees

| Indicator               | Description  | Status  | Page |
|-------------------------|--|---------|------|
| Overarching Requirement | <b>State Monitoring of Subgrantees</b><br>sections 3113-3116, 3121-3022 and 3302 of the ESEA; EDGAR 34 CFR 80.40 | Finding | 3    |

**Finding:** The CDE did not demonstrate that it is monitoring subgrantees sufficiently to ensure that all areas of Title III noncompliance were identified during its monitoring of subgrantees. The CDE’s subgrantee monitoring reports from recent onsite reviews do not address Title III use of funds and supplement, not supplant issues separately from Economic Impact Aid-Limited English Proficient (EIA-LEP) (the State’s categorical program to help LEP students). The Title III requirements are very specific and are different from other program requirements. Specifically, the State does not distinguish that Title III funds should supplement the level of Federal, State, and local public funds, including EIA-LEP funds. Consequently, LEAs were supplanting with Title III funds (as described in Finding 2.3) and using Title III funds for unallowable costs (as described in Finding 3.2(2)).

**Further action required:** The CDE must ensure that its Title III monitoring activities focus on compliance with Title III fiscal and programmatic requirements, particularly in the area of ensuring LEAs are not supplanting with Title III funds. The CDE must develop and submit to ED a revised monitoring plan, a revised monitoring instrument and evidence of implementation.

## **California Department of Education's Response**

The CDE does ensure that its' Title III monitoring activities focus on compliance with Title III fiscal and programmatic requirements. CDE's monitoring plan is annually updated and revised to ensure compliance with fiscal and programmatic requirements of Title III and other categorically-funded programs. In the course of this planning cycle, the monitoring instrument for English learner programs is reviewed and updated. The Language and Leadership Office (LPLO) is conducting a comprehensive review of the 2013–14 monitoring instrument and will revise the instrument to more clearly reflect that Title III funds must be used to supplement federal, state, and local public funds. The CDE will provide evidence of implementation of this revised monitoring instrument to the ED in accordance with the timeline below.

## **Timeline for Updating of Monitoring Instrument and Evidence of Implementation**

- **November 30, 2013:** The LPLO is to provide a draft of the updated monitoring instrument to the Federal Program Monitoring (FPM) Office.
- **December 1, 2013–January 31, 2014:** The updated monitoring instrument is to be reviewed by the CDE Legal Office.
- **February 1, 2014–March 31, 2014:** The FPM Office applies selection criteria to Cycle A/C LEAs and identifies LEAs to be reviewed in 2014–15; FPM Office notifies LEAs of selection. (See Cycle Schedule enclosure.)
- **April 1, 2014–May 31, 2014:** The updated monitoring instrument is to be uploaded to the California Accountability and Improvement System (CAIS) and posted to the CDE Compliance Monitoring Web page.
- **June 1, 2014–August 31, 2014:** Training to be provided for CDE program reviewers and LEAs.
- **September 1, 2014:** Reviews using revised monitoring instrument begin.

In addition, the CDE has provided additional training to FPM monitors as LEAs are preparing to receive FPM visits in the 2013–14 school year.

- **July 18, 2013:** The CDE provided LEA Title III Directors, County Offices of Education (COE) Leads and Bilingual Coordinators' Network (BCN) members the ED PowerPoint on supplement, not supplant, via e-mail. (See Supplement, Not Supplant, Title III in California enclosure.)
- **August 19, 2013:** The CDE provided FPM monitors training on the Education Department General Administrative Regulations (EDGAR) and the Office of Management and Budget (OMB) Circulars including the supplement, not supplant, and allowable uses federal of funds. (See EDGAR and OMB Circular Tutorial, and Excerpts from EDGAR handout enclosures.)
- **July 29, 2013 and August 2, 2013:** The CDE provided detailed training regarding supplement, not supplant, requirements to districts as discussed in **Element 3.2, Finding (2)** and **Element 3.4**. (See Local Educational Agency Regional Training enclosure.) Accordingly, the instrument will be formally revised during the 2013–14 fiscal year in preparation for the 2014–15 FPM monitoring cycle. The CDE program monitors continue to review LEA compliance with supplement, not supplant, and allowable uses of federal funds during the 2013–14 monitoring cycle to ensure Title III funds supplement state funds.

## Monitoring Area 1: Standards, Assessments and Accountability

| Indicator Number | Description  | Status   | Page |
|------------------|--|----------|------|
| Element 1.1      | <b>English Language Proficiency Standards</b><br>Section 3113 of the ESEA                                    | Finding  | 4    |
| Element 1.2      | <b>English Language Proficiency Assessment</b><br>sections 3113 and 3116 of the ESEA                         | Findings | 4    |
| Element 1.3      | <b>Annual Measurable Achievement Objectives</b><br>sections 3122(a)(1)(2)(3) and I 1 II(b)(2)(B) of the ESEA | Finding  | 5    |
| Element 1.4      | <b>Data Collection and Reporting</b> sections 3121 and 3123 of the ESEA; EDGAR 34 CFR 76.731                 | Finding  | 6    |

### Element 1.1 English Language Proficiency Standards

**Finding:** The SBE approved the adoption of newly aligned ELP standards in November 2012. The California English Language Development Standards are aligned to the State's Common Core English language arts standards. However, the CDE has not yet aligned the new ELP standards to the State's Common Core math and science standards.

