

Nebraska Consolidated Performance Review Report FY 2022

July 21, 2022

Commendations
2

Met Requirements
20

Recommendations
12

Action Required
23



U.S. Department of Education
Office of Elementary and Secondary Education
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Washington, DC 20202

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GENERAL INFORMATION

OVERVIEW OF THE CONSOLIDATED PERFORMANCE REVIEW

The Office of Elementary and Secondary Education (OESE) established the consolidated performance review process to conduct oversight of and provide assistance to State educational agencies (SEAs) as they administer K-12 formula grant programs. The goals of the consolidated performance review process are to conduct a review of key programs through a single, streamlined process that results in improved and strengthened partnerships between the Department and States, and encourages States to develop and effectively implement integrated and coherent consolidated State plans. To accomplish these goals, the consolidated performance review process is organized into cross-cutting sections that review fiscal and programmatic requirements across OESE programs, and program-specific sections, that consider how the SEA implements specific programs.

This Consolidated Performance Review Report summarizes the findings from the review of the Nebraska Department of Education (NDE) that occurred on February 28 – March 4, 2022. The review covered:

- Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), Improving Basic Programs Operated by Local Educational Agencies (LEAs);
- Title I, Part B of the ESEA, State Assessment Grants;
- Title I, Part C of the ESEA, Education of Migratory Children;
- Title II, Part A of the ESEA, Effective Instruction State Grants;
- Title III, Part A of the ESEA, the State Formula Grant Program for English Language Acquisition and Language Enhancement;
- Title IV, Part A of the ESEA, Student Support and Academic Enrichment (SSAE) Program;
- Title V, Part B, Subpart 2 of the ESEA, Rural and Low-Income Schools;
- Elementary and Secondary School Emergency Relief (ESSER) funds; and
- Emergency Assistance to Non-Public Schools (EANS) funds.

The report is based on information provided through the review process and other relevant qualitative and quantitative data. The primary goal of this review was to ensure that implementation of the programs is consistent with the fiscal, administrative, and program requirements contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance: 2 Code of Federal Regulations (C.F.R.) Part 200), the Education Department General Administrative Requirements (EDGAR), and the ESEA. The review addressed the administration of fiscal and programmatic components through two domains: (1) financial management and cross-cutting requirements and (2) program-specific requirements.

NAVIGATING THE CONSOLIDATED PERFORMANCE REVIEW REPORT

This report contains five sections. Section I contains a snapshot of information pertinent to the grant activities for the respective State. Section II is a summary of the State’s performance on each indicator reviewed for each covered program. For each indicator, the Department assigns one of four ratings. “Met requirements with commendation” represents high-quality implementation where the grantee is exceeding expectations; “met requirements” indicates that no instances of noncompliance were identified; “met requirements with recommendations” indicates there are quality implementation

concerns and some improvements could be made to ensure the grantee continues to meet expectations; and “action required” indicates there are significant compliance or quality concerns that require urgent attention by the SEA and will be revisited until the State has remedied the issue.

Section III highlights the areas where the State has exceeded requirements and is commended on the grant administration and fiscal management (i.e., those areas categorized as “met requirements with commendation”).

Section IV identifies those areas where the Department has significant compliance and quality concerns and for which corrective action is required. For those issues, the report outlines the current practice, the nature of noncompliance, and the required action.

Section V identifies those areas where the Department has quality implementation concerns related to grant administration and fiscal management (i.e., those areas categorized as quality concerns, “met requirements with recommendations”). In these instances, the Department is determining that the State is currently complying with requirements but that improvements could be made to improve the efficiency or effectiveness of operations. Identified issues are grouped according to relevant area and requirement, with citations provided. For each issue listed, the Department will provide a recommendation for improvement but is not requiring the State to take any further action.

Overview of Visit



COVERED GRANT PROGRAMS OF THIS REVIEW

Title I, Part A; Title I, Part B; Title I, Part C; Title II, Part A; Title III, Part A; Title IV, Part A; Title V, Part B, Subpart 2; ESSER; EANS



FEDERAL FUNDING¹

Title I, Part A	\$ 68,069,983
Title I, Part B	\$ 4,343,959
Title I, Part C	\$6,721,596
Title II, Part A	\$ 10,500,144
Title III, Part A	\$ 3,921,154
Title IV, Part A	\$5,887,415
Title V, Part B, Subpart 2	\$37,982
ESSER I	\$ 65,085,085 ²
ESSER II	\$ 243,073,530 ³
ARP ESSER	\$ 546,290,147 ⁴
EANS	\$ 17,272,129 ⁵
ARP EANS	\$ 18,618,767 ⁶

Dates of Review

SEA: February 28, 2022 – March 4, 2020; Subrecipients: March 7, 2022 – March 11, 2022.

ED Reviewers

Eve Allen (Office of State and Grantee Relations)
 Dan Behrend (Management Support Office)
 Leticia Braga (Office of School Support and Accountability)
 Preeti Choudhary (Office of Migrant Education)
 Chris Fenton (Office of State and Grantee Relations)
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 Erin Hudson (Management Support Office)
 Grace Kwon (Rural Education Achievement Program)
 Lakesha McKenzie (Office of State and Grantee Relations)
 Shane Morrissey (Management Support Office)
 Hamed Negron-Perez (Office of Safe and Supportive Schools)

¹ FY 2021 funds included above (<https://www2.ed.gov/about/overview/budget/statetables/index.html>) are from OESE administered programs that allocate funds to States using a statutory formula. The totals do not reflect all Department funds that flow to a State. States and other entities may also receive funds from grants that are awarded on a competitive basis.

² <https://oese.ed.gov/files/2020/04/ESSER-Fund-State-Allocations-Table.pdf>

³ https://oese.ed.gov/files/2021/01/Final_ESSERII_Methodology_Table_1.5.21.pdf

⁴ https://oese.ed.gov/files/2021/06/Revised-ARP-ESSER-Methodology-and-Allocation-Table_6.25.21_FINAL.pdf

⁵ https://oese.ed.gov/files/2021/01/FINAL_GEERII_EANS-Methodology_Table_1.8.21.pdf

⁶ https://oese.ed.gov/files/2021/04/Final_ARP-EANS-Methodology-and-Table-3.16.21.pdf

Leslie Poynter (Rural Education Achievement Program)
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 Evan Skloot (Office of School Support and Accountability)
 Deborah Spitz (Office of School Support and Accountability)
 Todd Stephenson (Office of School Support and Accountability)
 Bryan Thurmond (Office of School Support and Accountability)
 Elizabeth Witt (Office of School Support and Accountability)

**Subrecipients
 Participating in the
 Desk Review**

Educational Service Unit 9
 Lincoln Public Schools
 Millard Public Schools
 Mitchell Public Schools
 Omaha Public Schools
 Westside Community Schools

**Current Grant
 Conditions**

Title I, Part A	(2) NDE must demonstrate that its standards and assessment system meets all requirements in the ESEA. ⁷ NDE must demonstrate that its English language proficiency (ELP) standards and assessments meet all ESEA requirements. ⁸
Title I, Part B	None.
Title I, Part C	None.
Title II, Part A	None.
Title III, Part A	None.
Title IV, Part A	None.
Title V, Part B	None.
ESSER	In its ARP ESSER State Plan, NDE must describe how it uses the funds it reserves under sections 2001(f)(1) of the ARP Act on evidence-based interventions to address the academic impact of lost instructional time, and must describe how the interventions it identifies will address the disproportionate impact of COVID-19 on certain groups of students. ⁹
EANS	None.

⁷ <https://oese.ed.gov/files/2020/03/Nebraska-9-1.pdf>

⁸ <https://oese.ed.gov/files/2020/09/Nebraska82020.pdf>

⁹ <https://oese.ed.gov/files/2021/10/Nebraska-ARP-ESSER-State-Plan-Approval-Letter.pdf>

SECTION II

Summary Status of Fiscal & Program Monitoring Indicators

STATUS KEY



Met requirements with commendation

High quality implementation & compliance



Met requirements

No instances of noncompliance identified



Met requirements with recommendation

Satisfactory compliance with quality concerns



Action required

Significant compliance & quality concerns

FINANCIAL MANAGEMENT & CROSS-CUTTING













Topic ¹⁰	Status
Accounting Systems and Fiscal Controls	●●○○
Cash Management and Payment Systems	●●●○
Period of Availability and Carryover	●●●○
Internal Controls	●○○○
Audit Requirements	●●●○
Records and Information Management	●●●○
Personnel	●●●○
Procurement	●●○○
Equipment and Supplies Management	●○○○
Indirect Costs	●●●○
Local Applications and Plans	●○○○
Risk Assessment (External)	●●●○
Subrecipient Monitoring	●●○○

CROSS-CUTTING FINANCIAL AND PROGRAMMATIC










Topic	Status
Allocations	●●●○
Maintenance of Effort (MOE)	●○○○
Equitable Services	●○○○
Data Quality	●●●○

¹⁰ The Department also monitors for “Charter School Authorization and Oversight” but this topic is not applicable in Nebraska because the State does not currently have any charter schools.


TITLE I, PART A & TITLE I, PART B

Topic¹¹	Status
State Assessment Requirements	
Statewide Accountability System	
Identification of Schools	
Support for School Improvement	
1003 School Improvement	
State and Local Report Cards	
Schoolwide Programs	
Targeted Assistance Programs	
Parent and Family Engagement	
Educational Stability for Students in Foster Care	
Title I-Specific Fiscal Requirements	
Other Title I Requirements	

TITLE I, PART C

Topic	Status
Program Overview/State Context	
Identification and Recruitment – Quality Control: Process For Resolving Eligibility Questions	
Identification and Recruitment – Quality Control: Prospective Re-interviewing	
Identification and Recruitment – Quality Control: Eligibility Documentation	
Provision of Services	
Program Fiscal Requirements	
Migrant Student Information Exchange (MSIX) Data Submission - General	
MSIX - End OF Term Submissions	
MSIX – Data Quality	

TITLE II, PART A

Topic	Status
Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders	

¹¹ The Department also monitors for “Direct Student Services” and “Optional Public School Transfer” but these topics are not applicable in Nebraska.

TITLE III, PART A

Topic	Status
Activities by Agencies Experiencing Significant Increases in Immigrant Children and Youth	● ○ ○ ○
Use of Funds	● ● ○ ○
Data Quality	● ● ○ ○

TITLE IV, PART A

Topic	Status
Monitoring	● ● ● ○
Technical Assistance	● ● ● ●
Performance Reporting and Evaluation	● ● ○ ○
LEA Applications	● ● ● ○
SEA Subgranting	● ● ● ○
General Provisions	● ● ● ○
SEA Use of Funds	● ● ● ○
LEA Use of Funds	● ● ● ○

TITLE V, PART B, SUBPART 2

Topic	Status
RLIS Program Objectives and Outcomes	● ○ ○ ○
SEA Financial Management	● ● ○ ○
Subgrantee Use of RLIS Funds	● ○ ○ ○
Program Administration	● ● ● ○
RLIS Subrecipient Monitoring	● ○ ○ ○

SECTION III

Met Requirements with Commendation

Title I, Part A

STATE AND LOCAL REPORT CARDS

REQUIREMENT SUMMARY

Description: An SEA and its LEAs are required to prepare and annually disseminate report cards that include all required elements to the public in a timely manner. In preparing and disseminating report cards, an SEA and its LEAs must also follow student subgroup disaggregation reporting requirements.

ESEA §§ 1003(i), 1111(h), 8101(23) and (25)

Title I Regulations 34 C.F.R. § 200.11

COMMENDATION

NDE developed a feature for its local report cards to allow the comparison of a specific school or LEA against 12 schools or LEAs on a range of information published on report cards (e.g., per-pupil expenditures, number of teachers, performance on statewide assessments). The feature provides the option to either compare the school or LEA against (1) similar schools or LEAs or (2) schools or LEAs in the same geographic area. NDE published a document describing its methodology to determine the comparison groups used in this enhancement to its report cards.¹² For the first option, NDE developed a methodology for identifying similar schools or LEAs by comparing information across 24 variables; a majority of that information is from NDE's data systems (e.g., student demographics, mobility rate, attendance rate, teacher experience and education) and the remaining 8 variables are sourced from the U.S. Census Bureau's data publications (e.g., median household income, population density). For the second option, NDE uses geographic distance between school (for elementary, middle, and high schools separately) and district buildings to determine the nearest schools or districts for comparison. This peer comparison feature is a helpful tool to provide context around certain report card information for each school and LEA and, thus, support the interpretation of results for parents, family members, and education stakeholders.

Please note that NDE's overall rating on the State and Local Report Cards topic is action required because the SEA also has several required actions, as further described in Section IV.

¹² https://nep.education.ne.gov/content/assets/data/methodology_to_compare_similar_peer_school_districts_nebraska.pdf

Title IV, Part A

TECHNICAL ASSISTANCE (TA)

REQUIREMENT SUMMARY

Description: A State shall have procedures to ensure compliance. Each State shall have procedures for reviewing and approving applications for subgrants and amendments to those applications, for providing technical assistance, for evaluating projects, and for performing other administrative responsibilities the State has determined are necessary to ensure compliance with applicable statutes and regulations.

