

**New York Part B Verification Visit Letter
Enclosure**

General Supervision

Critical Element 1: Identification of Noncompliance

Does the State have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components?

Verification Visit Details and Analysis

During the verification visit, the State reported that continuous improvements are made to its general supervision system to measure outcomes for children with disabilities and their families and to identify noncompliance in a timely manner. The State reviewed with OSEP documents to demonstrate the changes to its general supervision system since OSEP's November 2003 verification visit to comply with the reauthorization of IDEA in 2004. The State staff's presentation included a profile of the State, a description of the State programs and service delivery systems and an organizational chart to demonstrate the collaborative relationships within the State that implement the components of its general supervision system. The State's general supervision components include, but are not limited to: (1) State and Federal policies and procedures; (2) fiscal management; (3) performance goals and indicators; (4) methods of ensuring services; (5) accountability system; (6) on- and off-site monitoring; (7) data collection and reporting; and (8) dispute resolution.

During the visit, OSEP reviewed the State's guidance documents and data that describe the relationship of the State's Special Education Policy Unit with the other components of its general supervision system. The State reported that in order to maintain the effectiveness of the State's general supervision system, progress is tracked through the review of local performance and results. The State requires all Local Education Agencies (LEAs) to submit current special education data collection reports and information to the Strategic Evaluation Data Collection, Analysis and Reporting Unit (SEDCAR).

The State described the general supervisory responsibilities of the Special Education Budget and Finance Unit (SEBFU) citing its procedures for approval of local applications and timely obligation and liquidation of the Federal IDEA section 611 and 619 funds. During the visit, the State reported that the SEBFU in collaboration with other components of the State's general supervision system, including the Policy Unit, Special Education Quality Assurance (SEQA), and SEDCAR, provide oversight of LEAs' use of funds to ensure appropriate special education and related services are afforded to students with disabilities in its jurisdiction. The State reported that its oversight of LEAs' use of funds and LEAs prompt submission of special education reports helps to ensure the timely identification of all noncompliance.

During the visit, the State described how administrative, programmatic and discretionary

Federal, State and local funds are aligned to improve outcomes for students with disabilities as reported in the State Performance Plan and Annual Performance Report (SPP/APR). The State reported that the 2005-2006 SPP established a six-year plan to improve educational results and functional outcomes for students with disabilities, including the alignment of SEA and LEA resources to identify areas of noncompliance.

The State reported that all findings of noncompliance are made when the State concludes and notifies an LEA in writing that the LEA is in noncompliance. The notification includes the citation of the statute and regulation and a description of the quantitative and/or qualitative data supporting the State's conclusion that there is noncompliance with that statute or regulation. The State reviewed for OSEP the *Procedures for the Resolution of Noncompliance Identified through Reviews and Complaints*, dated September 23, 2008. This guidance document informs LEAs that the State's *Monitoring Review Final Report* is issued to the LEA no later than three months after identification of noncompliance. When noncompliance is identified through the State complaint process, the letter of findings to the complainant and the institution is issued as soon as possible but not later than 60 days from the receipt of the complaint, unless exceptional circumstances warrant an extension. The State revised its due process hearing timelines and procedures to comply with IDEA 2004 changes. As discussed in Critical Element 3 section of this document, the State reported that there are challenges to implementing these procedures in urban areas of the State and improvement strategies are being implemented to ensure the timely identification of noncompliance.

The State provided OSEP documents containing a menu of the comprehensive and focused monitoring protocols developed to review public school districts, preschools, Board of Cooperative Education Services (BOCES)¹, charter, approved private day and residential schools, State operated/supported schools, Special Act schools and other program types. School districts and, in New York City (NYC)², community school districts are selected for monitoring based on the State's criteria for local determinations, the type of program, and the State's measurement for performance for specific SPP indicators³.

¹ BOCES are formally recognized intermediate units sharing services for all but nine of the 684 public school districts in the State. BOCES programs provide instructional services for special education students and other support services as well as vocational-technical education for high schools students.