**Further action required:** The CDE must submit a plan that includes a timeline detailing the process to align the new English Language Proficiency (ELP) Standards to the State's Common Core Math and Science Standards. Once the State aligns the new ELP Standards to the State's Common Core Math and Science Standards, the CDE must provide evidence of this alignment to ED.

### California Department of Education's Response

The Governor recently signed Assembly Bill 899 which provides the CDE with the authority and generally outlined procedures to fully align the ELP Standards with the new math and science standards. Actions stated within AB 899 found at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB899](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB899)

### Element 1.2 English Language Proficiency Assessments

**Finding 1:** The CDE's ELP assessment is not aligned with the State's recently adopted ELP standards. The CDE indicated that it plans to develop and adopt a new State ELP assessment, pending legislative authority and funding, that will be aligned to the State's new ELP standards.

**Further action required:** The CDE must submit a plan that includes a timeline detailing the process to align the State’s ELP assessment to the revised state ELP Standards. If the State adopts the new ELP assessment, the CDE must provide evidence of this alignment to ED.

**California Department of Education’s Response:**

The CDE proposes to replace the California English Language Development Test (CELDT) with the English Language Proficiency Assessments for California (ELPAC) system by 2016–17, provided legislative authority and additional funding are secured. The following is the proposed timeline of key transition activities:

| Date             | Key Activities  |
|------------------|---|
| Spring 2013      | The current CELDT contractor will analyze the item database of current CELDT questions for alignment to the 2012 California English Language Development (ELD) Standards. |
| Fall 2013        | The current CELDT contractor will submit to the CDE an item alignment report that highlights which CELDT questions are aligned to the 2012 ELD Standards.                 |
| Spring 2014      | The CDE will release a Request for Proposal(s) for the ELPAC initial (diagnostic) screener and summative assessment.  |
| Summer 2014      | The CDE will award a contract to develop or customize a computer-based ELPAC initial screener.  |
| Summer 2014      | The CDE will award a contract to develop the ELPAC summative assessment.  |
| Summer/Fall 2014 | The SBE will approve the new ELPAC test blueprints for kindergarten through grade twelve (K–12) based on the 2012 ELD Standards.  |
| Fall 2015        | The ELPAC screener contractor will field-test the ELPAC initial screener.   |
| Spring 2016      | The ELPAC summative contractor will field-test the ELPAC annual summative assessment.   |
| 2016–17          | The ELPAC screener contractor will administer the operational ELPAC initial screener.   |



|             |  |
|-------------|--|
| Spring 2017 | The ELPAC summative contractor will administer the operational ELPAC summative test. |
|-------------|--|

**Finding (2):** The CDE is using a composite score for its ELP progress and proficiency measures that is not consistent with its approved Consolidated State Application (CSA). The CDE currently assigns weights for the K-1 CELDT (CELDT) assessment results at: 45 percent weight for the domain of listening, 45 percent weight for the domain of speaking, and five percent weights each for the domains of reading and writing. This weighting of domain scores was not included in the approved CSA amendment. The CDE's approved amendment includes equal 25 percent weight for each of the four domains of language.

**Further action required:** The CDE must either use the weights for its CELDT assessment that are in the approved Consolidated State Application (CSA), or submit to the ED a CSA amendment reflecting the desired change. An amendment request must include evidence of whether the proposed composite scoring method is a valid and reliable measure of student progress and proficiency in English.

### California Department of Education's Response

In July 2010, the SBE approved the CDE staff recommendation to modify the calculation for the overall score for K–1. The proposed changes were based on valid and reliable measurement of the student progress as well as recommendations obtained from a panel of ELP experts, early literacy experts, and experts in early child development, to identify guiding principles to the development of the CELDT K–1 reading and writing test questions. The changes were implemented in the 2009–10 Title III Accountability Reports. The CDE, in September 2013, submitted a CSA amendment to the ED reflecting the change.

### Element 1.3 Annual Measurable Achievement Objectives

**Finding (1):** The CDE 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 the AMAOs for more than four consecutive years. The CDE 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 State does not continue to provide oversight for these LEAs after their fourth year of not meeting AMAOs. At a minimum the State must apply the accountability provisions in Section 3122(b)(4) to ensure that such LEAs improve outcomes for the LEP students served. Additionally, the CDE did not provide evidence that it had provided all the required

technical assistance to subgrantees that failed to meet their AMAOs during the development of the improvement plans and throughout implementation.

**Further action required:** The CDE 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 Annual Measureable Achievement Objectives (AMAOs). The plan must demonstrate that the CDE will apply the accountability provisions in Section 3122(b) of the ESEA to subgrantees that fail to meet AMAOs for four consecutive years. The plan must also include a description of how the CDE will provide the required technical assistance to subgrantees during the development of the improvement plans and throughout implementation.

