
Title III Notice of Final Interpretations

Presentation for the LEP Partnership/Title I & Title III Directors' Meeting

October 16, 2008

Background and Purpose

- The intent of the notice of final interpretations is to ensure that all States implement the requirements of Title III and follow the Secretary's "bright line" principles of NCLB.
 - NCLB marks the first time that States have been required to implement English language proficiency standards, language assessments aligned to those standards, and meaningful accountability for ensuring that limited English proficient (LEP) students acquire the English skills they need. It is central to the intent and purpose of NCLB that ALL students are included in assessments and accountability.
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How did the Department decide what went in the Notice?

- Important issues that reflect “bright line” principles of NCLB
 - Provisions of Title III that States are implementing inconsistently
 - Provisions of Title III for which States have received conflicting guidance
 - Implementation issues for which States have repeatedly asked the Department for guidance
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Notice of Final Interpretations

- In the notice, the Secretary provides final interpretations on ten issues in Title III of the ESEA regarding:
 - ❑ The annual administration of English language proficiency (ELP) assessments to LEP students served by Title III
 - ❑ The establishment and implementation of annual measurable achievement objectives (AMAOs) for States and districts receiving Title III funds
 - ❑ State and local implementation of Title III accountability provisions
 - The notice of final interpretations includes an analysis of comments received on the proposed interpretations.
 - The notice will be published in the Federal Register on Friday.
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Notice of Proposed Interpretations

- A notice of proposed interpretations was published in the *Federal Register* on Friday, May 2, 2008.
 - The Department made the proposed interpretations available for public comment so that we could hear from the field and respond to questions and concerns in the notice of final interpretations. The public comment period closed on June 2, 2008.
 - The Department received 74 comments from stakeholders, including from 24 States.
 - The Department briefed Senate and House education committee staff on the notice and solicited input on the consistency of the proposed interpretations with the legislative intent of Title III provisions.
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Issues Raised in Public Comments

- Mixed reaction on the issue of “banking” ELP assessment scores – assessment is costly and time consuming but how do you ensure that LEP students have mastered expectations in each of the four domains as academic demands increase?
 - Mixed reaction on allowing composite scores – does it mask weaknesses in some domains? Most States use and support use of composite scores.
 - Much misunderstanding about the proposed interpretation regarding alignment of AMAO 2 criteria with Title I exit criteria. This was not about changing exit criteria or making exiting LEP status based only on ELP assessments. It is about giving meaning to what it means to “attain proficiency” for AMAO 2.
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Issues Raised in Public Comments

- Strong negative reaction to the proposed interpretation regarding including students in AMAO 1 who don't have two State ELP assessment scores.
 - Concern about use of “time in program” as the only factor to be taken into consideration in developing AMAO targets.
 - Concern about not being able to weight student scores by starting proficiency levels or set different targets for groups of LEP students based on student characteristics.
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Issues Raised in Public Comments

- Support for flexibility regarding consortia accountability.
 - Some confusion about whether/when interpretations apply to all LEP vs. Title III-served LEP students as well as how “Title III-served LEP students” is defined.
 - Mixed reaction regarding use of Title I AYP for AMAO 3. Most States use it but don’t necessarily think it is fair.
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Notice Publication/Next Steps

- The notice of final interpretations will be published in the *Federal Register* on Friday, September 17th.
 - The Department will ask States to use the Consolidated State Plan amendment process, already in place, to request changes to their implementation of Title III based on the final interpretations in the notice.
 - Integration of Title III assessment and accountability information into Accountability Workbooks.
 - Amendments for 2008-09 were due to the Department in February 2008. We expect a similar timeline to be in place for requests for changes to Title III assessment and accountability policies for 2009-10.
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Next Steps/Implementation

- There will be transition time. Changes to Title III accountability systems will need to be in place effective with the AMAO determinations made based on ELP assessments administered in 2009-10.
 - The Department will verify that States have requested changes to their Title III State plans, consistent with the notice of final interpretations, during Title III desk monitoring in Spring 2009. States that have not, but need to amend their State plans, will receive notification from the Department following the desk audits.
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Overview of Final Interpretation (1)

- The Secretary interprets Title III (consistent with Title I) to require that all LEP students be assessed annually with an assessment or assessments that measure each and every one of the language domains of speaking, listening, reading, and writing. States may not “bank” the proficient scores of a LEP student in a particular domain until such time as the student is proficient in all domains.
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Overview of Final Interpretation (2)

- The Secretary interprets Title III to allow States to base their student performance expectations and accountability (i.e., AMAO targets) on assessment results derived from either (1) separate student performance levels or scores in each of the language domains or (2) a single composite score or performance level derived by combining performance scores across domains. In either case, a State must be able to demonstrate that its ELP assessment meaningfully measures student progress and proficiency in each language domain and, overall, is a valid and reliable measure of student progress and proficiency in English.
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Overview of Final Interpretation (2)

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- With regard to AMAO 1, the Secretary also interprets Title III to allow States to determine AMAO 1 targets, where appropriate, based on progress in one or more of the language domains, rather than requiring student progress separately in each and every one of the language domains, so long as the targets provide for meaningful progress toward attaining English language proficiency and student performance on the State's ELP assessment, overall, is improving.
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Overview of Final Interpretation (3)