² Although NYC is one school district, the New York City Department of Education (NYCDOE) is comprised of ten separate instructional regions. Each year, a formal monitoring review is conducted in each instructional region. Although there are inter- and intra-regional differences in the performance of students with disabilities, all regions are in need of improvement. Given the large number of schools located within each region, criteria are established by which a sample of schools is selected since the number of school buildings in each of the instructional regions ranges from approximately 100-150+ facilities. In general, efforts are made to ensure a sample that is representative of the region as well as of any other administrative unit of the NYCDOE (alternative programs, District 75). Depending upon the scope of the review, a sampling of schools would typically consist of 10-12 schools in addition to the regional CSE and each building's CSF subcommittee. Results from such reviews are then generalized. Corrective actions are reviewed by either regional personnel (if the noncompliance was unique to the region) or by central NYCDOE administration (if the noncompliance was systemic). The focus of the monitoring is different from year to year and is determined through a review of data, complaints from parents and/or other sources.

³ Focused monitoring reviews allow the State to target specific areas, based on current literature, and are designed to improve student outcomes. The State's Quality Assurance Focused Review Manual contains ten focused areas.

In addition, the State reported that the Non-District Units (NDUs) monitor non-LEA programs. These non-LEA programs include all approved in-State and out-of-State residential programs, State agency education programs and the State-operated and State-supported schools. In any given school year, a sample number of in- and out-of-State programs are identified for formal monitoring reviews.

OSEP reviewed the State's data in the *School District Self-Review Monitoring Protocols: Secondary Transition Individualized Education Programs Review for Students with Disabilities* to verify the State's capacity to timely identify noncompliance. The State's data indicated that beginning with the 2005-2006 school year, the State reported LEAs' performance on SPP Indicator 13 (Secondary Transition) based on data from one-sixth of the school districts in the State. The State indicated that the percent of youth with appropriate transition IEPs must be 100 percent. If even one regulatory citation is not met for an individual student's IEP, that student's IEP is marked as out of compliance. Section IV, *Identification of Noncompliance/Compliance*, of the School District Self-Review Monitoring Protocol document, it states that for an IEP to be considered in compliance, "yes" must be checked for every citation/issue on Attachment 3 that corresponds to that IEP. Additionally, section VI, *State Education Department (SED) Review of Self-Review Monitoring Report*, of the Protocol states that "If the school district reports to the State that, based on its self-review, the district has one or more compliance issues, the State will notify the district that it must correct all instances of noncompliance as soon as possible, but not later than one year from the identification of the issues" (i.e., date reported to the State). Part I, *Number of Youth with IEPs Containing Appropriate Transition Content*, of the school district's report to the State is the total number of IEPs with all citations marked in compliance. The State explained that the State directed school districts, based upon this review, to identify systemic issues of noncompliance based on a 90% compliance rate for each regulatory citation reviewed in the students' IEPs. Part II, *Identification of Compliance or Noncompliance by Regulation*, of its reporting to NYSED includes a report of systemic issues, in addition to the individual student IEP compliance issues, that would need to be addressed through identified corrective actions and improvement activities.

OSEP reviewed data from a District's Self-Review Monitoring Report for Indicator 13 to verify the State's practice to timely identify noncompliance. OSEP learned through its review of the District's Self-Review and the State's accompanying report that one or more of the District's policies, procedures and practices are not in compliance with State and Federal requirements related to the District's IEP review. The State required the District to: (a) take immediate steps to correct all instances of noncompliance identified in the report; (b) provide updates to the State on progress toward achieving compliance; and (c) provide an assurance to the State when the District has corrected all issues of noncompliance identified in the report.

The State provided OSEP a demonstration of its web-based data system, the Comprehensive Special Education Information System (CSEIS). The CSEIS is currently used to document

Four of the ten areas (Access to, Participation and Progress in the General Education Curriculum; Specialty-designed Instruction; Instruction in Literacy; and Behavioral Supports) are required for any focused review.

identified areas of noncompliance as reported in the District's Self-Review Monitoring Report specific to SPP Indicators 4 (Suspension/Expulsion rates), 9 (Disproportionality in special education), 10 (Disproportionality in specific disability or placement) and 15 (Timely Correction). The State explained that each review is individually logged as soon as site selections are made and data is entered at all critical stages (date of initiation, final report issued, compliance issues identified, compliance assurance plans [CAP] and due dates, status of each issue, date of corrective action(s), date of resolution, etc). This database also tracks timelines of State complaints as identified in Indicator 16 (State Complaints) at all critical stages (60th day, findings issued, specific issues involved, status of each issue, due date for corrective action(s), date of resolution, date of compliance) and mediation agreements as identified for SPP Indicator 19 (Mediation Agreements). An additional web-based data system is used by the State to notify districts of noncompliance as identified in SPP Indicators 11 (Initial evaluations), 12 (Early Childhood Transition), 13 (Postsecondary Transitions), 17 (Due Process Hearings), and 18 (Resolution Session Agreements).