### California Department of Education's Response

The CDE disagrees with this finding. This finding of California's monitoring of LEAs after their fourth year of not meeting AMAOs is inconsistent with previous reviews and interpretation of ESEA, Section 3122 (b)(4). This section does not address those beyond four consecutive years of failing to meet AMAOs. If the state educational agency determines that an eligible entity has failed to meet the annual measurable achievement objectives described in subsections (a) for 4 consecutive years, the agency shall- "(ii) require such entity to modify the entity's curriculum, program, and method of instruction" as approved by the SBE in January 2008. If there is a recent interpretation of "4 consecutive years" to include LEAs beyond the first 4 years, the CDE requests clarification of this finding.

With this report, the CDE includes additional evidence that it has provided all the required technical assistance to subgrantees that failed to meet their AMAOs during the development of the improvement plans and throughout implementation. LEAs that fail to meet one or more AMAOs for two consecutive years must develop an improvement plan. The CDE, with the assistance of the COE Leads, provides technical assistance (TA) during the development of the plan and through the implementation of the Year 2 plans. (See CDE Title III Technical Assistance Web page at <http://www.cde.ca.gov/sp/el/t3/t3amaotargets.asp>.)

Pursuant to requirements of ESEA, Section 3122(b)(4), and approved by the SBE, the CDE requires the LEAs failing to meet one or more AMAOs for four consecutive years to "modify the entity's curriculum, program, and method of instruction." Again, the CDE and COE Leads provide TA and guidance for the development and implementation of the Year Four Improvement Plans. (See CDE Title III Technical Assistance Web page at <http://www.cde.ca.gov/sp/el/t3/t3amaotargets.asp>.)

**Finding (2):** The CDE did not provide evidence that its AMAO 3 calculation includes graduation rate. During interviews, CDE staff stated the AMAO 3 calculations include

graduation rate, but this was not clearly reflected in the evidence provided. Also staff in one LEA was not aware that AMAO 3 calculations include graduation rate.

**Further action required:** The CDE must provide ED with evidence that its AMAO 3 calculations include graduation rates for secondary school students.

**California Department of Education's Response:** To comply with the Title III accountability program, Section 3122(a)(3)(A)(iii) of the ESEA, the CDE will include the graduation rate data for secondary school students into the AMAO 3 calculations in the 2012–13 Title III Accountability Reports.

#### **Element 1.4 Data Collection and Reporting**

**Finding:** The CDE did not provide evidence that its data reporting procedures for Title III purposes are accurate. ED found discrepancies between data reported in the State's Consolidated State Performance Report (CSPR) and in the evidence as reported by LEAs. For example, all 5 LEAs provided data for the number of identified LEP students that were not assessed on the CELDT during the 2011–12 school year, whereas the CDE reported in the CSPR (CSPR data element 1.6.3.2.1) that all LEP students had been assessed in that year. Additionally, as reported by the LEAs, the student count of LEP students tested included initial fluent English proficient students. The counts of LEP students tested should not include students who are not LEP (CSPR data elements 1.6.2.1 and 1.6.3.2.1). SEA's failure to maintain accurate data on LEP students significantly diminishes the quality of data submitted to ED, and reduces the likelihood that AMAO determinations and state allocations to LEAs are accurate.

**Further action required:** The CDE must provide ED with a written explanation for the discrepancies in the 2011–12 CSPR data and a plan that details the steps the CDE will take to ensure that any data submitted to ED in the future are accurate.

#### **California Department of Education's Response:**

In California, the English language proficiency assessment is given to potential LEP students as a screener as well as annually to already identified LEP students. Additionally, the assessment administered as a screener to a student later identified as LEP is also used as the student's first proficiency assessment result for federal accountability purposes. Prior to the full transition to a student level database, the link between the screener and the student LEP designation was not available. The implementation of California's longitudinal database will allow the department to modify its procedures for creating the CSPR data and to reduce or eliminate these discrepancies.

Plan For Reporting for Title III Data in the Future

1. By December 1, 2013, develop a process and procedures to extract data for CSPR Section 1.6.3.2.1 from the state’s longitudinal database to ensure:
  - a. Students who took the screener and were identified as LEP are included in the data.
  - b. Student who took the screener and were not identified as LEP are not included in the data.
  - c. LEP students enrolled during the testing window but without corresponding assessment results will be counted as Not Tested.