EDGAR 34 C.F.R. § 76.770

COMMENDATION

The Department commends NDE for providing LEAs TA on developing a comprehensive needs assessment. NDE Federal Programs undertakes the distribution and TA on the numerous Comprehensive Needs Assessment documents for multiple State Offices; (Special Education, Voc. Rehab, Career Counseling, School Improvement, MTSS). Districts use the District Strategic Plans/School Improvement Plans for the various needs assessments including for Title IV.

Action Required

Financial Management & Cross-Cutting

INTERNAL CONTROLS

REQUIREMENT SUMMARY

Description: An SEA and its LEAs must establish and maintain a system of effective internal controls over Federal awards that provides reasonable assurance that the SEA is managing Federal awards in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards. These internal controls should be in accordance with guidance stated in the “Standards of Internal Control in the Federal Government” (GAO Green Book) or the “Internal Controls Integrated Framework” (Treadway Commission).

Uniform Guidance 2 C.F.R. § 200.303

ISSUE

Under 2 C.F.R. § 200.303, an SEA must establish and maintain effective internal control over a Federal award that provides reasonable assurance that the SEA is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award (2 C.F.R. § 200.303(a)). An SEA’s internal controls should be in compliance with guidance contained in the “Standards for Internal Control in the Federal Government” (GAO Green Book) or the “Internal Control Integrated Framework” (Treadway Commission/COSO). Important elements of sufficient internal controls under both of these frameworks are an internal risk identification and assessment process, and a process for monitoring the operation of an organization’s internal controls.

The Nebraska Department of Administrative Services¹³ requires NDE to enter into a memorandum of understanding (MOU) to ensure policies and procedures are in place to maintain an effective system of internal controls and to ensure that proper accounting methods are employed. The MOU notes that the State Accounting Manual policy AM-005 requires NDE to have an internal control plan over financial reporting, approved by the Department of Administrative Services. The plan must include risk assessments and must be implemented, tested, and monitored by NDE.

Recently, NDE hired an internal controls director. The internal controls director will be reviewing NDE’s current policies and internal controls, but the position has been vacant for a couple of years. NDE provided evidence of the work it has done concerning its control environment, internal controls monitoring and evaluation; however, we found that more work is needed to identify entity risk and

¹³According to the MOU, State law requires the Nebraska Department of Administrative Services – State Accounting to “systematically review[] on a regular basis activities of [S]tate agencies and departments to determine that adequate internal controls exist within all departments and agencies and to assure that proper accounting methods are employed.”

mitigation, including implementing the internal risk identification and assessment process, and a process for monitoring the operation of NDE's internal controls, that will be performed by the new internal controls director. Without a formal entity risk identification and mitigation process in place and implemented, there is a risk that NDE will be unable to sufficiently identify risks to agency operations, develop targeted strategies to mitigate identified risks, or make timely determinations regarding the ability of the controls that are already in place to protect against identified risk.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must provide:

1. Documentation of a regular process (e.g., quarterly, annually, biannually, etc.) for identifying internal risks. This documentation should include:
 - a. The types of risk that will be evaluated and the indicators to be used in the assessment;
 - b. The process for establishing risk tolerances for different categories or types of risk;
 - c. The process used to complete the risk assessment (including identification of responsible individuals); and
 - d. The process used to respond to identified risks affecting the operation or performance of the organization.
2. Documentation of NDE's internal controls framework; and
3. Documentation of a regular process (e.g., quarterly, annually, biannually, etc.) for evaluating the performance and/or effectiveness of the agency's internal controls framework. This documentation should include a description of the process and its frequency, identify the staff responsible for performing such an evaluation, and include copies of any tools or checklists that will be used to accomplish the evaluations.

EQUIPMENT AND SUPPLIES MANAGEMENT

REQUIREMENT SUMMARY

Description: An SEA shall use, manage, and dispose of equipment and supplies purchased using Federal funds in accordance with all relevant State laws and procedures. SEAs shall also ensure that equipment and supplies are used only for authorized purposes of the project during the period of performance (or until no longer needed).

Uniform Guidance 2 C.F.R. §§ 200.313-314

ISSUE

2 C.F.R. § 200.313(d)(2) requires that a physical inventory of the equipment, acquired in whole or in part with Federal funds, be taken and the results reconciled with the property records at least once every two years. The Department received evidence that some LEAs have policies to conduct a physical inventory and reconciliation with less frequency than every two years. Additionally, some LEAs could not provide documentation of the results of a recent physical inventory, either for the LEA itself or for equipment and supplies provided through equitable services to students in private schools.

NDE provided to the Department evidence of its guidance to LEAs on equipment management, including the commendable practice of recommending in its State and Federal Grant Management Requirements and Guidance handbook (Revised July 2019) that LEAs include items under the capitalization threshold but that otherwise meet the definition for “equipment” in their inventory. NDE’s Fiscal Monitoring Plan for LEAs and Subrecipients (2020-2021, updated July 1, 2020) and NDE’s consolidated monitoring checklist (see e.g., 2021- 22 Monitoring Guide Checklist Elementary and Secondary Education Act (ESEA) Every Student Succeeds Act (ESSA)) also include a review of the LEA’s equipment and inventory policy and procedures.

Some of the citations in Appendix C of the Federal Grant Management Requirements and Guidance handbook (Revised July 2019), however, are outdated due to amendments to the Uniform Guidance that took place after 2019 (e.g., the definitions previously located in 2 C.F.R. §§ 200.12, 200.20, 200.33, 200.48, 200.58, 200.89, and 200.94 were consolidated under 2 C.F.R. § 200.1; the text of 2 C.F.R. §§ 200.313 and 200.439 was amended in 2020).

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must provide documentation that it provided guidance to its LEAs to update their equipment management and inventory policies to include the requirements in 2 C.F.R. § 200.313(d), specifically that a physical inventory is required at least once every two years and documentation clarifying that SEA review of the LEA policy and records of the physical inventory are included as part of NDE’s subrecipient monitoring.

RECOMMENDATION

NDE should review and update the citations in Appendix C of the Federal Grant Management Requirements and Guidance handbook (Revised July 2019) when it provides guidance to LEAs and when it next revises its grant management handbook.

The Department recognizes that the COVID-19 pandemic may have made conducting physical inventories more challenging over the last couple of years. However, the Department recommends using the required action in this monitoring report as an opportunity to remind LEAs of the requirements and to encourage them to implement consistent policies. Additionally, the Department recommends that NDE continue to ensure compliance through its fiscal and consolidated monitoring and to ensure that its subrecipient monitoring includes review of LEA equipment policies and record of physical inventories.

LOCAL APPLICATIONS AND PLANS

REQUIREMENT SUMMARY

Description: To receive a subgrant under any covered programs as defined in section 8101(11), an LEA must have on file with the SEA a local program plan or application for each program or a consolidated local plan or application. An SEA shall ensure that all LEAs engage in timely and meaningful consultation with required stakeholders regarding LEA plans. Certain LEAs must also consult with appropriate officials from Indian tribes or tribal organizations approved by the tribes located in the area served by the LEA.

ESEA §§ 1112, 1113, 2101, 2102, 3111, 3114, 3115, 8305, 8306, 8452, 8538

EDGAR 34 C.F.R. § 76.530

Uniform Guidance 2 C.F.R. §§ 200.403-408, 2 C.F.R. §§ 200.420-476

ISSUE

ESEA section 8306(a) requires that any applicant, other than the SEA, that submits a plan or application under the ESEA, shall have on file with the SEA a single set of assurances, applicable to each program for which a plan or application is submitted that meet the requirements in ESEA section 8306(a)(1)-(7). NDE provided evidence that it requires LEAs to submit a consolidated plan through the Grant Management System (GMS). NDE collects a separate Title I, Part C application through GMS. Two of the LEAs participating in the consolidated monitoring review provided copies of NDE’s consolidated application (the ESSA Consolidated Application that included Title I, Part A; Title I, Part D; Title II, Part A; Title III, Part A; and Title IV, Part A), and the Title I, Part C application. Both the consolidated application and Title I, Part C application included a set of general and program-specific assurances.

NDE’s consolidated application and Title I, Part C application include assurances that cite to sections 8306(a)(1)-(7) of the ESEA under the heading “P.L. 114-95, Every Student Succeeds Act (ESSA) General Assurances.” For both applications, however, the assurances related to ESEA section 8306(a)(1) and (2) are missing key terms and need to be revised.

The table below shows a side-by-side comparison of NDE’s ESSA General Assurances numbers 1-2 and the text from section 8306(a)(1)-(2) in the ESEA.

NDE’s ESSA Consolidated Assurances	Text of ESEA Sections 8306(a)(1)-(2) (emphasis added)
1. The applicant will comply with all provisions of P.L. 114-95, Every Student Succeeds Act of 2015, and applicable regulations, policies and administrative guidelines. (§8306(a)(1))	each such program will be administered in accordance with all applicable statutes, regulations, <i>program plans, and applications</i> (§8306(a)(1)).

<p>2. The control of the funds will be in a public agency and the public agency will administer the funds to the extent required by the authorizing statutes. §8306(a)(2)(A)</p>	<p>(A) the control of funds provided under each such program <i>and title to property acquired with program funds</i> will be in a public agency or in a eligible private agency, institution, organization, or Indian tribe, if the law authorizing the program provides for assistance to those entities; and (B) the public agency, eligible private agency, institution, or organization, or Indian tribe will administer the funds and property to the extent required by the authorizing statutes (§8306(a)(2)).</p>
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ESEA section 8538(a) requires that an affected LEA¹⁴ consult with appropriate officials from Indian tribes or tribal organizations approved by the tribes located in the area served by the LEA prior to the affected LEA’s submission of a required plan or application for a covered program¹⁵ under the ESEA or for a program under Title VI of the ESEA. ESEA section 8538(d) requires that each affected LEA maintain in the agency’s records and provide to the SEA a written affirmation signed by the appropriate officials of the participating tribes or tribal organizations approved by the tribes that the consultation required by this section has occurred. ESEA section 8538(d) further provides that if the appropriate officials do not provide the affirmation within a reasonable period of time, the affected LEA must forward documentation that the consultation has taken place to the SEA.

NDE noted in the self-assessment that it uses the consolidated application to determine whether consultation with Indian tribes and tribal organizations occurred for four tribal school districts in Nebraska. However, several other LEAs in Nebraska meet the definition of affected LEA under ESEA section 8538(c)(1). NDE does not have a documented process for affected LEAs to submit the written affirmation, or where the appropriate officials do not provide the written affirmation, documentation that the consultation has taken place to NDE.

NDE uses GMS to collect a consolidated application from LEAs that includes Title I, Part A; Title I, Part D; Title II, Part A; Title III, Part A; and Title IV, Part A. NDE also uses GMS to collect a separate application for Title, Part C. During interviews with NDE, NDE staff noted that the application for Title I, Part C was separate due to prior guidance from the Department, potentially prior to passage of the Every Student Succeeds Act in 2015. Neither NDE nor Department staff were able to locate documentation of this prior guidance. It is important for SEA staff to be knowledgeable of the Title I, Part C requirements when reviewing an application for Title I, Part C funds, however, there is not a prohibition on including Title I, Part C as part of the consolidated application.

¹⁴ Section 8538(c)(1) defines “affected local educational agency” to mean a local educational agency— (A) with an enrollment of American Indian or Alaska Native students that is not less than 50 percent of the total enrollment of the local educational agency; or (B) that— (i) for fiscal year 2017, received a grant in the previous year under subpart 1 of part A of title VII (as such subpart was in effect on the day before the date of enactment of the Every Student Succeeds Act) that exceeded \$40,000; or (ii) for any fiscal year following fiscal year 2017, received a grant in the previous fiscal year under subpart 1 of part A of title VI that exceeded \$40,000.

¹⁵ Section 8101(11) defines “covered program” to mean each of the programs authorized by: (A) Title I, Part A; (B) Title I, Part C; (C) Title I, Part D; (D) Title II, Part A; (E) Title III, Part A; (F) Title IV, Part A; (G) Title IV, Part B; and (H) Title V, Part B, Subpart 2.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must provide documentation that it:

1. Revised the assurance template for collecting all required assurances in ESEA section 8306, including revising the assurance for section 8306(a)(1) to include program plans and applications and section 8306(a)(2) to include that title to property acquired with program funds will be in a public agency as part of NDE's next subaward grant cycle (i.e., for the 2022-2023 school year); and
2. Developed a process for affected LEAs to provide written affirmation to NDE, signed by the appropriate officials of the participating tribes or tribal organizations approved by the tribes, that the consultation required by section 8538 of the ESEA occurred, or where the appropriate officials do not provide the written affirmation, documentation that the consultation has taken place.

RECOMMENDATION

NDE could consider including Title I, Part C as part of its consolidated application in the future. Due to the supplemental nature of the Migrant Education Program (Title I, Part C; MEP), States that incorporate the MEP in their consolidated application need to create a separate breakout for MEP budget, staffing, and services.

Cross-Cutting Financial & Programmatic

MAINTENANCE OF EFFORT

REQUIREMENT SUMMARY

Description: An SEA shall ensure that each LEA shall have an amount of funding not less than 90% of the amount available the preceding year.

ESEA § 9521

Regulations 34 C.F.R. §§ 299

ISSUE

34 C.F.R. § 299.5(b) lists the following programs covered by the ESEA maintenance of effort (MOE) requirement: Title I, Part A; Title I, Part D; Title II, Part A; Title III, Subpart 1, Part A; Title IV, Part A; Title IV, Part B; Title V, Subpart 2, Part B; and Title VI, Subpart 1, Part A. NDE's Grants Management guidance is incorrect with respect to its list of the covered programs. NDE incorrectly lists Title I, Part C, and does not include Title IV, Part A.