The State reviewed for OSEP the data in the FFY 2005 and 2006 APRs that indicated an increase in the instances of noncompliance identified from the prior year. As a result of the ongoing revisions and implementation of its general supervision systems, the State identified 1772 noncompliance issues during FFY 2004-2005. A review of the data in the FFY 2006 APR identified 1933 noncompliant issues during FFY 2005-2006. These data represented quality assurance monitoring reviews conducted in 142 school district/agency programs and the results of all complaint investigations in 197 school district/agency programs.

During the visit, the State reported several barriers that impede the State's ability to identify noncompliance. The barriers included the size of the State, student enrollment, number of entities providing special education and services, low resource/high need school districts, State and local staff shortages, budgetary shortages and OSEP data reporting timelines. To address those barriers, the State's Regional Office network⁴ has been expanded to include NDUs increasing the State's capacity to provide program oversight of all in- and out-of-State private day and residential programs and in NYC to address compliance improvement activities; revised and enhanced dispute resolution policies and procedures increasing the timely issuance of complaint findings and improved monitoring and proactive notification of appointments and timelines related to due process hearings; proposed adoption of regulations requiring use of State-mandated IEPs⁵, Committee on Special Education (CSE) and Committee on Preschool

⁴ Within each of the seven offices, Regional Associates (RA), who are employees of the State Education Department, are assigned to specific school districts and special education programs. The Regional Associate oversees preschool and school-age special education services, and serves as a resource to parents, school district personnel and private providers. Specifically, they are responsible for: (a) conducting Quality Assurance Reviews of public and private special education programs; (b) providing technical assistance to parents, school district personnel, and special education programs; (c) providing general information regarding services for students with disabilities to parents, school district personnel, private providers, and other stakeholders; (d) overseeing certain grant applications for the expenditure of Federal IDEA funds; and (e) investigating complaints alleging a public or private special education program's noncompliance with Federal or State law or regulation pertaining to the education of students with disabilities.

⁵ The State's website listing of special education publications and policy memoranda initially cited January 2009 as

Special Education (CPSE)⁶ meeting notices and prior written notice to assist districts to self-identify noncompliance with IEP and parent notification requirements; developed a database to track all compliance findings, issue automated notifications of identified noncompliance for RAs and Regional Supervisors, obtain trend data by State, region or individual facility regarding identified noncompliance and provide training and professional development based on that data; used discretionary grants to support personnel preparation and TA initiatives, and changed reporting timelines for OSEP required data to enable the State opportunities to thoroughly examine data submitted by the local school district for noncompliance.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State's systems for general supervision are reasonably designed to identify noncompliance in a timely manner. OSEP cannot, however, without also collecting data at the local level, determine whether the State's systems are fully effective in identifying noncompliance in a timely manner.

Required Actions/Next Steps

No further action required.

Critical Element 2: Correction of Noncompliance

Does the State have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner?

Verification Visit Details and Analysis

During the visit, the State defined timely correction of noncompliance as correction of noncompliant policies, procedures or practices as soon as possible but not later than 12 months from identification. The State demonstrated the tracking capabilities of its web-based data system specific to: (1) the issuance of compliance assurance plans and required due dates; (2) status of each noncompliance issue; (3) date of corrective action(s); (4) date of resolution of noncompliance identified by monitoring reviews and State complaints specific to issues involved; (5) status of each identified area of noncompliance; (6) due date for corrective action(s); (7) date of resolution; and (8) date compliance was achieved.