**Monitoring Area 2: Instructional Support**

| <b>Indicator 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) of the ESEA; EDGAR 34 CFR 76.770                      | Finding       | 8           |
| Element 2.3             | <b>Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth</b> sections 3114 and 3115 of the ESEA | Findings      | 8           |
| Element 2.4             | <b>Private School Participation</b> Section 9501 of the ESEA  | Finding       | 10          |

**Element 2.2 State Oversight and Review of Local Plans**

**Finding (1):** The CDE did not demonstrate that its procedures for reviewing subgrantee plans for the Title III State Formula Grant Program are sufficient to ensure that such plans include activities that meet statutory requirements. Specifically, the CDE's current practice of only reviewing the plans when LEAs are monitored or in improvement is not sufficient to ensure that subgrantees carry out appropriate activities that meet Title III requirements with budgets and narratives that reflect allowable expenses. Consequently, LEAs were exceeding their administrative cap (as described in Finding 3.2(1)), spending funds on unallowable activities (as described in Finding 3.2(2)), and

supplanting with Title III funds (as described in Finding 3.4). (Recurring finding from 2009 review)

**Further action required:** The CDE must ensure that its procedures for reviewing subgrantee Title III State Formula are sufficient to ensure that such plans include activities that meet statutory requirements. To accomplish this, the CDE must develop a comprehensive plan to enhance its procedures for review of Title III plans and submit to the ED evidence of these changes. This plan must include a timeline, implementation steps, staff, and resources.

### **California Department of Education's Response:**

The CDE disagrees with this finding. The CDE ensures that subgrantee plans include activities that meet statutory requirements. The CDE currently informs all Title III LEAs that they must update their LEA Plan each year. Further, in order to apply for Title III subgrants, the CDE requires all LEAs to submit to the CDE a proposed budget and assurances with their Consolidated Application (See Title III Assurances enclosures).

Furthermore, the CDE disagrees with the "Recurring finding from 2009 review" as all 2009 findings have been resolved.

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

**Finding (1):** The CDE did not correctly apply eligibility requirements for Title III immigrant children and youth subgrants. Specifically, the CDE staff indicated during interviews that the State awarded immigrant children and youth subgrants for three years but do not ensure districts were eligible each year. Although the CDE later stated that eligibility is determined annually, evidence was not provided in order to demonstrate the State annually determines eligibility for the immigrant children and youth subgrants.

Additionally, the CDE did not demonstrate that its procedures for reviewing Title III Immigrant Children and Youth Program plans are sufficient to ensure that such plans include activities that meet statutory requirements. Specifically, the CDE's current practice of only reviewing the plans when LEAs are monitored or in improvement is not sufficient to ensure that subgrantees carry out appropriate activities that meet Title III requirements with budgets and narratives that reflect allowable expenses.

**Further action required:** The CDE must provide evidence that its eligibility requirements for Title III immigrant subgrants for the 2012–13 school year to meet the Title III statutory requirement outlined above. The CDE must provide a list of LEAs that have received immigrant subgrants for the 2012–13 school year. The CDE must also

ensure that its procedures for reviewing subgrantee immigrant children and youth plans are sufficient to ensure that such plans include activities that meet statutory requirements. To accomplish this, the CDE must develop a comprehensive plan to enhance its procedures for review of Title III immigrant children and youth plans and submit to ED evidence of these changes. This plan must include a timeline, implementation steps, staff, and resources.

### **California Department of Education's Response:**

The CDE disagrees with this finding. In accordance with the authority given to the States as per ESEA Section 3116 (315), 20 USC 6824(e)(2) the CDE provides immigrant subgrants to eligible subgrantees for the duration of three years. ("The duration of a subgrant made by a SEA, under Section 6824(d)(1), of this title shall be determined by the agency in its discretion"). Each year, LEA eligibility is calculated. (See Eligibility Determination enclosure.) The CDE determines that an LEA has experienced a significant increase in immigrant eligible students by comparing the number of eligible students in the current year with the average of the two preceding years. Once an LEA qualifies for and is awarded the immigrant subgrant, the duration of the subgrant is three years. Frequently Asked Questions for the Title III Immigrant Education Program can be found at <http://www.cde.ca.gov/sp/el/t3/title3faq.asp>. The list of LEAs that received Immigrant subgrants is enclosed.

**Finding (2):** The CDE has not ensured that LEAs properly identify immigrant children and youth based on the definition in section 3301(6) of the ESEA. Two districts reported students from Puerto Rico in their immigrant counts and CDE staff stated that their current data collection system includes Puerto Rican students in the immigrant counts. (Recurring finding from 2009 review)

**Further action required:** The CDE must provide the ED with evidence that it counts the appropriate students in the Title III immigrant children and youth counts. The CDE must submit to the ED evidence that it has informed LEAs regarding how to report accurate student immigrant counts to the State.

### **California Department of Education's Response:**

The CDE identifies all qualifying countries from which to identify eligible students for Title III Immigrant funding. The CDE also provides LEAs with a complete list of U.S. territories and commonwealths from which students do not qualify for Title III Immigrant funding. (Refer to the Student National Origin Report Web page at <http://www.cde.ca.gov/sp/el/t3/data.asp> and the Title III Frequently Asked Questions Web page at <http://www.cde.ca.gov/sp/el/t3/title3faq.asp>. The California Longitudinal Pupil Achievement Data System (CALPADS) was modified in August 2013 so LEAs cannot submit student data identifying Puerto Rican students as immigrant. (See CDE

California Student Information System (CSIS) Change and Issue Review Forum minutes enclosure.)