REQUIRED ACTION

Subsequent to the review but prior to the release of this report, NDE updated its guidance to correct the list of programs. No further action is required.

EQUITABLE SERVICES

REQUIREMENT SUMMARY

Description: An SEA shall ensure that LEAs use Federal funds to provide benefits to eligible children enrolled in private schools and to ensure that teachers and families of participating private school children participate on an equitable basis. Where applicable, the SEA shall ensure that it uses Federal funds for State-level activities to provide benefits to eligible students and educators.

ESEA § 1117, § 8501

Regulations 34 C.F.R. §§ 200.62-67, § 299.6, and § 299.9

EDGAR C.F.R. § 76.661

ISSUE

ESEA section 8501 requires a State to provide equitable Title II, Part A services to ensure that teachers, principals, and other school leaders in participating private schools participate on an equitable basis as public school teachers, principals, and other school leaders. ESEA section 8501(c) requires meaningful consultation with private school officials in order to determine the needs of private school educators. This requirement applies not only to Title II, Part A funds that are allocated to LEAs, but also to the program funds that the SEA retains at the State level to carry out State activities under ESEA section 2101(c)(4). The requirement in ESEA section 2101(c)(4) presumes that meaningful consultation begins with the SEA identifying private school educators' needs and then providing activities that meet those needs. NDE is not carrying out all requirements regarding the provision of equitable services to eligible nonpublic school educators using State-level activity funds. While NDE invites private school educators to participate in at least one activity it provides to public school educators with State-level Title II, Part A funds, an opportunity to which all invited private school staff declined to participate, NDE provided no evidence that the consultation process originates with an effort to determine the needs of private school educators. As a result, private school educators are at risk of not having their professional development needs addressed by Title II, Part A State activities funds.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must submit a plan and a timeline for how the State will engage in meaningful consultation (that meets the requirements of ESEA section 8501(c)) with private school officials regarding how State activities funded with Title II, Part A will be responsive to the professional development needs of private school educators, as required by ESEA section 8501(a)(1) and further provide a plan and timeline for provision of such services.

Title I, Part A

IDENTIFICATION OF SCHOOLS

REQUIREMENT SUMMARY

Description: An SEA shall identify schools for comprehensive or targeted support and improvement. With respect to schools identified for comprehensive support and improvement, identification shall occur at least once every three years and must result in the identification of a subset of schools that receive Comprehensive support, as required by the statute. The schools identified for comprehensive support and improvement must include: 1) not less than the lowest-performing 5 percent of schools receiving Title I, Part A funds, 2) all high schools with a graduation rate below 67 percent, and 3) schools that receive Title I, Part A funds that were previously identified for additional targeted support and have not exited such status after a State-determined number of years. In addition, an SEA must annually identify schools requiring targeted support and improvement based on having one or more consistently underperforming subgroups of students, as determined by the State. Finally, an SEA must identify all schools requiring additional targeted support based on having one or more subgroups performing as poorly as the all students group in the lowest-performing 5 percent of schools receiving Title I, Part A funds, and the frequency of identification of which is determined by the SEA. An SEA may also identify, in its discretion, additional statewide categories of schools.

ESEA §§ 1111(c)(4)(D), 1111(c)(4)(C)(iii), 1111(d)(2)(C)-(D), 1111(d)(3)(A)(i)(II)

ISSUE

ESEA section 1111(d)(2)(C) requires the State to identify, for Targeted Support and Improvement – Additional Targeted Support (ATSI), any school in which any subgroup of students, on its own, would lead to identification under ESEA section 1111(c)(4)(D)(i)(I) using the State’s methodology under ESEA section 1111(c)(4)(D). NDE provided its business rules that indicated the State sets the cut score for identifying ATSI schools by averaging the score of all schools identified as the lowest-performing Title I schools identified for comprehensive support and improvement (CSI-Low Performing) for each indicator. Using the average score of all CSI-Low Performing schools on each indicator does not capture all schools in which any subgroup of students, on its own, would be identified for CSI-Low Performing. Accordingly, NDE did not identify ATSI schools consistent with ESEA requirements in fall 2019 based on data from school year 2018-2019.

Subsequent to the review but prior to the release of this report, NDE submitted an amendment request to its consolidated State plan to provide more detail regarding its procedures for identifying ATSI schools

consistent with ESEA requirements (i.e., clarifying that the cut scores for each indicator represent the highest-performing CSI-Low Performing school).

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must submit evidence that:

- NDE revised its business rules so that its methodology for identifying schools for ATSI includes any school in which any subgroup of students, on its own, would lead to identification under ESEA section 1111(c)(4)(D)(i)(I) using the State's methodology under ESEA section 1111(c)(4)(D) (i.e., set the cut scores for each indicator so that the cut scores represent the highest-performing CSI-Low Performing school).

After NDE has identified schools for ATSI in fall 2022, NDE must submit to the Department evidence that:

- NDE identified schools for ATSI consistent with ESEA section 1111(d)(2)(C) (i.e., setting the ATSI cut scores for each indicator using the highest scores of those schools identified for CSI-Low Performing for each indicator) as soon as possible, but no later than October 31, 2022, based on data from the 2021-2022 school year. If NDE fails to meet this requirement, the Department may take additional enforcement action.

SUPPORT FOR SCHOOL IMPROVEMENT

REQUIREMENT SUMMARY

Description: Upon receiving notification from the State, an LEA shall, for each school identified by the State and in partnership with stakeholders, develop and implement a support and improvement plan. The SEA shall notify an LEA of any school served by the LEA that is identified for targeted support and improvement, and the LEA shall notify such identified schools.

An SEA must establish statewide exit criteria for schools identified for comprehensive support and improvement and additional targeted support and improvement. Periodically, an SEA must review resource allocation to support school improvement in each LEA serving a significant number or a significant percentage of schools identified for Comprehensive or Targeted support and improvement and must provide technical assistance to each LEA serving a significant number of schools identified for Comprehensive or Targeted support and improvement.

ESEA §§ 1003(b)-(f), 1111(d)(1)-(2), 1111(d)(3)(A)

ISSUE

ESEA section 1111(d)(2)(B) requires each school identified for Targeted Support and Improvement due to consistently underperforming subgroups (TSI) and ATSI to develop a support and improvement plan that must be approved and monitored by the LEA. NDE submitted a frequently asked questions (FAQ) document that clearly lists the plan requirements for TSI and ATSI schools and clearly describes that each LEA is required to notify TSI and ATSI schools of their designation and support schools in creating a plan. NDE also provided a TSI and ATSI planning guide; however, this guide did not reference most of the requirements in ESEA section 1111(d)(2)(B) (i.e., that the plan is developed in partnership with stakeholders; is informed by all indicators; must be approved and monitored by the LEA; and, for ATSI schools, identify the resource inequities to be addressed by the plan). Lastly, NDE provided its monitoring protocol and a monitoring sample from an LEA with a TSI school. The monitoring protocol requires a description of LEA supports for TSI and ATSI schools. However, although NDE submitted a sample monitoring response from an LEA with relatively robust information, there is no specific requirement in the monitoring protocol that ensures each LEA reviews, approves, and monitors implementation of TSI and ATSI plans. Both LEAs also indicated during the desk review that they would benefit from additional support and clarity from NDE regarding TSI and ATSI plans.

ESEA section 1111(d)(3)(A)(ii) requires the SEA to periodically review resource allocation to support school improvement in each LEA in the State serving a significant number of CSI, TSI, and ATSI schools. While NDE provides technical assistance to all identified schools and supports LEAs in their own resource inequity review as required during the development of CSI and ATSI plans, the SEA itself has not periodically reviewed resource allocation to support school improvement in each LEA in the State serving a significant number of schools identified for CSI, TSI, and ATSI.

REQUIRED ACTION

Within 60 days, NDE must provide:

1. Evidence that it ensures each LEA reviews, approves, and monitors implementation of TSI and ATSI plans (e.g., changes to its monitoring protocol and its guidance materials); and
2. A timeline and plan for conducting resource allocation reviews in each LEA serving a significant number of CSI, TSI, or ATSI schools in the 2022-2023 school year.

After NDE has conducted its resource allocation reviews during the 2022-2023 school year, NDE must provide evidence of the review conducted in LEAs serving a significant number of CSI, TSI, or ATSI schools.

RECOMMENDATION

While NDE has an FAQ document that includes the requirements in ESEA section 1111(d)(2)(B) for support and improvement plans for TSI and ATSI schools, its planning guide does not mention these requirements. Both LEAs that participated in this review indicated that they would like additional support in this area from NDE. The Department recommends that NDE update its planning guide to clearly include these requirements and ensure that the existing template clearly describes the specific TSI and ATSI plan requirements.

1003 SCHOOL IMPROVEMENT

REQUIREMENT SUMMARY

Description: An SEA shall allocate and oversee the administration of 1003(a) school improvement subgrants so that LEAs and schools can effectively develop and implement comprehensive support and improvement and targeted support and improvement plans. The SEA must also conduct a rigorous review of 1003(a) subgrant applications to ensure that LEAs include all required elements.

ESEA §§ 1003(a)-(f), 1111(d)(1)-(2)

ISSUE

Under ESEA section 1003(e), an LEA must submit an application to the SEA that describes how the LEA will:

1. Develop comprehensive support and improvement plans under section 1111(d)(1) for schools receiving funds;
2. Support schools developing or implementing targeted support and improvement plans under section 1111(d)(2), if applicable;
3. Monitor schools receiving funds;
4. Use a rigorous review process to recruit, screen, select, and evaluate any external partners with whom the LEA will partner;
5. Align other Federal, State, and local resources to carry out the activities supported with funds; and
6. As appropriate, modify practices and policies to provide operational flexibility that enables full and effective implementation of the plans.

NDE's application template includes checkboxes for the LEA to ensure that it will monitor schools receiving section 1003 funds and that the LEA will use a rigorous review process to recruit, screen, select, and evaluate any external partners with which the LEA will partner. However, the application must require each LEA to describe how it will carry out each of the responsibilities; therefore, assurances are insufficient. Additionally, NDE did not require in its application each LEA to describe how it will align other Federal, State, and local resources to carry out the activities supported with funds, and, as appropriate, modify practices and policies to provide operational flexibility that enables full and effective implementation of the plans.

REQUIRED ACTION

Within 60 days of receiving this report, NDE must submit a revised LEA application for section 1003 school improvement funds that requires each LEA to describe how it will:

1. Monitor schools receiving funds under the section;
2. Use a rigorous review process to recruit, screen, select, and evaluate any external partners with whom the LEA will partner;
3. Align other Federal, State, and local resources to carry out the activities supported with these funds; and

4. As appropriate, modify practices and policies to provide operational flexibility that enables full and effective implementation of support and improvement plans.

RECOMMENDATION

NDE includes several assurances in its ESEA section 1003 application that are not necessarily related to section 1003 or Title I. For example, there is an assurance that states: “The LEA assures that it developed and will implement the local flexibility demonstration agreement in consultation with teachers, principals, and other school leaders, administrators of Federal programs Impacted by the agreement, parents, community leaders, and other relevant stakeholders. 1501(d)(1)(G).” This assurance comes from ESEA section 1501, which is not applicable to ESEA section 1003 or to LEAs receiving Title I funds, generally. Further, section 1501 of the ESEA relates to authority, the only the Department may grant to an LEA, to implement a weighted student funding formula for the district of Federal (and State and local) funds to schools. There are also several assurances related to operating a targeted assistance or schoolwide program. The Department recommends that NDE examines its listed assurances and remove any that are not applicable to the programs covered in this application.

STATE AND LOCAL REPORT CARDS

REQUIREMENT SUMMARY

Description: An SEA and its LEAs are required to prepare and annually disseminate report cards that include all required elements to the public in a timely manner. In preparing and disseminating report cards, an SEA and its LEAs must also follow student subgroup disaggregation reporting requirements.

ESEA §§ 1003(i), 1111(h), 8101(23) and (25)

Title I Regulations 34 C.F.R. § 200.11

ISSUE

Minimum Number of Students

ESEA section 1111(c)(3)(A)(iii) requires a State to describe a minimum number of students necessary to be included to carry out the requirements for any provision under Title I, Part A and ensure the minimum number is sufficient to not reveal any personally identifiable information. In addition, under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g), educational agencies and institutions are generally prohibited from disclosing personally identifiable information (PII) from students' education records without prior written consent. FERPA's definition of personally identifiable information includes information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty (34 C.F.R. § 99.3). This means that a State must assess the level of disclosure risk for each proposed data release and evaluate that risk to ensure that the students' PII is not disclosed. (See also A-10 in the Department's Opportunities and Responsibilities for State and Local Report Cards under the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act, Non-Regulatory Informational Document, September 2019.)¹⁶

NDE's approved consolidated State plan describes using 10 as the minimum number of students necessary to be included when reporting information on student subgroups on State and local report cards. In addition, NDE has policies and procedures in place that indicate it will apply masking procedures for reported data with fewer than 10 students in a group represented, except in the case of membership data, which is not masked. However, there were multiple instances where NDE reported assessment participation information for student subgroups with fewer than 10 students (e.g., in one school, for the American Indian or Alaska Native student subgroup, 0 students were tested and 1 student was not tested for the reading/language arts assessment).