As described by the State's guidance document, *Procedures for the Resolution of Noncompliance Identified through Reviews and Complaints*, Regional Office staff are required to provide the institution clarification and technical assistance, where necessary, to ensure the institution has a clear understanding of the nature of the identified noncompliance and what is needed to resolve it. The State emphasized that the SEQA staff are required to issue a full resolution letter when all identified noncompliance has been fully resolved. In the case of monitoring reviews, the staff is instructed to send the full resolution letter to the institution and

the effective date for adoption of the State-developed IEP. However, the State has delayed the date until September 2009 to accommodate three public hearings currently scheduled for November 2008.

⁶ Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) refer to IEP teams for school-aged and preschool students with disabilities, respectively.

include a Compliance Assurance Plan (CAP) status report which indicates acceptance of each required documented corrective action. When the noncompliance has been identified through State complaints, the institution and the complainant receive the full resolution letter, including the CAP status report indicating the acceptance of each required corrective action.

The State discussed the options available to institutions to meet the due dates of a required corrective action. Specifically, if a legitimate reason is provided by the institution, the request for an extension of the established due dates may be granted by the SEQA staff, in consultation with the SEQA staff's supervisor. In the case of a monitoring review, the revised date should not exceed seven months from issuance of the final report in order to resolve the identified areas of noncompliance in a timely manner. The resolution of State complaints cannot be delayed beyond one month from the previously established due date in order to resolve the child specific areas of noncompliance in a timely manner. The SEQA staff is instructed to provide the institution with a revised CAP status report, continue to monitor the progress of the institution in achieving compliance and provide the institution with technical assistance. The State reported that should the institution fail to complete the requirements of the CAP by the established due dates, letters are issued and, in cases of continued failure to complete the CAP, the State has the authority to impose sanctions including withholding or redirecting IDEA funds.

The State informed OSEP that noncompliance is not considered resolved until evidence of compliance with the regulatory or statutory citation is submitted or observed and compliance is verified. OSEP reviewed the State's documentation to verify the correction of noncompliance, that include: (1) on-site observations; (2) on-site interviews; (3) review of documents; (4) self-reviews; and (5) resubmission of data, and IEPs.

During the visit, OSEP focused its discussion on the State's FFY 2006 APR submission specific to Indicator 15 noting that while the State did not reach the target of 100 percent, the percent of identified noncompliance issues that were corrected within one year from identification increased 7.7 percentage points from 83.71 percent in FFY 2005-2006 to 91.41 percent in FFY 2006-07. As of January 18, 2008, 1,903 (98.44 percent) of the 1,933 noncompliance findings identified during FFY 2005-2006 were brought into compliance. The remaining 30 noncompliance findings were found in one public school district and 24 private school programs. Twenty-eight of the 30 remaining unresolved findings are issues related to staff certification in approved private preschool and school age programs. As of January 18, 2008, 1,767 (99.71 percent) of the 1,772 noncompliance findings identified during FFY 2004-2005 were brought into compliance. The remaining noncompliance findings were found in two preschool programs and are related to staff certification issues. The State reported that it has experienced difficulty in ensuring compliance with an urban area in the State due to higher standards for performance established by court consent decrees.

OSEP Conclusion

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA section 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the State must ensure that identified noncompliance is corrected in a timely manner. Although the

State demonstrated, that as of January 18, 2008 almost all of the findings made in 2004-2005 and 2005-2006 had been corrected, the State demonstrated timely correction of only 91.41 percent of findings made in FFY 2005.

Required Actions/Next Steps

As required by OSFP's June 2008 response to the State's FFY 2006 APR, the State was required to, in its FFY 2007 APR, due February 2, 2009, demonstrate that the State had corrected the remaining noncompliance identified in Indicator 15 from FFY 2004 and FFY 2005. In addition, the measurement table for the FFY 2007 APR, due February 2, 2009, required that the State report on the timely correction of noncompliance identified in FFY 2006. To the extent that the State's documentation does not demonstrate correction of the FFY 2004 and 2005 findings, or the timely correction of FFY 2006 findings, the State must, with its FFY 2008 APR, due February 1, 2010, provide documentation that it has corrected any remaining findings from FFY 2004, 2005 and 2006.

Critical Element 3: Dispute Resolution

Does the State have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA?