The CDE will continue to provide TA to LEAs emphasizing the eligibility and reporting requirements at the annual Accountability Leadership Institute (ALI), quarterly BCN meetings, and at monthly Title III COE Leads meetings. At the ALI on December 8–10, 2013, the CDE will provide a series of workshops and trainings for new LEA Title III LEP and Immigrant Directors.

## **Element 2.4 Private School Participation**

**Finding (1):** The CDE has not ensured that Title III subgrantees comply fully with the requirements in section 9501 of the ESEA to provide services to private school LEP students in areas served by the LEA. LEAs indicated that a home language survey and annual ELP student assessment are eligibility requirements for LEP children in private schools to receive Title III services. Additionally, representatives from two LEAs described public school requirements that were also being required of private schools in order for their LEP students to be eligible for Title III services. In one LEA, a private school that initially sought to receive Title III services decided not to apply because the LEA required private schools to meet the same requirements as the public schools in the LEA, including providing a minimum time for students' English language development instruction, adoption of a formal curriculum, and teacher credentialing. As a result of adding additional requirements not authorized by Federal law, private school students may have not received services they were eligible for.

**Further action required:** The CDE must provide guidance and technical assistance to subgrantees regarding the requirements in section 9501 of the ESEA. The guidance will clarify that LEAs should not impose additional requirements not authorized by federal law on private schools.

The CDE must submit to the ED evidence that it has developed and disseminated guidance and provided TA to Title III subgrantees.

### **California Department of Education's Response:**

The CDE has revised the letter to private schools inviting participation (see Private School Participation letter enclosures) to ensure Title III subgrantees comply with Private School Participation requirements and that LEAs do not unnecessarily create barriers to private school participation.

The CDE has developed and disseminated guidance and provided TA to Title III Subgrantees. Sample documents can be found at <http://www.cde.ca.gov/sp/el/t3/title3faq.asp>,

<http://www.cde.ca.gov/sp/el/t3/immprivschool.asp>, and at <http://www.cde.ca.gov/sp/el/t3/lepriv.asp>.

Additionally, the CDE continues to update TA documents to ensure LEAs understand the requirements under which private schools participate and do not impose additional requirements not authorized by federal law.

The CDE will continue to monitor compliance with the requirements during the review of LEA plans and Federal Program Monitoring visits by interviewing private school representative to ensure LEAs and private schools understand the requirements.

### Monitoring Area 3: Fiduciary

| Indicator Number | Description   | Status   | Page |
|------------------|---|----------|------|
| Element 3.1      | <b>State Allocations, Reallocations and Carryover</b><br>Section 3111(b) of the ESEA; 20 USC 6821(b)(3); sections 3114(a)–(d) of the ESEA | Findings | 11   |
| Element 3.2      | <b>LEA Allocations, Reallocations and Carryover</b><br>Section 3115 of the ESEA   | Findings | 13   |
| Element 3.3      | <b>Maintenance of Effort</b><br>sections 1120A and 9021 of the ESEA   | X        | N/A  |
| Element 3.4      | <b>Supplement, Not Supplant</b><br>Section 3115(g) of the ESEA  | Finding  | 14   |

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

**Finding (1):** The CDE does not comply with the Title III supplement, not supplant provision as evidenced by the following:

- The primary responsibilities of some CDE staff whose salaries are paid 100 percent by Title III have job responsibilities for State programs including EIA, Seal of Biliteracy, and programs required by State law.
- The primary responsibilities of some CDE staff whose salaries are paid 100 percent by Title III include "Federal program monitoring," which encompasses monitoring for other Federal programs and State requirements.
- The Title III State Director is funded 80 percent by Title III with responsibilities that include many other State programs. This position also serves as Director of the English Learner Support Division. The work done by this Division includes the Economic Impact Aid and Seal of Biliteracy programs, which are required by State law. Additionally, the Title III Director's responsibilities include Migrant Education.



The Title III State Director spends more than 20 percent of her time on these other responsibilities.

- 32 percent of the Complaints Management payables are funded by Title III. However, there was no evidence that a third of all complaints are specifically related to Title III.
- \$264,054 of Title III funds were spent on translation of parent documents and \$244,284 was spent on a Parent Document Clearinghouse for storing these translated documents. These materials are not specific to the Title III, but are related to general education.

**Further action required:** The CDE must immediately make changes to current staff allocations so that Title III funds are not used to support non-Title III related duties and responsibilities. Additionally, the CDE must immediately make changes to the way charges to Complaints Management, Parent Document Clearinghouse, and federal programs monitoring are allocated so that Title III funds pay for these activities only proportionally, if at all. The CDE must provide ED with evidence that it will use Title III funds only for allowable Title III costs and not to supplant other funding. Such evidence should include budget documents, revised job descriptions, and other documentation that demonstrates that Title III funds are no longer utilized to support non-Title III related activities.