Additionally, NDE's current policy establishes a threshold of 5 students for reporting on assessment performance levels within a student subgroup category. If there are fewer than 5 students within a performance level for a student subgroup, NDE suppresses that information. However, NDE's policy clearly indicates it does not use complementary suppression, which means that in some cases, the

¹⁶ <https://oese.ed.gov/files/2020/03/report-card-guidance-final.pdf>

suppressed information is still disclosed through subtraction. For example, in one school, NDE reported that 73 percent of Asian 3rd-grade students taking the mathematics assessment scored proficient and that “*” scored below proficient. The data are not sufficiently masked because the user can easily calculate that 27 percent scored below proficient. Although there are no specific required business rules for reporting data, the Department’s guidance notes that complementary suppression is one possible way to ensure that the State is protecting the privacy of students.

Accessibility for Parents, Family Members, and the Public

NDE’s report card website integrates a translation feature to assist in making report cards accessible in Spanish. This function does not work consistently throughout the webpages that display report card information. Additionally, in order to provide contextual information to parents, family members, and the public around interpreting assessment data during the 2020-2021 school year, NDE chose to report assessment performance and participation information through a special report. This report does not utilize the same translation feature as the rest of the State’s report cards. Furthermore, although NDE indicated that it uses a translation service for any requests for translations for a different language, it does not currently have a method of publicly communicating this option to parents, family members, and the public. Consistent with requirements under Title VI of the Civil Rights Act of 1964, NDE must ensure meaningful access to national origin minority parents who have limited English proficiency by producing, to the extent practicable, versions of its State and local report cards in other languages or by supporting local translations of some report card information.

Secondly, during the performance review, NDE did not provide information describing how report cards are accessible to an individual with a disability, as defined by the Americans with Disabilities Act (ADA) (42 U.S.C. 12102). An SEA and LEA has an obligation under Section 504 and Title II of the ADA to ensure that communications with individuals with disabilities are as effective as communications with non-disabled individuals. (28 C.F.R. § 35.160 and 34 C.F.R. § 104.4(b)(1)(iii)). Thus, each SEA and LEA must disseminate its annual report cards in a manner that provides parents with disabilities and individuals with disabilities who are members of the public with an equal opportunity to access the report cards. To do so, the SEA and LEA may need to take appropriate steps, including providing accommodations or modifications when necessary. This is the same requirement that applies to any service, program, or activity that an SEA and LEA provides, including to the SEA’s and LEA’s electronic dissemination of information, distribution of print material, and the conduct of any related activities, such as public forums or workshops to discuss the report card.

Required Reporting Elements

The Department reviewed NDE’s State and local report cards for the 2020-2021 school year and found that NDE did not include all required information under ESEA section 1111(h)(1)-(2). Specifically, its report cards for school year 2020-2021 do not include the following:

- **ESEA sections 1111(b)(2)(B)(xi), 1111(h)(1)(C)(ii) and (h)(2)(C)** – Student achievement data (i.e., the number and percentage of students at each level of achievement on the State mathematics, reading/ language arts, and science assessments) disaggregated specifically for children without disabilities and non-economically disadvantaged students on State and local report cards in addition to:

- Comparison of achievement in the LEA to the State as a whole on local report cards; and
 - Comparison of achievement in the school to the LEA and the State as a whole.
- **ESEA sections 1111(b)(2)(B)(xi), 1111(h)(1)(C)(vii) and (h)(2)(C) –**
 - Percentages of students assessed and not assessed (i.e., participation rates) for Nebraska’s field test of the science assessment (Nebraska’s College and Career Ready Standards for Science) for all students and disaggregated by student subgroups on State and local report cards.¹⁷ Although NDE received a waiver of the requirement to report the results of science assessment performance on State and local report cards, NDE did not receive a waiver of the requirement in ESEA section 1111(h)(1)(vii) and related requirement in (2)(C) to report assessment participation information for science assessments.¹⁸
 - Percentages of students assessed and not assessed in each subject (i.e., participation rates) for all statewide assessments disaggregated for children without disabilities and non-economically disadvantaged students on State and local report cards.
 - **34 C.F.R. § 200.6(h)(5)(iii) –** Number and percentage of recently arrived English learners exempted from one administration of the reading/language arts assessments or whose results are excluded from certain State accountability system indicators for State and local report cards.
 - **ESEA sections 1111(h)(1)(C)(viii) and (h)(2)(C) –** School-level data from the CRDC (i.e., in-school suspensions, out-of-school suspensions, expulsions, school-related arrests, referral to law enforcement, chronic absenteeism, incidents of violence including harassment and bullying, number of students enrolled in preschool programs, and number and percentage of students enrolled in accelerated coursework) for local report cards.
 - **ESEA sections 1111(h)(1)(C)(ix) and (h)(2)(C) –** The professional qualifications of teachers in the State including information (that shall be presented in the aggregate and disaggregated by high-poverty compared to low-poverty schools) on the number and percentage of: inexperienced teachers, principals, and other school leaders; teachers teaching with emergency or provisional credentials; and teachers who are not teaching in the subject or field for which the teacher is certified or licensed on State and local report cards. Specifically, NDE’s report cards did not include this information disaggregated by high-poverty compared to low-poverty schools and did not include information on inexperienced principals and other school leaders.

¹⁷ Please note that the required student subgroups disaggregation varies by report card element. For example, the State and local report cards must disaggregate data for students who are not economically disadvantaged and children without disabilities when reporting on student achievement data (i.e., the number and percentage of students at each level of achievement on the State mathematics, reading/language arts, and science assessments) and participation rates (i.e., the percentages of students assessed and not assessed in each subject). There are no other report card elements that are required to be disaggregated for students who are not economically disadvantaged and children without disabilities. For a complete explanation of the reporting requirements for student subgroups by individual element, please refer to Appendix A on page 54 of the Department’s guidance on State and local report cards: <https://oese.ed.gov/files/2020/03/report-card-guidance-final.pdf>.

¹⁸ <https://oese.ed.gov/files/2021/05/ne-2020-21-science-assessment-waiver-letter.pdf>

- **ESEA sections 1111(h)(1)(C)(xii) and (h)(2)(C)** – State performance on the National Assessment of Educational Progress (NAEP) for mathematics and reading, grades 4 and 8 on the:
 - State report cards for all students and disaggregated for major racial and ethnic groups, children with disabilities, English language learners, and economically disadvantaged students; and
 - Local report cards with statewide information.
- **ESEA sections 1111(h)(1)(C)(xiii) and (h)(2)(C)** – Postsecondary enrollment rates (where available) for each high school, for public postsecondary institutions and private and out-of-State postsecondary institutions disaggregated for the following subgroups: major racial and ethnic groups, children with disabilities, English learners, and economically disadvantaged students on State and local report cards. Specifically, NDE’s report cards reported State-, LEA-, and school-level postsecondary enrollment rates (with separate rates reported by total, public college, private college, 2-year college, and four-year college) and did not report any disaggregated information by student subgroups. In NDE’s prior *EDFacts* submissions on high school graduates’ postsecondary enrollment rates (file 160), the State reported information by student subgroup. To the extent that NDE has postsecondary enrollment data available by student subgroup, it must include this information on its State and local report cards.

Additionally, the Department reviewed NDE’s State and local report cards for the 2018-2019 school year for elements that were not required to be reported in the 2019-2020 and 2020-2021 school years due to the waivers that NDE received from the Department.¹⁹ The Department found that NDE did not include all the required information under ESEA section 1111(h)(1)-(2). Specifically, its report cards for school year 2018-2019 do not include the following:

- **ESEA sections 1111(h)(1)(C)(i)(I)-(IV), (VI), and (h)(2)(C)** – The following on State and local report cards (or a direct link from the State and local report cards to a webpage containing this information):
 - Clear and concise description of State accountability system, including:
 - Minimum number of students (i.e., n-size) for use in accountability system
 - Long-term goals
 - Measurements of interim progress
 - Indicators to meaningfully differentiate all public schools in the State
 - System for meaningful differentiation among schools
 - Specific weight of the accountability indicators
 - Method of identifying schools as consistently underperforming, including time period the State uses to determine consistent underperformance
 - Method of identifying schools for comprehensive support and improvement
 - Exit criteria established by the State for (1) schools identified for comprehensive support and improvement and (2) schools identified for additional targeted support and improvement, including the number of years after which, if the exit criteria are not

¹⁹ <https://oese.ed.gov/files/2021/05/ne-acct-waiver-response.pdf>

satisfied, in the case of Title I schools, such schools will be identified for comprehensive support and improvement.

- **ESEA section 1111(h)(1)(C)(iii)(I) and (h)(2)(C)** – Performance on the Other Academic indicator used in the State accountability system overall and disaggregated for the following subgroups: major racial and ethnic groups, children with disabilities, English learners, and economically disadvantaged students on State and local report cards. The Department was able to locate data for LEA and school-level performance on “growth” and “improvement” on the 2018-2019 Data Downloads page, specifically in the AQuESTT Classifications file. However, this data is not disaggregated and is difficult to interpret without a description of the indicator or additional information.
- **ESEA section 1111(h)(1)(C)(v) and (h)(2)(C)** – Performance on the School Quality or Student Success indicator(s) used in the State accountability system overall and disaggregated for the following subgroups: major racial and ethnic groups, children with disabilities, English learners, and economically disadvantaged students on State and local report cards. The Department was able to locate the data for LEA and school-level chronic absenteeism and Evidence-Based Analysis in a AQuESST Classifications spreadsheet. However, this data is not disaggregated and is difficult to interpret without a description of the indicator or additional information.
- **ESEA section 1111(h)(1)(C)(vi) and (h)(2)(C)** – Progress toward State-designed, long-term goals for academic achievement, graduation rates, and progress in achieving English language proficiency, including measurements of interim progress overall and disaggregated for the following subgroups: major racial and ethnic groups, children with disabilities, English learners, and economically disadvantaged students on State and local report cards.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must provide:

1. Evidence that NDE has applied its minimum number of students necessary for reporting, consistent with its business rules and FERPA requirements, to update its 2020-2021 report cards;
2. Evidence that it translates, to the extent practicable (e.g., if it is not practicable to provide a written translation, it should be provided orally to a family member upon request), the State and local report card in the languages spoken by the major language groups served by the SEA and LEA and distributes the translated copies to parents who have limited English proficiency;
3. Evidence (e.g., publicly available information on NDE’s website, internal policies and procedures) that report cards are available to be provided in an alternative format accessible to a parent who is an individual with a disability, as defined by the ADA (42 U.S.C. 12102); and
4. Evidence that its State and local report cards for the 2020-2021 school year include all required reporting elements consistent with ESEA section 1111(h) (notwithstanding the elements that were waived by the Department for that school year for NDE).

After publication of report cards for the 2021-2022 school year in fall 2022, NDE must provide evidence (e.g., providing links to published report cards, screenshots, etc.) that its State and local report cards for the 2021-2022 school year include all required report card elements consistent with ESEA section 1111(h).

SCHOOLWIDE PROGRAMS

REQUIREMENT SUMMARY

Description: A Title I schoolwide program is a comprehensive reform strategy designed to upgrade the educational program of a Title I school in order to improve the achievement of the lowest-achieving students. An LEA may operate a schoolwide program in a Title I school with 40 percent or more of its students living in poverty. In addition, an SEA has discretion to grant a waiver to allow an LEA to operate a schoolwide program without meeting the 40 percent poverty threshold if the SEA has determined that a schoolwide program will best serve the needs of low-achieving students in the school.

A school implementing a Title I schoolwide program must conduct a comprehensive needs assessment of the entire school, prepare a comprehensive schoolwide plan, and regularly review the schoolwide plan. To better leverage all available funding, a schoolwide program school has the flexibility to consolidate funds from Title I and other Federal educational programs with State and local funds. To support the effective implementation of schoolwide programs, States must eliminate or modify State and local fiscal accounting requirements so that LEAs can consolidate funds under schoolwide programs.

ESEA § 1114

Title I Regulations 34 C.F.R. §§ 200.25-200.29

ISSUE

Consolidation of Funds

Under ESEA section 1114(a)(1)(A), an LEA may consolidate and use Title I funds, together with other Federal, State, and local funds, in order to upgrade the entire educational program of a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children enrolled in the school are from such families. Additionally, under ESEA section 1603(a)(1)(C) each State receiving Title I funds must eliminate or modify State and local fiscal accounting requirements in order to facilitate the ability of schools to consolidate funds under schoolwide programs. Finally, under ESEA section 1111(g)(2)(E), each SEA must ensure that it will modify or eliminate State fiscal and accounting barriers so that schools can easily consolidate funds from other Federal, State, and local sources to improve educational opportunities and reduce unnecessary fiscal and accounting requirements.

During the performance review, NDE indicated that, although it allows for the braiding or coordination of Federal, State, and local funds, it does not allow the consolidation of funds. The State further indicated that this was due to the accounting structures in place and that it may start allowing consolidation of funds, particularly if it heard from an LEA or school that was interested in consolidation. One of the LEAs included in the desk review expressed an appreciation for its current accounting procedures in order to track the use of funds to meet the goals of their respective programs.