- The Secretary interprets Title III to require that, in general, all Title III-served LEP students be included in all AMAO targets, calculations, and determinations. This interpretation is consistent with the plain language in Title III, which makes no provision for defining AMAOs in ways that systematically exclude any Title III-served LEP students from any AMAO targets, calculations, and determinations. However, the Department acknowledges two exceptions to this interpretation.
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Overview of Final Interpretation (3)

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- First, a State is not required to include in its AMAO 1 calculation Title III-served LEP students who have not participated in two administrations of a State's annual ELP assessment consistent with Interpretation 4.
 - Second, a State is not required to include in its AMAO 3 calculation the scores of Title III-served LEP students whose scores are excluded from the State's AYP determination under Title I and §200.20(f).
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Overview of Final Interpretation (4)

- The Secretary interprets Title III to require States to include in AMAO 1, at a minimum, the scores of all Title III-served LEP students who have participated in at least two administrations of the State's annual ELP assessment.
 - If a State does not have results from two administrations of the State's annual ELP assessment for some Title III-served LEP students, but wants to include such students in AMAO 1 accountability determinations, the State may propose to the Secretary an alternative method of measuring progress. The alternative method for measuring progress under AMAO 1 must be a valid and reliable measure of growth in English language proficiency.
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Overview of Final Interpretation (5)

- It is the Secretary's final interpretation of Title III that a State may use a definition of attaining English language proficiency for purposes of Title III accountability determinations under AMAO 2 that differs from the definition of English language proficiency that the State uses to determine that students should exit the LEP subgroup for Title I accountability purposes. However....
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Overview of Final Interpretation (5)

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- If a State uses different definitions, students who remain in the LEP subgroup – regardless of whether they “attain proficiency” for AMAO 2 purposes – continue to be eligible for Title III services, and must participate in the State’s annual ELP assessment, as required under section 1111(b)(7) of the ESEA.
- Any LEP student who continues to receive Title III services – regardless of whether they “attain proficiency” for AMAO 2 purposes – must be included in all AMAO determinations.
- The Secretary strongly encourages States to have a definition of attaining proficiency (AMAO 2) for Title III purposes that is consistent with the State’s definition for exiting the LEP subgroup under Title I. A single definition of English language proficiency would result in a State setting its targets for AMAO 2 that are consistent with and reflect the same criteria it uses to determine that students are prepared to exit the LEP subgroup for Title I accountability purposes.

Overview of Final Interpretation (6)

- The Secretary interprets Title III to permit a State to apply the same minimum group size to AMAO calculations and determinations that the State applies to adequate yearly progress (AYP) determinations and that have been approved by the Department in the State's Accountability Workbook for purposes of Title I of the ESEA.
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Overview of Final Interpretation (6)

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- To ensure that a State's minimum group size does not decrease accountability for subgrantees receiving Title III funds, a State may apply its minimum group size only to the State and to subgrantees Title III-served LEP population as a whole and not to separate "cohorts" of Title III-served LEP students.
 - If a State's subgrantees have formed a consortium for the purposes of Title III funding, a State's minimum group size may be applied to each consortium member only if AMAO determinations can be made for each member. If AMAO determinations cannot be made using the State's minimum group size for any member of the consortium, the State must combine AMAO data across some or all consortia members for some or all AMAO determinations so that minimum group size requirements are met.
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Overview of Final Interpretation (7)

- The Secretary interprets section 3122(a)(3)(A)(iii) of the ESEA to permit a State and its subgrantees to meet AMAO 3 if the State's AYP achievement targets for reading and mathematics are met by the LEP group as a whole (the same AYP determination under Title I) or by the subgroup of Title III-served LEP students
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Overview of Final Interpretation (8)

- The Secretary interprets Title III to mean that (a) States may, but are not required to, establish “cohorts” for AMAO targets, calculations, and determinations; and (b) States may only set separate AMAO targets for separate groups or “cohorts” of LEP students served by Title III based on the amount of time (for example, number of years) such students have had access to language instruction educational programs.
 - States may not set separate AMAO targets for cohorts of LEP students based on a student’s current language proficiency, time in the United States, or any criteria other than time in a language instruction educational program.
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Overview of Final Interpretation (9)

- The Secretary requires States to hold consortia, like any other eligible subgrantee, accountable for meeting AMAOs. However, the Secretary proposes to interpret Title III to allow States discretion about whether to treat subgrantees that consist of more than one LEA as a single entity or separate entities for the purpose of calculating each of the three AMAOs required under Title III.
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Overview of Final Interpretation (10)

- The Secretary reinforces the proper implementation of the accountability requirements of Title III, which requires that all States make determinations for each of three AMAO targets – making progress in English proficiency (AMAO 1), attaining English proficiency (AMAO 2), and AYP for the LEP subgroup (AMAO 3) – for every Title III subgrantee in the State for every school year. The Secretary also clarifies State responsibilities to communicate with parents and subgrantees about AMAO results.
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Next Steps/Discussion

- The notice of final interpretations will be published in the *Federal Register* on October 17, 2008.
 - The Department will ask States to use the Consolidated State Plan amendment process, already in place, to request changes to their implementation of Title III based on the final interpretations in the notice.
 - Amendments for 2008-09 were due to the Department in February 2008. We expect a similar timeline to be in place for requests for changes to Title III assessment and accountability policies for 2009-10.
 - There will be transition time. Changes to Title III accountability systems will need to be in place effective with the AMAO determinations made based on ELP assessments administered in 2009-10.
 - The Department will verify that States have requested changes to their Title III State plans, consistent with the notice of final interpretations, during Title III desk monitoring in Spring 2009.
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