### **California Department of Education's Response:**

The CDE disagrees that all of the items cited in the monitoring report evidence of noncompliance with the Title III Supplement, Not Supplant Provision. Specifically, the report concludes that "there was no evidence" supporting the percentage of the Complaints Management payables funded to Title III; however, during the onsite review, the ED team did not address these costs or ask the CDE to provide evidence supporting these costs. Likewise, the report concludes that the Title III funds used for the Parent Document Clearinghouse evidenced supplanting, but this item was not discussed with the relevant personnel from the CDE; and these costs were previously determined to be allowable by the ED during the CDE's 2009 monitoring review.

With regard to staff allocations, by December 31, 2013, the CDE will complete a review of staff duties funded in whole or in part with Title III funds to determine if funding adjustments are necessary. Based on this review, CDE will complete any necessary adjustments by June 30, 2014.

With regard to the Parent Document Clearinghouse, or Clearinghouse for Multilingual Documents (CMD), this online system and its translation project was established in 2005 and 2006 as a form of TA to districts that have EL students and receive Title III funds. Technical assistance from a state agency is permitted under Title III, Section 3111(b)(2)(C):

*“Providing technical assistance and other forms of assistance to eligible entities that are receiving subgrants from a State educational agency under this subpart, including assistance in —“*

The available documents in the CMD include Title III program information, as well as, parental notification and outreach requirements consistent with ESEA, Section 3302(a) and (e).

In 2009, the Title III reviewers from the ED interviewed CDE administrators regarding the CMD and its translation project, including the types of materials available through the online clearinghouse database.

As part of its discussions, the ED team asked if the CMD’s translation project was the CDE’s implementation of California *Education Code* Section 48985, in which case the CDE would be using federal funds to meet the expectations of a state law. In responding, the CDE explained that the translation requirement in Section 48985 is incumbent upon schools and districts, not the state. Accordingly, the CDE’s translation and housing of these documents is efficient and cost effective supplemental TA to districts.

In their final report in 2009, the ED team did not find the CMD or the translation project to be a violation of supplanting requirements, and the CMD was deemed to be in alignment with federal requirements. Since 2009, there have been no changes to the CMD’s operations, procedures, expenditures items, or the kinds of TA it provides to the field.

**Finding (2):** The CDE awards two million dollars for County Office "grants". Carrying out State-level activities through a third party is an allowable use of funds, however subgranting to accomplish this is not. The only allowable subgrants under Title III, Part A are for the LEP formula subgrants and the immigrant children and youth subgrants. Additionally, these County Office grants are charging administrative costs. These administrative costs should be included in the SEA's administrative set aside.

**Further action required:** The CDE must immediately cease awarding County Office “grants”. The CDE must provide ED with evidence that it has taken this action, such as budget documents and other documentation that demonstrates that the CDE does not subgrant. If the CDE wishes to enter contracts with the County Offices, the CDE must follow its State procurement laws. If the CDE provides funds to the County Offices through a contract to carry out State level activities, the CDE must have a process to include any administrative costs in the State’s administrative set-aside.

### **California Department of Education’s Response:**

The CDE currently provides funds from the state activities reservation in ESEA, Section 3111(a)(2), to COE to provide localized and extensive TA for LEAs in improvement. The

CDE provides extensive training, materials, and oversight to the COE Leads that work directly with the districts.

The ED is requesting the CDE to immediately cease awarding COE Leads “grants.” The process by which CDE provides funds to the COE is not consistent with the federal definition of a “grant award.” The CDE enters into an agreement of services that the COE lead provides as an extension of the CDE. This process is consistent with the CDE’s state funding and procurement requirements. To better clarify the relationship between the CDE and COEs, the CDE will cease to use the term “grant” to describe this activity.

**Finding (3):** The CDE has not ensured that subgrantees receive funds in a timely manner in order to fully implement the Title III program. Title III funds are awarded in December of each year, and any Title III expenditures prior to December are funded through carryover funds or other sources. This is six months into the grant period. Additionally, new charter schools that had submitted a Title III plan for the 2012–2013 school year had not yet been awarded Title III funds as of April 25, 2013. Because the CDE awards funds in the middle of the school year, LEAs may not have sufficient time to implement proposed activities during the school year for which the grant was made.

**Further action required:** The CDE must develop and implement a comprehensive corrective action plan, including a timeline, implementation steps, staff, and resources, to ensure that Title III awards are made in a timely manner so that LEAs can carry out their proposed activities. The CDE must submit this plan to ED, along with evidence of implementation.

### **California Department of Education’s Response:**

The CDE has adopted and implemented a revised plan to ensure Title III subgrants are made in a timely manner so that LEAs can carry out their proposed activities. (See Timeline enclosed.) The CDE calculates the per-pupil amount and notifies LEAs of their grant award eligibility by April of each year. LEAs may apply directly or through consortia for Title III funding. The applications for Title III funding are due by June 30 of each year. Previously, the CDE waited to award Title III subgrants until after receiving all LEA applications, and then recalculated the award amounts to include redistribution of funds from LEAs that decided not to apply. The plan implemented for the 2013–14 fiscal year is as follows: LEAs that apply for Title III subgrants will receive the Title III award in July of each year based on eligibility determination made in April. The application window will remain open through March of each year. If, at that time, there are LEAs that have decided not to apply for Title III funding, the money will be redistributed to the participating LEAs after the close of the application period. This proposed plan does not impact current application due dates for LEAs. The CDE will provide notification to LEAs regarding the revised awarding process not later than November 2013.