Regarding the issue of existing accounting structures, the Department provided examples in question E-3 of the 2008 Non-Regulatory Guidance on Title I Fiscal Issues in order to support SEAs in establishing procedures for consolidation with minimal changes to existing accounting structures.²⁰

Use of Funds for Dual or Concurrent Enrollment Programs

Under ESEA section 1114(e), a secondary school operating a schoolwide program may use Title I funds to operate dual or concurrent enrollment programs that address the needs of low-achieving secondary school students and those at risk of not meeting the challenging State academic standards. A secondary school using Title I funds for a dual or concurrent enrollment program may use such funds for any of the costs associated with such program, including the costs of:

1. Training for teachers, and joint professional development for teachers in collaboration with career and technical educators and educators from institutions of higher education, where appropriate, for the purpose of integrating rigorous academics in such program;
2. Tuition and fees, books, required instructional materials for such program, and innovative delivery methods; and
3. Transportation to and from such program.

Although NDE has had schools operating schoolwide programs utilize this flexibility and it provided the necessary information to those schools, it did not have any guidance documents or information in its monitoring checklist regarding this requirement.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must provide a plan and a timeline to develop procedures and communicate the option for Title I schools operating schoolwide programs to consolidate and use Title I funds, together with other Federal, State, and local funds, in order to upgrade the entire educational program of a school.

RECOMMENDATION

The Department recommends NDE update its guidance, policies, or procedures (e.g., Schoolwide Plan Rating Rubric for New & Updated Plans, Schoolwide Plan Template) to clearly communicate the option to use funds in a schoolwide program for dual or concurrent enrollment programs.

²⁰ <https://www2.ed.gov/programs/titleiparta/fiscalguid.pdf>

PARENT AND FAMILY ENGAGEMENT

REQUIREMENT SUMMARY

Description: An LEA that receives Title I, Part A funds must notify parents that they may request information on teacher and paraprofessional qualifications. Additionally, an LEA must provide parents with information regarding student academic achievement and growth, testing transparency, information regarding the State or LEA policy for student participation in any assessments and additional information. An LEA receiving Title I funds must also conduct outreach to parents and family members and implement parent and family programs and activities, which must be planned and implemented in consultation with parents. An SEA must collect and disseminate to LEAs effective parent and family engagement strategies.

ESEA §§ 1111(g)(2)(f), 1116, and 8101(39)

ISSUE

ESEA section 1116(a)(2) and (b) outline the requirements for district and school parent and family engagement policies, respectively. While NDE provides guidance and templates that outline these requirements, the two LEA policies submitted during the performance review only reiterated the statutory requirements rather than describing how each LEA and school would meet the requirements. For example, ESEA section 1116(a)(2)(D) requires an LEA to describe how it will conduct, with the meaningful involvement of parents and family members, an annual evaluation of the content and effectiveness of the parent and family engagement policy. In the evidence submitted by NDE and both LEAs, the policy simply reiterates this requirement instead of describing how an LEA would conduct such evaluation. NDE noted that its previous guidance indicated that each LEA and school must describe how they will meet the requirements in ESEA section 1116(a)(2) and (b), but its current guidance and templates do not reflect this.

ESEA section 1116(a)(3)(C) requires that not less than 90 percent of the funds reserved for parent and family engagement shall be distributed to Title I schools, with priority given to high-need schools. NDE indicated that it does not ensure that each LEA prioritizes high-need schools when distributing funds under this reservation.

ESEA section 1112(e)(1)(B)(ii) requires each Title I school to provide to each individual parent of a child who is a student in a Title I school timely notice that the student has been assigned, or has been taught for four or more consecutive weeks by, a teacher who does not meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned. NDE indicated during its desk review that it does not ensure, whether through monitoring or other means, that each LEA ensures that each Title I school meets this requirement.

REQUIRED ACTION

Within 60 days of receiving this report, NDE must provide evidence that it has updated its:

1. Guidance and templates for both district and school parent and family engagement policies so that they clearly indicate that each LEA and school must describe how it will meet the requirements under ESEA section 1116(a)(2) and (b), respectively;
2. Policies or procedures to ensure that each LEA prioritizes high-need schools when distributing funds from the parent and family engagement reservation under ESEA section 1116(a)(3); and
3. Monitoring protocol to verify that each LEA is ensuring that Title I schools are providing timely notice to each individual parent of a child that the student has been assigned, or has been taught for four or more consecutive weeks by, a teacher who does not meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned.

TITLE I-SPECIFIC FISCAL REQUIREMENTS

REQUIREMENT SUMMARY

Description: An SEA may only provide Title I, Part A funds to an LEA if State and local funds will be used in schools served by Title I funds to provide services that, on the whole, are at least comparable to services in schools that are not receiving Title I funds.

An SEA and its subgrantees shall ensure that funds from the Title I, Part A program are used to supplement not supplant State and local funds.

An SEA shall ensure that, when subawarding funds to LEAs or other subrecipients, it makes subawards in accordance with applicable statutory requirements (including requirements related to the process for subawarding funds and the amounts to be subawarded to individual subrecipients).

ESEA §§ 1113, 1114, 1115, 1116(a)(3), 1117(a), 1118(b), 1118(c), and 4306

Title I Regulations 34 C.F.R §§ 200.64, 200.77, and 200.78

EDGAR 34 C.F.R. §§ 76.50-51, § 76.300, § 76.789, and § 76.792

Uniform Guidance 2 C.F.R. § 200.332(a)

ISSUE

Comparability

ESEA section 1120A(c) requires the SEA to only provide Title I, Part A funds to an LEA if the State and local funds will be used in schools served by Federal programs to provide services that, on the whole, are at least comparable to services in schools that are not receiving funds. Each LEA is required to develop procedures for compliance with comparability requirements. In Nebraska, NDE uses an online portal through which each LEA annually submits its comparability data. NDE uses a student-to-staff ratio in order to determine compliance with the comparability requirement. When calculating student-to-staff ratios, NDE allows LEAs to exclude English learners and students with disabilities from the student count. While an LEA may exclude State and local funds expended for language instruction educational programs and excess State and local costs of providing services to children with disabilities as determined by the LEA, it may not exclude those students from the comparability calculation.

Within-District Allocations

Under 34 C.F.R. § 200.78(c), an LEA is not required to allocate the same per-pupil amount to each participating school. If an LEA allocates different per-pupil amounts to participating schools, the LEA must allocate a higher per-pupil amount to schools with higher poverty rates than it allocates to schools with lower poverty rates. The flexibility to allocate more funds on a per-pupil basis to a higher-poverty school represents an opportunity for an LEA to distribute Title I funds in a manner that may be more

equitable than allocating the same amount of funds per-pupil to every school. NDE does not clearly communicate that each LEA has the option to allocate more funds on a per-pupil basis to schools with higher poverty rates than it allocates to schools with lower poverty rates.

Supplement Not Supplant

ESEA section 1118(b) requires an LEA to demonstrate that its methodology to allocate State and local funds to schools results in each Title I school receiving all of the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds. The Department notes that NDE sufficiently monitors LEAs for this requirement. However, the Department also notes that NDE's Grants Management guidance incorrectly states that it is meeting this requirement through annual comparability checks (pages 29-31). Additionally, on page 30 of the same guidance document, NDE incorrectly explains that the district-level Title I supplement, not supplant requirement is maintenance of effort. This comparison is unclear and may lead to confusion on how a district complies with Title I supplement, not supplant requirements.

REQUIRED ACTION

Within 60 days of receiving this report, NDE must submit evidence that it has revised its procedures for determining LEA compliance with comparability requirements so that it includes all students when calculating the student-to-staff ratio.

RECOMMENDATIONS

The Department recommends that NDE update its guidance, policies, or procedures (e.g., LEA consolidated application) to describe that an LEA has the option under 34 C.F.R. § 200.78(c) to allocate higher per pupil amounts to higher poverty schools in the district.

The Department further recommends that NDE revise its guidance to correctly describes how it checks for LEA compliance with Title I supplement not supplant requirements and remove the comparison to maintenance of effort.

OTHER TITLE I REQUIREMENTS

REQUIREMENT SUMMARY

Description: Any State that receives support under Title I, Part A must describe how low-income and minority children are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers and must evaluate and publicly report the progress of the SEA with regard to such description and ensure that LEAs identify and address any disparities that result in low-income students and minority students being taught at higher rates than other students by ineffective, inexperienced, or out-of-field teachers.

ESEA §§ 1111(g), 1112, 1119, 1603

ISSUE

ESEA section 1111(g)(1)(B) requires that a State plan describe how low-income and minority children enrolled in Title I schools are not served at disproportionate rates by ineffective, out-of-field, and inexperienced teachers, and the measures the State will use to evaluate and publicly report the progress of the State with respect to such description. As described above in the required action under the State and Local Report Cards section, NDE publicly reports the disaggregation of out-of-field teachers, teachers with provisional credentials, and inexperienced teachers on State and local report cards in order to partially meet the requirements under ESEA section 1111(h). However, NDE does not publicly report its progress toward ensuring that low-income and minority children in Title I schools are not served at disproportionate rates by ineffective, out-of-field, and inexperienced teachers. Please note that the SEA is *not* required to report this progress on State and local report cards, though that is one way to meet this requirement.

Further, ESEA section 1112(b)(2) requires each LEA receiving a Title I, Part A subgrant to “identify and address, as required under State plans as described in section 1111(g)(1)(B), any disparities that result in low-income students and minority students being taught at higher rates than other students by ineffective, inexperienced, or out-of-field teachers.” Currently, NDE’s three-year monitoring cycle for LEAs verifies whether the LEA with Title I, Part A programs has policies and procedures in place to ensure that “students from low-income families and students of color are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers.” Based on the performance review, it does not appear that the State is effectively communicating the definition of ineffective teachers to LEAs and requiring that LEAs identify and address any disparities that result in low-income students and minority students being taught at higher rates than other students by ineffective teachers. Additionally, only one of the two LEAs included in the desk review had information on its process to identify such disparities and it was only for out-of-field teachers.

Finally, NDE indicated that it has developed the Supporting Educator Effectiveness through Development System (SEED) which helps districts organize data about their educators to inform how best to support and develop educators. NDE further indicated that the “SEED process defines ‘ineffective’ as an educator who scores at the lowest level of the district’s locally adopted evaluation instrument.” NDE also stated that it intends to revise its “Teacher Vacancy Survey” to include questions

on how many teachers are ineffective teachers under the same definition used in the SEED process. The SEED process definition differs from NDE's definition in its approved consolidated State plan, which is based on districts' and schools' responses to Evidence-Based Analysis (EBA) Educator Effectiveness items.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must submit:

1. A timeline and plan for evaluating and publicly reporting progress in ensuring that low-income and minority children in Title I schools are not served at disproportionate rates by ineffective, out-of-field, and inexperienced teachers consistent with the requirements in ESEA section 1111(g)(1)(B); and
2. Evidence that NDE requires LEAs to identify and address any disproportionate rates of access to ineffective, out-of-field, and inexperienced teachers for low-income and minority students in Title I schools consistent with the requirements in ESEA section 1112(b)(2).

Please note that if NDE would like to use a different definition of ineffective teachers for reporting purposes than the one described in its currently approved consolidated State plan, it must propose a new definition through a State plan amendment.

EDUCATIONAL STABILITY FOR STUDENTS IN FOSTER CARE

REQUIREMENT SUMMARY

Description: An SEA must collaborate with the State agency responsible for administering the State plans under Parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq. and 670 et seq.) to ensure the educational stability of children in foster care and ensure LEAs receiving Title I, Part A subgrants collaborate with the State or local child welfare agency to develop and implement procedures governing transportation for children in foster care.

ESEA § 1111(g)(1)(E) and § 1112(c)(5)

ISSUES

LEA Transportation Procedures

ESEA section 1112(c)(5)(B) requires each LEA receiving a Title I, Part A subgrant to provide an assurance that it will, in collaboration with the relevant local child welfare agency, develop and implement written transportation procedures describing how it will provide, arrange, and fund transportation for students in foster care. NDE includes an assurance in its Title I, Part A application that requires each LEA applying for Title I, Part A funds to commit to developing written transportation procedures to govern how transportation for students in foster care will be provided, arranged, and funded. During its conversation with the Department, however, NDE was not aware of the aforementioned assurance in the State's Title I, Part A application and NDE further indicated that the State does not review whether LEAs maintain written transportation procedures for students in foster care. One LEA that the Department talked to as part of this review indicated that it does not have written transportation procedures to govern transportation for students in foster care.

Subrecipient Monitoring

Under the Uniform Guidance, the SEA is responsible for monitoring subrecipient activities as necessary to ensure that the subaward is used in compliance with Federal statutes and regulations. (See 2 C.F.R. § 200.332(d)). NDE did not provide a copy of a subrecipient monitoring instrument that includes reference to the Title I, Part A requirements related to the educational stability of students in foster care. While both LEAs that the Department talked to as part of the review indicated that NDE monitors implementation of these Title I, Part A requirements, neither LEA provided a monitoring report that referenced the requirements, and the LEAs did not consistently describe the SEA's monitoring practices with respect to these requirements.

Best Interest Determinations

ESEA section 1111(g)(1)(E)(i) requires each SEA to ensure that it will collaborate with the State child welfare agency to ensure that students entering foster care or experiencing a change in foster care placement remain at their respective schools of origin unless it is determined to be in their best interest to leave the school of origin. NDE indicated during its interview that best interest determinations are the

responsibility of the child welfare agencies. Based on the Department's conversation with NDE and two LEAs, it is clear that LEA staff in Nebraska are not involved in making best interest determinations about school placement when a student enters foster care or experiences a change in foster care placement. Further, one of the LEAs, Lincoln Public Schools (LPS), indicated that the local child welfare agency communicates its best interest determination to the LEA via the State's Superintendent Letter system. (Following the completion of the monitoring interview, NDE provided a document entitled "Best Interest Determination Form for Foster Care School Placement," but it remains unclear how this form is used within the State or its LEAs.) The Department notes that effective implementation of this requirement generally necessitates collaboration between LEAs and local child welfare agencies to conduct best interest determinations, which must "be based on all factors relating to the child's best interest."

