

## Summary of Title III Notice of Final Interpretations

**Background:**

- The Department published a Notice of Proposed Interpretations regarding implementation of Title III assessment and accountability provisions in May 2008 and provided a 30 day public comment period.
- The Department received 74 comments from 24 States, as well as from numerous advocacy groups for LEP students, and assessment experts.
- The Notice of Final Interpretations provides an analysis of the comments and provides ten final interpretations that reflect consideration of the feedback received on the proposed interpretations.
- The Notice of Final Interpretations will be published in the Federal Register on Friday, October 17, 2008.

**Purpose:** The final interpretations in this Notice –

- Provide States with guidance on the implementation of Title III consistent with the basic tenets and goals of NCLB.
- Correct conflicting guidance provided by the Department and others regarding Title III assessment (ELP -English language proficiency assessments) and accountability (Annual Measurable Achievement Objectives – AMAO) requirements.
- Give notice to States that, based on these final interpretations, they may need to amend their Title III Consolidated State plans, by the same process the Department uses for accepting and reviewing amendments to Title I Accountability Workbooks. Changes need to be in place for the AMAO determination States make based on ELP assessments administered in the 2009-2010 school year.

Interpretation	Issues Addressed by Interpretation	Rationale
<p><b>1. States must annually assess all LEP students for English language proficiency.</b> All Title III-served LEP students must be assessed annually in each of the language domains of speaking, listening, reading, and writing.</p>	<p>Some States have asked if they may exempt LEP students from an annual English language proficiency (ELP) assessment in any domain in which the student scored proficient. Some want to “bank” proficient scores until the student is proficient in all domains.</p>	<p>A proficient score at one grade level (for example, third grade) does not mean a student will be proficient in a subsequent grade level (for example, sixth grade) in the same language domain, since language demands increase as a student advances in school.</p> <p>The plain language of Title III indicates that LEP students served by the program must participate in an annual ELP assessment in four language domains. Furthermore, Title I also requires an annual ELP assessment in four language domains for all LEP students.</p>

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<p><b>2. States have some flexibility in how they structure the ELP assessments they use.</b> States may use ELP assessments that provide either (1) separate scores in each of the language domains or (2) a single composite score, so long as the State can demonstrate that the assessment meaningfully measures student progress and proficiency in each of the language domains, and overall, is valid and reliable for the purposes for which it is being used. In addition, this interpretation gives States flexibility in how they define “progress” for accountability purposes.</p>	<p>Some States had questions about whether their ELP assessments needed to generate separate, valid, and reliable scores for each language domain or whether they could use an overall composite score across the domains as a measure of student progress and/or proficiency. In addition, some States were advised that a student had to show progress in each and every domain each year to be considered to be making any progress in English for AMAO 1 (number and percent of students making progress learning English annually).</p>	<p>The Department wants to ensure that all domains are tested, measured, and reflected in Title III AMAO determinations. But the Department does not believe it is necessary or appropriate to mandate that States revise their ELP assessments so that they can generate separate valid and reliable domain scores for Title III accountability purposes. A single composite score can be an acceptable way to demonstrate student progress and proficiency across the required language domains. In addition, given the nature of language acquisition, some LEP students may make meaningful progress in learning English without necessarily making the same amount of progress in every domain in a given school year. States should be able to account for this in measuring AMAO 1.</p>
<p><b>3. States must include all Title III-served LEP students in Title III accountability.</b> All Title III-served LEP students must be included in accountability determinations. The only exceptions are the scores of LEP students who have not participated in two administrations of a State’s annual ELP assessment (from AMAO 1) and the scores of LEP students excluded from AYP determinations under normal Title I rules (e.g., full academic year).</p>	<p>Some States have systematically excluded students from Title III accountability in ways that are inconsistent with the law. For example, some States include LEP students in AMAO 1 or AMAO 2 (number and percent of students attaining English language proficiency annually), but not both. In some States only LEP students who score at a certain minimum performance level on State ELP assessments are included in Title III accountability determinations.</p>	<p>Consistent with the basic principles of NCLB, all students are to be included in assessment and accountability measures. The law provides no basis for systematically excluding some students served by Title III from AMAO determinations.</p>

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<p><b>4. States have flexibility in determining “progress” in English language proficiency.</b> At a minimum, AMAO 1 must include all Title III-served LEP students with two measures on the State’s ELP assessment. If a student does not have two measures from which to determine progress for AMAO 1, the State <u>may</u> propose to the Department an alternative method of calculating progress. The alternative method for measuring progress must be a valid and reliable measure of growth in English language proficiency.</p>	<p>The purpose of this interpretation is to ensure that States include as many Title III-served LEP students in AMAO 1 as possible. Some States were advised that they were “prohibited” from including in accountability any student for whom the State did not have scores from two consecutive and consistent State ELP assessments.</p>	<p>States should get credit for ensuring that LEP students make progress in English language proficiency.</p>
<p><b>5. States have flexibility in defining “proficiency” in English under Title III, but are strongly encouraged to use the same definition they use to exit students from the LEP subgroup under Title I.</b> A State may continue to use a definition for proficiency under Title III for AMAO 2 that differs from the definition the State uses to exit students from the LEP subgroup for Title I accountability purposes.</p>	<p>Many States have two different definitions of language proficiency for LEP students for Title III and Title I purposes. In most cases, States use one definition of proficiency to determine whether a student has “attained proficiency in English” for purposes of Title III accountability (AMAO 2), and different standards of proficiency under Title I to “exit” a student from the LEP subgroup. Some contend that this was Congress’ intent and therefore, we strongly encourage, rather than require, a State to use a definition of proficiency for Title III purposes that is consistent with the definition of LEP under Title I. The interpretation clarifies that students who remain in the LEP subgroup – regardless of whether they “attain proficiency” under Title III – must continue to be eligible for Title III services and must participate in the State’s annual ELP assessment, as required under Title I.</p>	<p>We strongly encourage States to use the same definition of proficiency for Title III as States use for Title I because the lack of consistent proficiency criteria creates confusion about which students are eligible for services under Title III, which students must participate in a State’s annual ELP assessment, and whether students should be included in AMAO determinations for Title III purposes.</p>