**Finding (4):** The CDE did not provide sufficient evidence that its cash management procedures for allowing the drawdown of funds by LEAs meet the requirements in section 80.21 of EDGAR. Specifically, the CDE gives districts an initial allocation of 25 percent of their award in December. This allocation is not based on the LEAs' need for the funds. This accounting procedure allows an LEA to carry cash on hand. As a result, LEAs are accumulating interest that they have to return to the Federal Treasury.

**Further action required:** The CDE must review and revise its cash management procedures, including drawdown policies, as they apply to Title III subgrants, to ensure that they meet the disbursement requirements in EDGAR and the Treasury regulations. The CDE must provide to ED a timeline and plan for the review and revisions, as well as evidence that it has implemented the revised procedures.

### **California Department of Education's Response:**

The CDE disagrees with this finding. The CDE cash management procedures, including drawdown policies, as they apply to Title III subgrants meet disbursement requirements in Electronic Data Gathering, Analysis, and Retrieval and the Treasury regulations. In response to an ED Office of Inspector General (OIG) audit report in March 2009, the CDE began working with ED's Risk Management Services (RMS) to develop a compliant cash management process. In 2009, the CDE implemented a pilot project involving LEAs submitting federal cash balances on a quarterly basis using Web-based reporting via a newly created Cash Management Data Collection (CMDC) system. The CMDC system was established by the CDE to comply with federal cash management requirements by minimizing the time elapsing between the receipt and disbursement of funds by recipients of federal grants awarded by the CDE.

The CMDC reporting requirements can be found on the CDE's Federal Cash Management Web page at <http://www.cde.ca.gov/fg/aa/cm/>. This process allows sufficient cash to operate until the next CMDC reporting window and minimizes the amount of interest an LEA will earn.

In addition, the CDE implemented new cash management fiscal monitoring procedures to verify—on a sample basis—LEAs' reported cash balances and to ensure compliance with federal interest requirements. Furthermore, the CDE has dedicated staff in the position of a Cash Management Analyst to directly provide LEAs TA for calculating interest on federal cash balances.

The CDE met with RMS on March 12, 2013, to discuss and review the CDE's cash management procedures and received verbal acceptance regarding the compliance of the process. Additionally, the OIG has indicated the CMDC is appropriate for payment for federal LEA subgrantees.

### **Element 3.2 LEA Allocations, Reallocations and Carryover**

**Finding (1):** The CDE has not ensured that subgrantees are in compliance with the two percent administrative cap under Title III. The State has not ensured that LEAs include administrative positions funded under Title III in the two percent administrative cap. As a result, several LEAs visited exceeded their two percent cap. Additionally, the SEA's local plan template, Local Educational Agency (LEA) Plan for LEAs in Program Improvement Year 3 Corrective Action, states, "No more than three percent of Title III funds may be allocated toward administrative costs. The district may also take indirect costs as established each year." LEAs may allocate no more than two percent of Title III funds for administrative costs, including indirect costs.

**Further action required:** The CDE must provide additional guidance to its LEAs about the two percent restriction on administrative costs under Title III and describe how it will ensure, through its monitoring and review of LEA plans and budgets, that LEAs do not exceed the two percent cap. The CDE must submit evidence that it has provided additional guidance to its LEAs and the description of the procedures it will implement to ensure compliance with the administrative cap.

#### **California Department of Education's Response:**

The CDE disagrees with this finding. The CDE provides guidance to LEAs regarding the administrative cap through several different documents and applications. The LEA budget template in the Title III application has a built in error message that will not permit LEAs to budget administrative costs in excess of the two percent cap. Further, the LEA final expenditure report for Title III also includes an automatic error message if LEAs report administrative expenditures in excess of the cap. On its Web site <http://www.cde.ca.gov/sp/el/t3/title3faq.asp>, the CDE addresses the two percent cap in its "Frequently Asked Questions."

The California School Accounting Manual (CSAM) also includes guidance for LEAs regarding administrative caps and indirect costs. The CSAM is available at <http://www.cde.ca.gov/fg/ac/sa/documents/csam2011complete.pdf>. Procedure 915 states the following:

The CDE's annual training for Title III directors, scheduled for July 31 and August 2, covered the issue as well. (See Local Educational Agency Regional Training enclosure.) In addition, the CDE verifies that districts did not exceed the two percent cap through the FPM on-site and online review and the A-133 single audits. The FPM instrument is regularly revised. (See response to Overarching Requirement.)