Technical Assistance for LEAs

NDE provided evidence that it has issued guidance on the Title I, Part A requirements related to the educational stability of students in foster care. However, NDE referenced several tools and resources (particularly related to best interest determinations for students in foster care and immediate enrollment procedures) that the SEA was unable to provide to the Department. Further, neither LEA reported that it received technical assistance or training from NDE on the Title I, Part A requirements related to the educational stability for students in foster care.

REQUIRED ACTIONS

LEA Transportation Procedures

Within 60 business days of receiving this report, NDE must submit a plan and a timeline detailing how it will ensure that LEAs receiving Title I, Part A subgrants have written transportation procedures, developed in collaboration with the State or local child welfare agency, to govern how transportation will be provided, arranged, and funded for students in foster care. NDE must also provide a plan for how it will inform subgrantee LEAs about the Title I, Part A requirements related to transportation procedures for students in foster care.

Subrecipient Monitoring

Within 60 business days of receiving this report, NDE must submit a plan and a timeline detailing how it will monitor LEA compliance with all Title I, Part A requirements related to the educational stability of students in foster care. This plan should indicate, among other requirements, how NDE will monitor that LEA staff participate in making best interest determinations when students enter foster care or experience a change in foster care placement and how NDE will monitor that LEAs have written transportation procedures governing how transportation will be provided, arranged, and funded for students in foster care.

RECOMMENDATIONS

Best Interest Determinations

The Department recommends that NDE collaborate with the State child welfare agency to ensure that all LEAs and local child welfare agencies understand and adhere to NDE's requirements related to best

interest determination meetings. The Department also recommends that NDE work with the State child welfare agency to develop new written guidance and training opportunities to ensure a shared understanding of the process for conducting best interest determination meetings, including the involvement of staff from educational agencies in making school placement decisions. Where possible, the Department further recommends that NDE and the State child welfare agency co-author written guidance and offer joint trainings for LEA staff and local child welfare agency staff.

Technical Assistance for LEAs

The Department recommends that NDE publish all of its guidance documents and tools related to the educational stability of students in foster care on its SEA program webpage. The Department further recommends that NDE develop a strategy for supporting LEA implementation of the Title I, Part A requirements related to students in foster care through both broad and targeted technical assistance approaches.

Title I, Part C

IDENTIFICATION AND RECRUITMENT – QUALITY CONTROL: PROCESS FOR RESOLVING ELIGIBILITY QUESTIONS

REQUIREMENT SUMMARY

Description: An SEA must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children that includes a formal process for resolving eligibility questions raised by recruiters and their supervisors and for ensuring that this information is communicated to all local operating agencies.

ESEA § 1304(c)(8), §§ 1309(2)-(5)

EDGAR 34 C.F.R. Part 76

Title I Regulations 34 C.F.R. § 200.89(d)(3)

ISSUE

Based on discussions with the NDE Migrant Education Program (MEP) team and MEP staff at the selected LEAs, reviewers learned that NDE does not have a formal written process in place for resolving eligibility questions raised by recruiters and their supervisors, or for ensuring that this information is communicated to all LEAs. During the interview, the NDE MEP team described how eligibility questions are typically resolved; however, they confirmed there was no written process or procedure, and reviewers noted that the process described by the LEAs differed from what the NDE MEP team shared. NDE submitted follow-up documentation including a narrative describing the eligibility resolution process but did not submit evidence to support how the information would be shared with all LEAs. Although NDE's Identification and Recruitment (ID&R) Manual contains a Certificate of Eligibility (COE) approval process chart, a process for addressing eligibility questions is lacking.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must provide a plan and timeline for how it will provide guidance to its LEAs regarding how to resolve eligibility questions raised by recruiters and their supervisors, and how NDE will communicate responses to eligibility questions with its LEAs.

IDENTIFICATION AND RECRUITMENT – QUALITY CONTROL: PROSPECTIVE RE-INTERVIEWING

REQUIREMENT SUMMARY

Description: An SEA must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children that includes a process for the SEA to validate that child eligibility determinations were properly made, including conducting prospective re-interviewing.

ESEA § 1304(c) (8), §§ 1309(2)-(5)

EDGAR 34 C.F.R. Part 76

Title I Regulations 34 C.F.R. § 200.89(b) (2)

ISSUE

Each SEA that currently receives funds under Title I, Part C of the ESEA, as amended, is required to annually validate child eligibility determinations from the current performance reporting period (September 1 to August 31) through prospective re-interviews for a randomly selected sample of children identified as migratory during the same performance reporting period. Re-interviews are a key aspect of States' eligibility quality control systems, which are essential to ensuring that MEP-funded services are provided to children who meet the program eligibility criteria, and the level and quality of those services are not diluted by the delivery of services to children who are not eligible to receive them.

There are two types of re-interviewing: prospective and retrospective. Based on discussions with the NDE MEP team, reviewers learned that NDE conducted retrospective re-interviews instead of prospective re-interviews. Specifically, NDE conducted retrospective re-interviews that measured the quality of eligibility determinations for the entire child count period (i.e., eligibility determinations made over the course of a three-year period), instead of all newly identified migratory children in the current performance period (see page 240-241 in MEP National ID&R Manual). Of particular concern is that NDE did not report whether each child, determined to be ineligible during the current performance period, was also determined to be ineligible for a previous reporting period. This is critical information which must be communicated to OME as soon as possible to determine whether the Department must apply an adjustment to NDE's future MEP award to account for overpayment in previous fiscal years.

According to NDE's School Year (SY) 2020-21 retrospective re-interview spreadsheet, 7 out of 55 children, or 12.7%, who were re-interviewed were found to be ineligible for the MEP. While the NDE MEP team told reviewers that their quality control team met to discuss training opportunities for recruiters based on the significant number of children found to be ineligible, no evidence was submitted detailing NDE's plan to provide recruiters with technical assistance and improve the accuracy of eligibility determinations. OME recommends that NDE refer to the Technical Assistance Guide on Re-Interviewing that is contained on RESULTS.ed.gov to expand its SY 2020-21 retrospective re-interview spreadsheet to include how the SEA sampled, the number of families the SEA re-interviewed, the number and type of ineligibility determinations the SEA found, and the type of follow-up actions the SEA took. NDE should report the re-interview findings back to recruiters at regular intervals throughout the year and discuss how any recurring issues can be resolved.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must submit a plan and timeline for how NDE will correct its sampling approach for prospective re-interviews in SY 2022-23, including how the State will improve the accuracy of MEP eligibility determinations beginning in SY 2022-23.

PROGRAM FISCAL REQUIREMENTS

REQUIREMENT SUMMARY

Description: An SEA and its subgrantees must use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. In general, an SEA must expend and account for Federal funds in accordance with State laws and procedures for expending and accounting for State funds. In addition, State and LOA accounting systems must satisfy Federal requirements regarding the ability to track the use of funds and permit the disclosure of financial results. SEAs and LOAs also must have written procedures for determining cost allowability and must maintain effective control over all funds.

EDGAR 34 C.F.R. 76.702

Uniform Guidance 2 C.F.R. 200.302

ISSUE

The MEP Consortium Incentive Grants (CIGs) are authorized by section 1308(d) of the ESEA, as amended. Through this program, the Department provides financial incentives to SEAs to participate in high quality consortia that improve the interstate or intrastate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted.

Reviewers requested follow-up documentation from the NDE MEP team detailing how the SEA manages the awards it receives for two MEP CIGs, the Identification and Recruitment Consortium (IDRC) and Instructional Services for Out-of-School and Secondary Youth (iSOSY). While the NDE MEP team submitted a brief description, there was no evidence describing the breakdown of MEP CIG funds or how the funds are being utilized.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must provide documentation (e.g., budget spreadsheet, fiscal office procedure documentation, etc.) explaining how MEP CIG funds are managed.

MSIX DATA SUBMISSION - GENERAL

REQUIREMENT SUMMARY

Description: (i) An SEA that receives a grant of MEP funds must submit electronically to MSIX the Minimum Data Elements (MDEs) applicable to the child's age and grade level, regardless of the type of school in which the child is enrolled (e.g., public, private, or home school), or whether a child is enrolled in any school.

Title I Regulations 34 C.F.R. § 200.85(b) (1)

ISSUE

After the monitoring concluded, NDE submitted a document entitled, "Title IC Nebraska MSIX MDE Collection Policies and Procedures", which accounted for MSIX data submission timelines and responsibilities. However, upon review, OME staff discovered that the document contained the statement that MDE 65 (Credit Granted) is not being collected because Nebraska schools do not measure credit granted by Carnegie Units as required by MSIX. Therefore, NDE decided not to submit MDE 65 which is applicable to migratory children enrolled in secondary school. However, OME notes that approximately 40% of these data are being submitted to MSIX by NDE.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must submit its updated "Title IC Nebraska MSIX MDE Collection Policies and Procedures" document to OME to clarify responsibilities for collecting and submitting MDE 65; this revision to the procedures must contain a method for mapping final grades issued by districts into Carnegie Units.

MSIX - DATA QUALITY (DATA COMPLETENESS)

REQUIREMENT SUMMARY

Description: Each SEA that receives a grant of MEP funds must-

- (1) Use, and require each of its local operating agencies to use, reasonable and appropriate methods to ensure that all data submitted to MSIX are accurate and complete; and
- (2) Respond promptly and ensure that each of its local operating agencies responds promptly, to any request by the Department for information needed to meet the Department's responsibility for the accuracy and completeness of data in MSIX in accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e) (6) and (g) (1) (C) or (D).

Title I Regulations 34 C.F.R. §200.85(d)

ISSUE

OME reviewers used the MSIX data completeness, data quality, and assessment reports to assess the accuracy and completeness of data submitted to MSIX by NDE. On February 2, 2022, OME reviewers ran an MSIX Data Completeness Report for the 2020-21 Performance Period. The report showed the following percentages of MDEs missing data: 98.70 % data missing for Clock Hours (MDE 63), 98.10% data missing for Grade to Date (MDE 64); 99% data missing for Residency Verification Date (MDE 73), 100% data missing for Graduation Date (MDE 74), and 100% data missing for Graduation Indicator (MDE 75). During the monitoring, NDE supplied a document to reviewers entitled, "Title IC Nebraska MSIX MDE Collection Policies and Procedures" which contained explanations concerning missing data for MDEs 73, 74 and 75. It was explained that data were missing because of incorrect file submissions to MSIX, and that these NDE file submissions would be corrected moving forward. When OME reviewers again checked NDE's data submissions to MSIX, staff determined that although MDE 73 is now being populated in the system, data are still missing for MDE 74, and MDE 75 in MSIX as well as for MDE 63 and MDE 64. During the monitoring interview, OME staff also determined because NDE is not using the most up to date MSIX MDE List to report assessment types 09, 10, and 11 for MDE 52, the data are missing in MSIX. Therefore, OME reviewers concluded that NDE is not currently submitting MDEs 52, 63, 64, 74 and 75 which are appropriate for migratory children in grades 3 through 12.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must submit a plan of action with a timeline for resolving the data completeness issues in MSIX. These plans must include the following:

1. Policy and procedures to proactively identify and resolve data quality issues in the State Migrant specific database before submission to MSIX; and
2. By September 30, NDE must submit data for Assessment Type (MDE 52), Clock Hours (MDE 63), Grade to Date (MDE 64), Graduation/HSE Date (MDE 74), and Graduation/HSE Indicator (MDE 75) applicable for age and grade levels for migratory children enrolled in school in

Nebraska during the 2021-2022 school year. NDE must provide OME with a MSIX Data Completeness report for as evidence that these data have been submitted.

Title III, Part A

ACTIVITIES BY AGENCIES EXPERIENCING SIGNIFICANT INCREASES IN IMMIGRANT CHILDREN AND YOUTH

REQUIREMENT SUMMARY

Description: The SEA must reserve no more than 15 percent of its Title III grant to award at least one subgrant to one or more eligible entities that have experienced a significant increase in the percentage or number of immigrant children and youth in public and nonpublic elementary schools and secondary schools in geographic areas served by the entities.

ESEA §§ 3114(d), 3115(e)(1), 3201(3)

ISSUE

Section 3114(d) of the ESEA requires that an SEA “(1) shall reserve not more than 15 percent of the agency’s allotment under section 3111(c)(2) to award subgrants to eligible entities in the State that have experienced a significant increase... in the percentage or number of immigrant children and youth...” and that the SEA “shall equally consider eligible entities that satisfy the requirement of [an increase in immigrant children and youth] but have limited or no experience in serving immigrant children and youth.”

Section 3201(3) of the ESEA defines the term eligible entity as “(A) one or more local educational agencies; or (B) one or more local educational agencies, in consortia or collaboration with an institution of higher education, educational service agency, community-based organization, or State educational agency.”