Verification Visit Details and Analysis

During the visit, the State provided documentation regarding the restructuring of the organization to ensure collaboration between the policy, quality assurance, data units and technical assistance networks to implement its noncompliance resolution processes related to the State's dispute resolution system. The State reported that its regulations were amended in October 2007 to conform State dispute resolution process requirements to Federal requirements relating to State complaints, due process hearings, mediation, resolution sessions; and the Procedural Safeguards Notice⁷. The State's sample State Complaint and Due Process Hearing forms are included in the Procedural Safeguards Notice, posted on the State's website, and disseminated to constituent groups including parents and all interested individuals and organizations.

The State-funded Special Education Parent Centers provide parents of children with disabilities information and approaches to promote early resolution of disputes between parents and school districts. The Centers also disseminate information to parents to promote use of resolution sessions and special education mediation; distributes information to parents on their procedural due process rights, including the right to impartial hearings and appeals and the State complaint process; and collaborates with public school districts on methods to facilitate positive parent involvement as a means of improving special education services and results for children with disabilities.

⁷ The State reported that the State-mandated Procedural Safeguard Notice must be provided to parents of a student with a disability consistent with all Federally required timelines. The Notice is available in five different languages. English and Spanish versions are automatically disseminated by the State and the other language versions are available upon the LEA's request to assist districts in providing procedural safeguards notices in the native languages of the parents, as required by 34 CFR §300.504(d).

The State's guidance document, *Parent, Individual or Organization (Complainant) Submitting the State Complaint*, describes the State's requirements for filing a State complaint which are consistent with IDEA. The State requires the individual filing the complaint to forward a copy of the complaint to the school district or other public agency serving the child at the time the person files the complaint to the State. The State emphasized that every effort is made to ensure this added step does not compromise the 60-day timeline for investigation. The *Procedures for the Resolution of Noncompliance Identified through Reviews and Complaints* document identifies specific timelines for each step of the State complaint process. In its FFY 2006 APR, the State reported a decrease from 95% in FFY 2005 to 82.82% in FFY 2006 in the percent of signed written complaints with reports issued that were resolved within the 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint. During the visit, the State reported one large urban area accounted for 49.7% of the complaints with reports issued. To address systemic issues and individual State complaints, the State employed targeted reviews, technical assistance and professional development, conducted routine visits to address data entry issues/concerns, and appointed an impartial hearing liaison to oversee the implementation of hearing officers' decisions. The State reported that these strategies contributed to an increase of signed written complaints with reports issued that were resolved within the 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint to 96.7%, as reported in its FFY 2007-2008 section 618 Table 7 (dispute resolution).

The State's Impartial Hearing Resolution System (IHRS), a web-based data system, monitors due process hearing timelines, resolution sessions, appointments of Impartial Hearing Officers (IHOs), and decisions rendered by those Officers. The LEAs are responsible for appointing IHOs using a rotational list of State-certified IHOs⁸. The IHRS provides real time information beginning with the initial written request for a hearing, amendments, extensions and subsequent implementation of decisions rendered in the hearing. Daily electronic notices are forwarded to LEAs and IHOs to address lack of timeliness, which is calculated by the web-based data system. When IHOs order correction of noncompliance, the State requires the LEA to carry out the decision. If the IHO does not require correction, no action is taken by the SEA. During the visit the State demonstrated the web-based data system, including the site's links to applicable laws and regulations, the link to the *State Commissioner of Education Decisions* and links to specific publications to ensure the adjudication and processing of due process hearings and resolution sessions are consistent with regulatory requirements. In its FFY 2006-2007 APR, the State reported a decrease from 83.39% in FFY 2005-2006 to 79.63% in the percentage of adjudicated hearings completed in a timely manner. During the visit, the State reported one large urban area accounted for a significant number of late IHO decisions. To address the reasons why the IHO decisions were issued beyond the State's required time period, the State conducted monthly telephone conferences to address data collection issues, clarify State regulations, policies and procedures; improved the State's web-based data system's capacity to monitor timelines through the establishment of electronic file transfer processes; provided IHOs activity summaries of the

⁸ As of September 2008, the State certified 118 IHOs with 65 in NYC.

total number of cases to which they were appointed and whether those cases were addressed in a timely manner; revoked the certification of an IHO as a result of founded complaints regarding timelines; used data from the notification process in IHO investigations; provided training for IHOs; developed guidelines for special education mediation; developed a website to assist IHOs to access and review relevant information necessary to reach a timely decision; and initiated the development of a procedural guide for use by all IHOs to ensure consistency in due process hearings. The State reported that these strategies contributed to the increase of adjudicated hearings completed in a timely manner to 80.9%, as reported in its FFY 2007-2008 section 618 Table 7 (dispute resolution).