The CDE has not found the statement, "No more than three percent of Title III funds may be allocated toward administrative costs. The district may also take indirect costs

as established each year" in the SEA's local plan template for the LEA Plan used by LEAs in the Program Improvement Year 3 Corrective Action document referenced in the finding.

**Finding (2):** The CDE does not provide sufficient oversight of activities and budgets to ensure that LEAs expend Title III funds on activities that are allowable, allocable necessary and reasonable. The State's LEA Consolidated Application does not require LEAs to provide detailed information regarding how Title III funds will be used. As a result, ED could not establish, in all LEAs visited, that Title III funds were spent on allowable activities. For example, one LEA was providing "discretionary funds" to each school in the district. There was neither oversight nor guidance on allowable use of these funds.

Additionally, ED found that LEAs were spending Title III funds on activities that were not allowable. One district used Title III funds for a water cooler and building rental costs and another LEA used Title III funds for academic caps & gowns. It is unclear by reviewing the local plans or through interviews with Title III staff, how these expenditures support the required Title III activities. The ED team also reviewed purchase orders for food-related expenses in LEAs visited, and although these expenditures appeared to be reasonable and allowable, one LEA indicated during interviews that it was not aware of the circumstances under which Title III funds could be used for these types of expenditures.

**Further action required:** The CDE must provide ED with a description of how it will annually ensure funds are used for activities that are reasonable, necessary, and allowable for Title III program implementation. Additionally, the CDE must provide evidence of guidance to LEAs regarding allowable uses of Title III funds.

### **California Department of Education's Response:**

The CDE disagrees with this finding. The CDE regularly provides TA and guidance documents regarding allowable uses of funds at the enclosed CDE Title III FAQs at <http://www.cde.ca.gov/sp/el/t3/title3faq.asp>. In addition, the CDE requires LEAs to assure compliance by providing detailed assurances that accompany the LEA application for Title III funds (see Title III Assurances enclosures).

The CDE continues to develop additional training materials regarding allowable uses of funds. This training will be tied to the Supplement, Not Supplant training discussed below. Additionally, the CDE continues to review and strengthen its TA documents, including its Frequently Asked Questions and the Title III program template.

The FPM on-site and online review and the A-133 single audits verify that the Title III funds are used on allowable costs. The FPM instrument is also being updated. (See response to Overarching Requirement.)

### **Element 3.4 Supplement, Not Supplant**

**Finding (1):** While the CDE does monitor LEAs, it is not sufficient to ensure that LEAs do not supplant with Title III funds as evidenced by the following:

- Two LEAs' program handbooks referred to both Title III funds and EIA-LEP funds as supplemental. Neither plan stated that the Title III funds should supplement, but not supplant, EIA-LEP funds. Title III funds should supplement the level of Federal, State, and local funds, including the EIA-LEP funds.
- One LEA used Title III funds for instructional aides hired specifically to administer the CELDT and to purchase curriculum materials that are part of the core language instruction educational program.
- Two LEAs spent a significant portion of their Title III budget on program materials. It was not clear that these materials supplement the core curriculum.
- One LEA received a notice from the SEA that it had a large amount of carryover and needed to spend funds. The LEA then "receded" expenses to Title III that had been previously paid for through other State or local funds.
- One LEA was supplanting teacher salaries with Title III funds.

**Further action required:** The CDE must develop and provide ED with a detailed plan and timeline for ensuring that its Title III subgrantees comply with the Title III non-supplanting provision. The plan must address how the State will annually ensure that its Title III subgrantees comply with the Title III non-supplanting provision.

### **California Department of Education's Response:**

The CDE disagrees with this finding. The CDE has consistently provided Title III subgrantees with TA and guidance on the Title III non-supplanting provision. In addition to what is currently part of CDE practice, and as discussed throughout this response, the CDE is taking several steps to further ensure that its Title III subgrantees comply with the Title III non-supplanting provisions. Also, the CDE annually conducts a comprehensive review of its monitoring instrument and provides training for its federal program monitors to ensure that the FPM process continues to identify noncompliance with the Title III supplanting provision as appropriate.

The CDE included extensive training on the Title III Supplement, Not Supplant provision on July 29, 2013 and August 2, 2013. (See Local Educational Agency Regional Training, Categorical Program Directors' meeting agenda and handout enclosures.) The CDE also disseminated the federal supplement, not supplant webinar to all Title III directors for additional guidance. (See Supplement, Not Supplant, Title III in California.) Throughout the school year, the CDE will continue

to address supplanting questions and provide additional TA in its monthly meetings with the COE Leads, and BCN quarterly meetings. At the next CDE Title III annual ALI from December 8–10, 2013, the CDE will offer a seminar for participants to learn the federal requirements including the topic of supplement, not supplant. The ALI is designed for Title III Directors, Administrators, LEA Superintendents, Title III recipients, COE's, and other educators serving ELs.

Furthermore, the CDE has a Title III listserv to address common questions and send TA news briefs that include specific examples of compliance with federal requirements to guide LEAs. The CDE also provides additional information regarding compliance with the Title III non-supplanting provision to its Web