NDE stated in its self-assessment that consortia are not eligible for immigrant children and youth subgrants. This practice was confirmed in the monitoring interview. While the State has the authority to determine the definition of “significant increase” for the purposes of awarding this subgrant, it cannot automatically exempt an eligible entity, in this case consortia, from eligibility. Following the monitoring interview, but before the release of this report, NDE updated its website to specifically include consortia as eligible entities for immigrant children and youth subgrants.

REQUIRED ACTION

Within 60 business days of receiving this report, NDE must provide evidence that it has communicated to all LEAs in the State regarding this change in eligibility for Title III immigrant children and youth subgrants.

Title V, Part B, Subpart 2

RLIS PROGRAM OBJECTIVES AND OUTCOMES

REQUIREMENT SUMMARY

Description: An SEA that submits an application for funding under RLIS will provide information on program objectives and outcomes, including how the SEA will use funds to help all students meet challenging State academic standards.

ESEA: § 5223(b)(1)

ISSUE

NDE's ESEA Consolidated State Plan states that the SEA's goal for the Rural and Low-Income Schools (RLIS) program is for all students to meet or exceed the Nebraska State Standards of academic achievement in reading, mathematics, and writing. NDE's State Plan further describes that an LEA receiving RLIS funds is required to address how the funds will be used in the LEA's efforts to meet at least one of the SEA's goals. Through monitoring, NDE indicated that more specific RLIS objectives are identified by LEAs through a comprehensive needs assessment. The LEA then decides how RLIS funds will be used to address the objective. Each LEA-identified objective must connect to one of NDE's academic achievement areas (reading, mathematics, or writing). NDE administers the Nebraska Student-Centered Assessment System (NSCAS) to collect data on academic achievement. However, NDE currently does not have a process for evaluating the NSCAS data to monitor the progress LEAs are making towards their RLIS objectives. As such, NDE was unable to report the progress made towards RLIS goals and objectives. NDE also indicated that its ESEA Consolidated State Plan needs to be updated to reflect the SEA's current practices.

REQUIRED ACTION

To comply with section 5223(b)(1) of the ESEA, within 60 business days, NDE must submit a plan for updating its ESEA Consolidated State Plan to reflect the SEA's current RLIS program objectives and outcomes for activities under Title V, Part B, Subpart 2, including how the SEA will use funds to help all students meet the challenging State academic standards.

SUBGRANTEE USE OF RLIS FUNDS

REQUIREMENT SUMMARY

Description: All uses of RLIS funds must comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements* (2 C.F.R. Part 200), which include, among other things, the requirement that costs be reasonable and necessary for the accomplishment of program objectives.

RLIS subrecipient LEAs may use their grant funds for allowable activities under any of the following:

- Title I-A
- Title II-A
- Title III
- Title IV-A
- Parental involvement activities.

ESEA: § 5222(a)

Uniform Guidance: 2 C.F.R. Part 200, Subpart E

ISSUE

NDE tracks each LEA's uses of RLIS funds for allowable activities through the RLIS application, which requires each LEA to identify its proposed use of RLIS funds by providing a narrative response and using a table to identify the Title program that allows the proposed activity. However, the table included in the RLIS application that NDE provided to the Department does not contain an accurate list of Title programs under which an RLIS subrecipient LEA may use RLIS grant funds, as it contains Title II, Part D, Title IV, Part B, and Title V. Furthermore, it does not list parental involvement activities as a fund use option. As a result of an inaccurate table on past applications, the Department identified an LEA that mis-categorized its use of RLIS funds on the SY 2021-22 RLIS application. The LEA indicated that it uses RLIS funds for class-size reduction, which is an allowable activity under Title II, Part A, and thus RLIS. However, the LEA incorrectly categorized the proposed activity under Title II, Part D in its RLIS application.

REQUIRED ACTION

NDE must ensure that the use of funds table in the RLIS application aligns with the allowable Title programs listed in ESEA section 5222(a). Within 60 business days, NDE must provide the Department with a revised version of the RLIS application containing an updated use of funds table with the following allowable programs: Title I, Part A; Title II, Part A; Title III, Title IV, Part A; and parental involvement activities. NDE must also provide an updated reimbursement review process that ensures NDE staff verify a LEA's use of funds against the allowable Title programs listed in ESEA section 5222(a). Finally, NDE must provide a plan to disseminate the correct information about allowable uses of RLIS funds to LEAs.

RLIS SUBRECIPIENT MONITORING

REQUIREMENT SUMMARY

Description: An SEA shall monitor LEAs and any other entities, including external providers, receiving federal funds from programs to ensure that all applicable fiscal and programmatic performance goals are achieved and that subawards are used for authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

Uniform Guidance: 2 C.F.R. § 200.332(d)

ISSUE

2 C.F.R. § 200.332(d) requires that NDE monitor the activities of subrecipients as necessary to ensure that subawards are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. On average, three eligible LEAs apply to NDE to receive RLIS grant funds in a given fiscal year. An LEA rarely applies for an RLIS grant in consecutive years. NDE does not currently have a subrecipient monitoring process for RLIS subgrantees that covers the full requirements outlined in 2 C.F.R. 200.332(d). Instead, NDE describes that it reviews the RLIS application (e.g., checking that proposed use of RLIS funds are allowable) and has a reimbursement review process (e.g., checking that reimbursements requests are for allowable RLIS activities). NDE conducts consolidated monitoring for LEAs every three years, but RLIS is not included in this process.

REQUIRED ACTION

Within 60 business days, NDE must develop and submit the procedure it will use to monitor RLIS subrecipients for the requirements outlined in 2 C.F.R. § 200.332(d). The process should include how NDE will monitor the progress that LEAs make towards RLIS goals and objectives, how it will verify use of RLIS funds, and how it will ensure that subrecipients comply with Federal statutes, regulations, and the terms and conditions of the award. The process should also include how NDE will follow-up with LEAs to ensure any required actions are addressed.

Met Requirements with Recommendation

Financial Management & Cross-Cutting

ACCOUNTING SYSTEMS AND FISCAL CONTROLS

REQUIREMENT SUMMARY

Description: An SEA and its subgrantees must use fiscal control and fund accounting procedures that ensure proper disbursement of and accounting for Federal funds. In general, an SEA must expend and account for Federal funds in accordance with State laws and procedures for expending and accounting for State funds. In addition, State and LEA accounting systems must satisfy Federal requirements regarding the ability to track the use of funds and permit the disclosure of financial results. SEAs and LEAs also must have written procedures for determining cost allowability and must maintain effective control over all funds.

EDGAR 34 C.F.R. § 76.702

Uniform Guidance 2 C.F.R. § 200.302

ISSUE

2 C.F.R. § 200.302(b)(7) requires that the financial management system of each non-Federal entity provide written procedures for determining the allowability of costs in accordance with 2 C.F.R. Part 200, Subpart E and the terms and conditions of the Federal award. NDE provided examples of guidance that it provides NDE staff and LEAs (e.g., State and Federal Grants Management Guidance handbook, Revised July 2019) regarding allowability, as well as the policies for reviewing and approving reimbursements (i.e., Paper Grant Reimbursement Policy; Grants Management System (GMS) Reimbursement Request Review Procedures).

However, it was not clear that the reimbursement review policies had been included with NDE's internal compilations of processes and procedures (e.g., insideNDE). Based on conversations with NDE staff, the reimbursement policies, which include sampling a portion of the expenditures for additional review based on the subrecipient's current risk score, were implemented relatively recently.

Additionally, while NDE provided evidence of guidance it created on determining the allowability of costs, including in accordance with 2 C.F.R. Part 200, Subpart E, it was not clear that guidance was integrated in its written procedures for reviewing reimbursement requests.

RECOMMENDATION

The Department recommends that NDE ensure that the reimbursement policies are included in its internal compilations of processes and procedures, or some other resource widely available to NDE staff (e.g., insideNDE). The Department also recommends that NDE include in its reimbursement policy, or

as a standalone document for NDE staff, written policies for determining allowability of costs, which needs to include the reference to 2 C.F.R. Part 200, Subpart E, and could either compile the program-specific guidance on allowability or cross-reference the guidance that NDE has already developed.

SUBRECIPIENT MONITORING

REQUIREMENT SUMMARY

Description: An SEA shall monitor LEAs and any other entities, including external providers, receiving federal funds from programs to ensure that all applicable fiscal and programmatic performance goals are achieved and that subawards are used for authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

Uniform Guidance 2 C.F.R. § 200.332(d)

ISSUE

2 C.F.R. § 200.332(d) requires that NDE monitor the activities of its subrecipients as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. NDE provided evidence of its consolidated program monitoring, its fiscal monitoring, and its recently implemented ESSER program monitoring.

At the time of the Department's consolidated monitoring, NDE had just started to monitor its LEAs for the ESSER program requirements. The Department is conducting a desk review of NDE's administration of the ESSER program requirements in June 2022, which will include a review of NDE's subrecipient monitoring for the ESSER program.

In recent years, NDE has updated its subrecipient monitoring and internal controls, to improve the administration of the covered programs in response to findings from NDE's single audit (e.g., personnel charges, equitable services reservations). NDE is in the process of implementing and evaluating those changes.

Several of the required actions in this report relate to changes to NDE's subrecipient monitoring (e.g., Equipment and Supplies Management; RLIS Subrecipient Monitoring; Educational Stability for Students in Foster Care).

RECOMMENDATION

While the Department does not require NDE to take additional required actions in response to this section of the report, it acknowledges that NDE is beginning to implement its ESSER program monitoring, NDE is improving its subrecipient monitoring in response to single audit findings and NDE is required to take action under other sections of this report related to subrecipient monitoring. The Department recommends that NDE continue to update its subrecipient monitoring to improve the administration of the covered programs when it identifies areas for improvement (e.g., single audit and monitoring findings).

PROCUREMENT

REQUIREMENT SUMMARY

Description: An SEA shall ensure that all relevant State procurement procedures are followed when procuring goods and services using Federal funds. An SEA must also maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specification of their contracts.

Uniform Guidance 2 C.F.R. §§ 200.317, 200.322, 200.326

ISSUE

NDE's purchasing procedures requires that all supplies, materials or equipment that exceed \$2,000 are purchased utilizing the State's procurement process. According to NDE's policy, NDE must comply with all applicable Federal regulations regarding procurement that pertain to the Federal fund source prior to the purchase approval. NDE contract procedures require that a contractor not be permitted to begin work under a contract until both the contractor and the approving authority have signed the contract. Subsequently, the staff member that originated the contract must provide an invoice that indicates final payment to the Administrative Services Administrative Assistant, who certifies that the required services have been provided prior to final payment of the contract. However, NDE's process does not clearly specify that the staff member that originated the contract should ensure that the contractor performed in accordance with the terms, conditions, and specifications of the contract. In addition, NDE process does not appear to include proper segregation of duties.

RECOMMENDATION

The Department recommends that NDE update its procurement process to include a checklist or steps that should be taken by the staff member that originated the contract to ensure that the contractor performed in accordance with the terms, conditions and specifications of the contract. In addition, in order to maintain proper segregation of duties, NDE should evaluate whether the staff member that originated the contract should also be the same person responsible for ensuring that the contractor performed in accordance with the terms, conditions, and specifications of the contract.

Cross-Cutting Financial & Programmatic

EQUITABLE SERVICES

REQUIREMENT SUMMARY

Description: An SEA shall ensure that LEAs use Federal funds to provide benefits to eligible children enrolled in private schools and to ensure that teachers and families of participating private school children participate on an equitable basis. Where applicable, the SEA shall ensure that it uses Federal funds for State-level activities to provide benefits to eligible students and educators.

ESEA §§ 1117, and 8501

Regulations 34 C.F.R. §§ 200.62-67; 299.6; and 299.9

EDGAR 34 C.F.R. § 76.661

ISSUE

The NDE equitable services web page may be inadequate to meet the needs of LEAs that are providing equitable services on behalf of private school students and educators. While the LEAs interviewed provided no evidence suggesting that they had made errors in the provision of equitable services, LEAs indicated that they could benefit from better access to up-to-date information and documents about the provision of equitable services. Information provided by LEAs suggests that making more updated equitable services information in a variety of areas would be useful:

- Providing clear guidance about tracking property purchased for equitable services.
- Including additional guidance on providing equitable services for programs covered by Title VIII of the ESEA. For example, one of the interviewed LEAs is using consultation materials that contain guidance on Title II, Part A allowable uses of funds that would have been correct under NCLB, but which may be misleading in regard to requirements in the current version of the ESEA. The Department currently has available draft equitable services guidance for programs covered by Title VIII; NDE's web page could provide a link to this draft guidance (<https://oese.ed.gov/files/2022/03/Draft-Title-VIII-Equitable-Services-Guidance.pdf>).
- Linking to the Department's current Title I equitable services nonregulatory guidance (<https://oese.ed.gov/files/2020/03/equitable-services-guidance-100419.pdf>). One LEA interviewed was using outdated NCLB Title I equitable services guidance rather than the 2019 ESSA guidance.
- Clarifying information as to when carryover of funds set aside for equitable services is permissible or required.
- Updating information about using religious organization as third-party providers of equitable services.

RECOMMENDATION

The Department recommends that NDE update its equitable services web page to make it more useful and up-to-date and to provide, for the benefit of both public and private school officials, a centralized access point for information on the provision of equitable services.