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<p><b>6. States may use a minimum group size in Title III accountability (“n-size”), but it must be the same as that approved under Title I.</b> States may apply a minimum group size to its subgroups in general but not to separate “cohorts” of Title III-served LEP students for which the State has set separate targets for AMAOs. If a State has formed consortia for the purposes of Title III funding, a State’s minimum group size may be applied to each consortia member only if AMAO determinations can be made.</p>	<p>Many States are already implementing a minimum group size with Title III accountability provisions. Using an n-size for accountability of cohorts and consortia could result in many students being excluded from accountability determinations.</p>	<p>We are not encouraging States to adopt minimum group size policies for Title III accountability provisions. We do not believe it will be necessary for most States to adopt such policies because Title III accountability requirements apply only at the LEA and State levels, not to individual schools. Furthermore, LEAs with very small numbers of LEP students are not typically eligible for Title III grant funds.</p>
<p><b>7. States have flexibility to use the same AYP determination for the LEP subgroup under Title I for Title III accountability purposes (AMAO 3) and are encouraged to do so.</b> If States have the capacity to track Title III-served students specifically, States may calculate a separate AYP for only Title III-served students for AMAO 3 purposes.</p>	<p>The statutory language in Title III is not clear on which LEP students are expected to be included in Title III accountability – all LEP students or only Title III-served LEP students.</p>	<p>The Department strongly encourages States to use the same criteria for determining AMAO 3 under Title III as it uses to determine AYP for the LEP subgroup under Title I because this directly ties accountability for English language acquisition under Title III to accountability for LEP students under Title I. As a practical matter, many States already calculate AMAO 3 for the State based on the entire LEP subgroup or at least all LEP students in LEAs receiving Title III subgrants.</p>
<p><b>8. States may set separate AMAO targets for Title III subgrantees based on the amount of time LEP students have had access to language instruction educational programs.</b> The Secretary interprets Title III to mean that (a) States may, but are not required to, establish “cohorts” for Title III accountability; and (b) States may set separate targets for separate groups or</p>	<p>Instead of using access to English language instruction for accountability determinations, numerous States have been setting AMAOs based on student performance on ELP assessments, grade levels, or the likelihood a student will reach proficiency in English in a given year.</p>	<p>Title III requires States to take into account in AMAO determinations the time a student has spent in a language instruction educational program. It would be inconsistent with the statute to set different expectations for different LEP students served by Title III based on their current language proficiency, individual abilities, time in the United States, or any criteria other than time in a language instruction educational program.</p>

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<p>“cohorts” of LEP students served by Title III based only on the amount of time (for example, number of years) such students have had access to language instruction educational programs.</p>		<p>The Department also believes that States can factor time in a language instruction educational program into State and LEA level AMAO determinations without necessarily establishing separate cohorts with separate targets.</p>
<p><b>9. States have flexibility in making accountability determinations for consortia.</b> The Secretary requires States to hold consortia, like any other eligible LEA, accountable under Title III, but believes that States should have discretion about whether to treat consortia that consist of more than one LEA as a single entity or as separate entities for Title III accountability.</p>	<p>Some Department officials have limited States’ flexibility in making accountability determinations for consortia and have communicated that States must make accountability determinations for consortia by compiling all ELP assessment data and other applicable data from each consortia member and making one set of AMAO determinations that would apply to each consortia member.</p>	<p>The statute is silent as to how consortia should be held accountable under Title III. Requiring States, in all cases, to treat consortia that consist of more than one LEA as a single entity is unnecessarily restrictive for most States. The Department wants to ensure that each State has a consistent set of decision rules about how AMAO determinations are made for consortia, but does not want to set those decision rules at the federal level.</p>
<p><b>10. States must implement corrective actions as required under Title III for every LEA for every school year.</b> As part of its corrective actions, States must annually inform their LEAs when the LEAs do not meet the State’s Title III accountability targets. In addition, States and LEAs must communicate this information to the parents of LEP students. Finally, States must implement required technical assistance and consequences.</p>	<p>Some States have made accountability determinations under Title III, but have not informed their LEAs or parents about these determinations. Some States have also failed to implement any measures to address LEAs’ failure to meet accountability targets under Title III.</p>	<p>It is important to be absolutely clear that States must communicate with LEAs and the parents of LEP students served by the LEA about student progress and achievement under Title III; these requirements are central to the purposes and goals of NCLB.</p>