Title I, Part A & Title I, Part B

STATEWIDE ACCOUNTABILITY SYSTEM

REQUIREMENT SUMMARY

Description: An SEA must measure, on an annual basis, all required indicators and must establish a system of annual, meaningful differentiation of all public schools in the State based on all indicators in the State's accountability system for all students and for each subgroup of students. An SEA must calculate and report a four-year and, at the State's discretion, an extended-year adjusted cohort graduation rate for public high schools in the State.

ESEA § 1111(b)(3), §§ 1111(c)(4)(A)-(C), § 1111(c)(4)(E), § 1111(c)(4)(F), § 8101(23), § 8101(25), and § 8101(43)

ISSUE

The ESEA includes specific definitions for calculating the four-year and extended-year adjusted-cohort graduation rates (ACGRs). The ACGR was designed to provide a uniform and accurate measure of calculating high school graduation rates that is comparable across States and increases accountability and transparency. Each State uses ACGR data for an indicator in its system of annual meaningful differentiation and for purposes of identifying schools for comprehensive, targeted, and additional targeted support and improvement.

During the Department's review of NDE's documentation and data regarding the identification of schools for CSI based on low graduation rates, Department staff noted that two high schools had graduation rates below 67 percent for school year 2017-2018 and were not identified for CSI in a downloadable file on the State and local report cards website.²¹ NDE indicated that these two high schools did not have accurate ACGR data (i.e., the reported values were lower than the actual values) for school year 2017-2018. NDE indicated that, at the time of identifying schools, it was aware the actual graduation rates were above 67 percent but the LEAs did not submit revised ACGR data before the State identified schools. Furthermore, NDE later reported ACGR rates above 90 percent for both high schools for school years 2017-2018 on the local report cards for school year 2020-2021.²²

Accordingly, NDE determined these data were not of sufficient quality for use in identifying these two schools for support and improvement based solely on low graduation rates in fall 2018. Thus, the two schools were excluded from the identification of schools for comprehensive support and improvement based the State's definition of low graduation rates because they would have been identified based on inaccurate graduation rates below 67 percent. Additionally, NDE excluded the Graduation Rate indicator

²¹ See the "AQuESTT Classifications" spreadsheet for school year 2018-2019 available here: <https://nep.education.ne.gov/Links>

²² School 1: <https://nep.education.ne.gov/Schools/Index/47-0001-005?DataYears=20202021&type=SECONDARY#achievement>; School 2: <https://nep.education.ne.gov/Schools/Index/14-0008-001?DataYears=20202021&type=SECONDARY#achievement>

for these two schools when identifying schools for comprehensive support and improvement based on low performance in fall 2018. The two schools were not identified for comprehensive support and improvement.

RECOMMENDATION

The Department recommends that NDE develop and document a transparent process for handling data quality issues in its statewide accountability system. Specifically, the Department recommends that the SEA establish an appeal process whereby it (1) uses available data to identify schools consistent with its consolidated State plan and ESEA requirements and (2) allows a school or LEA to appeal the State's determination if the school or LEA can demonstrate that the identification was based on inaccurate data.

TARGETED ASSISTANCE PROGRAMS

REQUIREMENT SUMMARY

Description: A Title I targeted assistance program is a strategy in schools receiving funding under Title I Part A that serve eligible children identified as having the greatest need for special assistance in order for those children to meet the challenging State academic standards. A school implementing a Title I targeted assistance program must serve participating students by using resources to help eligible children meet the challenging State academic standards, use methods to strengthen the academic program to the school, and coordinate with and support the regular education program.

ESEA § 1115

ISSUE

First, under ESEA section 1115(b)(2)(G), a school operating a targeted assistance program must provide to the LEA assurances that it will:

1. Help provide an accelerated, high-quality curriculum;
2. Minimize the removal of children from the regular classroom during regular school hours for instruction provided under the targeted assistance program; and
3. On an on-going basis, review the progress of eligible children and revise the targeted assistance program under this section, if necessary, to provide additional assistance to enable such children to meet the challenging State academic standards.

NDE provided documentation demonstrating that, through monitoring, which is conducted every three years, it examines it whether the schools operating Title I targeted assistance programs are meeting the goals of the last two assurances (ii) and (iii). For example, NDE checks whether “Students receiving Title I assistance receive the same amount of high-quality curriculum instruction from the regular classroom teacher as non-Title I students. School minimizes the removal of children from the regular classroom during regular school hours for Title I instruction.” However, NDE does not currently have any guidance or monitoring in place to ensure that schools operating Title I targeted assistance programs provide the assurances to LEAs as required under ESEA section 1115(b)(2)(G).

Second, in a school operating a Title I targeted assistance program, the staff paid with Title I funds should primarily be providing services to eligible students. ESEA section 1115(d)(2) authorizes the staff in the Title I targeted assistance school who are paid with Title I funds to assume limited duties beyond classroom instruction or that do not benefit participating children that are assigned to similar personnel, provided the time Title I staff spend on such duties is the same proportion of total work time assigned to similar non-Title I staff. NDE provided evidence that it monitors whether “Title I funded personnel are assigned to supervisory duties only if similarly situated district personnel are also assigned duties” on page 18 of its “Monitoring Checklist.” Additionally, NDE’s “Targeted Assistance Self-Review Rubric” also asks this as a yes or no question on page 4. Although NDE communicates the requirement in section 1115(d)(2) regarding supervisory duties, it does not do so for any other limited duties beyond classroom instruction.

Finally, there are several options for uses of funds that NDE does not currently monitor for or provide information on because schools operating targeted assistance programs have not utilized these options in the past:

- Under ESEA section 1115(e)(2), if health, nutrition, and other social services are not otherwise available to eligible children in a targeted assistance school and such school, if appropriate, has engaged in a comprehensive needs assessment and established a collaborative partnership with local service providers; and funds are not reasonably available from other public or private sources to provide such services, then a portion of the funds provided under this part may be used as a last resort to provide such services, including—
 - The provision of basic medical equipment, such as eyeglasses and hearing aids;
 - Compensation of a coordinator;
 - Family support and engagement services;
 - Integrated student supports; and
 - Professional development necessary to assist teachers, specialized instructional support personnel, other staff, and parents in identifying and meeting the comprehensive needs of eligible children.
- Under ESEA section 1115(f), a secondary school operating a targeted assistance program under this section may use funds received under this part to provide dual or concurrent enrollment program services described under section 1114(e) to eligible children under subsection (c)(1)(B) who are identified as having the greatest need for special assistance.

RECOMMENDATION

The Department recommends NDE update its guidance, policies, or procedures (e.g., Targeted Assistance School Program Effectiveness Guidance Rubric, ESEA/ESSA Monitoring Guide Checklist) to clearly communicate the provisions under ESEA section 1115(d)(2), (b)(2)(G), (e)(2), and (f), as further described above (e.g., school's assurances to the LEA, requirement around assumption of limited duties beyond classroom instruction, use of funds for health, nutrition, and other social services, use of funds for dual or concurrent enrollment).

Title I, Part C

IDENTIFICATION AND RECRUITMENT – QUALITY CONTROL: ELIGIBILITY DOCUMENTATION

REQUIREMENT SUMMARY

Description: An SEA and its operating agencies must use the Certificate of Eligibility (COE) form established by the Secretary to document the State's determination of the eligibility of migratory children.

ESEA § 1304(c)(8), §§ 1309(2)-(5)

EDGAR 34 C.F.R. Part 76

Title I Regulations 34 C.F.R. § 200.89(c)(1)

ISSUE

The form of the national Certificate of Eligibility (COE) that NDE uses includes birth city/state/country as a child data element to be collected. NDE's use of the national COE may include State required/requested information that NDE can use to collect other data; however, NDE should note that birth city/state/country is not a required data element. The birth city/state/country minimum data elements (MDEs) are no longer required to be submitted to MSIX, nor is such information required to be collected on the national COE because it is not necessary for purposes of determining or documenting a child's eligibility for the MEP.

RECOMMENDATION

The Department recommends that NDE removes birth city/state/country as a child data element from the State's COE, unless the Nebraska MEP has a State-specific reason for collecting that information.

Title II, Part A

LEA-LEVEL FUNDS: USE OF FUNDS

REQUIREMENT SUMMARY

Description: When LEAs use local Title II, Part A funds for professional development activities, SEAs must ensure that these LEA activities meet the statutory definition of professional development, which requires that professional development be:

- sustained
- intensive
- collaborative
- job-embedded
- data-driven
- and classroom-focused

ESEA § 8101(42)

ISSUE

In the SEA interview, NDE suggested that some private schools use equitable services for teachers to attend conferences, which are not always explicitly aligned with the ESEA definition of quality professional development.

RECOMMENDATION

The Department recommends that NDE ensure that private school officials are aware that conference attendance among teachers must be a supportive element of teachers' larger professional development plans. Specifically, conferences must fall within the statutory definition of professional development (i.e., be job-embedded, collaborative, and classroom-focused rather than short-term or stand-alone experiences).

Title III, Part A

USE OF FUNDS

REQUIREMENT SUMMARY

Description: In carrying out activities with Title III funds, the eligible entity must carry out three required activities, all of which must be supplemental: provide an effective language instruction educational program (LIEP); provide effective professional development; and provide and implement other effective activities and strategies that enhance or supplement LIEPs, which must include parent, family, and community engagement activities.

ESEA §§ 3115(c), 3115(d)

ISSUE

Section 3115(c) of the ESEA requires eligible entities “(1) to increase the English language proficiency of English learners by providing effective language instruction educational programs... (2) to provide effective professional development... (3) to provide and implement other effective activities and strategies that enhance or supplement language instruction educational programs for English learners, which—(A) shall include parent, family, and community engagement activities.”

The “Title III Program Information” section on NDE’s *ESSA Consolidated Application* for LEAs includes a checklist for each LEA to check at least one box in the section entitled: “2. Activities serving English Learners in LEAs (grantees) receiving Title III funds. Check all that apply. At least one must be selected.” Multiple activities in this checklist are required activities, specifically (1) “supporting the development and implementation of LIEPs,” (2) “professional development to teachers and other personnel serving ELs,” and (3) “parent and community engagement activities.”

While the SEA makes it clear each of these activities is required for Title III elsewhere on the application and verifies through the submitted budgets that required activities are being met, this checklist is unclear about these requirements because it implies that one listed activity will meet requirements rather than all three activities.

RECOMMENDATION

The Department recommends that NDE update the “Activities serving English Learners in LEAs (grantees) receiving Title III funds. Check all that apply. At least one must be selected” checklist on the consolidated application for LEAs to make clear which activities in the checklist are required activities under Title III, Part A. The Department acknowledges that, following the monitoring interview but prior to the release of this report, NDE stated that it has updated its application to clarify the required activities under Title III, Part A.

DATA QUALITY

REQUIREMENT SUMMARY

Description: An SEA is required to have appropriate procedures in place to ensure that the data reported to the public and the U.S. Department of Education are high quality (i.e., timely, complete, accurate, valid, and reliable).

ESEA §1111(h)(5), §8101(23) and (25), §8303, §8304(a)(6)(A)

EDGAR 34 C.F.R. § 76.720, 34 C.F.R. § 76.770

Government Accountability Office's "Standards for Internal Control in the Federal Government"

Uniform Guidance 2 C.F.R. §§ 200.303, and 200.328(b)

ISSUE

NDE provided its list of internal business rules to the Department as part of the performance review. The Department has a recommendation around the business rule with error code 226 related to the Title III, Part A program.

NDE's business rule with error code 226 raises an error if a student is reported as a foreign exchange student and is also reported as "English learner eligible." A foreign exchange student who meets the definition of an EL in ESEA section 8101(20) (i.e., a foreign exchange student who meets the standardized statewide EL entrance procedures) should be recorded as an EL.

RECOMMENDATION

The Department recommends that NDE review its internal business rules and related policies with respect to foreign exchange students to ensure they are consistent with appropriately identifying and reporting on students who meet the statutory definition of EL under ESEA section 8101(20).

Title IV, Part A

CSPR—REQUIRED BY THE SECRETARY AND APPROVED BY OMB

REQUIREMENT SUMMARY

Description: The SEA publicly reports on fund use requirements, as well as the progress LEA's have made toward meeting the objectives and outcomes described in section 4106(e)(1)(E).

Uniform Guidance 2 C.F.R. §§ 200.302, 200.327, 200.328

ISSUE

NDE defines the reporting period as the State's fiscal year, July 1 to June 30. While the reporting period aligns with the State's fiscal year, it does not match the LEA fiscal year, which is September 1 to August 31.

RECOMMENDATION

The Department recommends that NDE aligns its reporting period for Title IV-A to its LEA fiscal year which is September 1 to August 31.

Title V, Part B, Subpart 2

SEA FINANCIAL MANAGEMENT

REQUIREMENT SUMMARY

Description: SEAs must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

Uniform Guidance 2 C.F.R. § 200.302-305

ISSUE

Although NDE is generally meeting requirements for SEA financial management of RLIS, the Department found that NDE's website provides inaccurate information on the RLIS period of availability of funds. NDE reported that its website is updated when needed, but at the time of the Department's review, the website provided that RLIS funds must be spent by September 30 of the following year (a fifteen-month period of availability). The RLIS award is available for 27 months (e.g., FY 2021 RLIS funds are available for obligation from July 1, 2021, until September 30, 2023).

RECOMMENDATION

The Department recommends that NDE update its website to reflect the accurate performance period for RLIS funds. It also recommends NDE develop and implement a process to regularly review its website for accuracy and update it as necessary to ensure LEAs have correct and up-to-date information.