The State reported that while more than 400 mediation requests were received by school districts in FFY 2006-2007 (91% of which resulted in agreement), efforts are ongoing to increase the number of mediation requests and agreements through increased numbers of trained mediators, initiatives with the State-funded parent centers and a network of non-profit community mediation centers. The State has instituted statewide training sessions on alternative forms dispute resolution to include the use of mediation prior to complaints being filed.

OSEP Conclusion

As described above, the State has made significant progress in ensuring that signed written complaints are resolved within 60 days or a timeline extended for exceptional circumstances with respect to a specific complaint, as required by 34 CFR §300.152. With regard to due process hearings, however, under 34 CFR §300.515 the State must ensure that due process hearing requests are fully adjudicated within the 45-day timeline (or 30-day timeline for preschool students) or a timeline that is properly extended by the hearing officer at the request of either party. Although the State reported an increase in the percentage of adjudicated hearings completed in a timely manner from 79.63% in FFY 2006-2007 APR to 80.9% as reported in its FFY 2007-2008 section 618 Table 7 (dispute resolution), the State is not ensuring that due process hearing requests are fully adjudicated within the 45-day timeline (or 30-day timeline for preschool students) or a timeline that is properly extended by the hearing officer at the request of either party.

Required Actions/Next Steps

As required by OSEP's June 2008 response to the State's FFY 2006 APR, the State must, review its improvement activities and revise them, if appropriate, to ensure that they will be enable the State to provide data in the FFY 2007 APR, due February 2, 2009, that demonstrates that the State is in compliance with the timely due process hearing resolution requirements in 34 CFR §300.515. To the extent that the State is unable to provide the required data, the State must, with its FFY 2008 APR, due February 1, 2010, provide the required data that demonstrates compliance.

Critical Element 4: Educational Results and Functional Outcomes

Does the State have procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities?

Verification Visit Details and Analysis

The State described multiple procedures and practices employed to improve educational results and functional outcomes for students with disabilities throughout the State. These procedures and practices included, but were not limited to, enactment of State law, monitoring reviews, technical assistance networks, school improvement and other discretionary grants, and professional development.

The State reported methods such as comprehensive and focused quality reviews which enabled the State to review results across indicators (e.g., preschool outcomes, graduation, dropout, disproportionality, suspension/expulsions) and to identify issues related to compliance and performance results. The public reporting of these data contributed to the State's efforts to continuously revise its school improvement strategies and to determine the types of interventions and supports for each school district. The State also noted the need to prioritize its discretionary budget outlays to develop, identify and replicate effective school improvement and projects that demonstrate significant results. These outlays also included personnel development grants and preparation projects in areas with professional shortages.

The collaboration between the State's Department of Health and the SEA has resulted in the development of a joint guidance document, *Transition of Children at Age Three from the New York State Department of Health Early Intervention Program to the State Education Department Preschool Special Education Program or Other Early Childhood Service*. The document is cited in the State's FFY 2006 APR as a completed improvement activity to address compliance with the early childhood transition requirements in 34 CFR §300.124(b). During the visit, the two agencies met and acknowledged the need to revisit the document to clarify definitions, responsibilities and processes to improve early childhood transition in the State. The State's interagency agreement is also being revised to ensure it reflects the recent amendments to IDEA 2004.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has demonstrated it has procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities.

Required Actions/Next Steps

No further action is required.

Critical Element 5: Grant Assurances

Does the State have procedures and practices that are reasonably designed to implement selected grant assurances (i.e., monitoring and enforcement, significant disproportionality, private schools, coordinated early intervening services [CEIS], National Instructional Material Accessibility Standards [NIMAS] and assessment)?

Verification Visit Details and Analysis

Public Reporting and Determinations

The State reported that it has revised its policies and procedures including its monitoring protocols to ensure existing State law and regulations are implemented to the extent they are consistent with Federal requirements. The State's capacity to implement the priority areas, identified by Congress and specified in the statute, is demonstrated by State's reporting on the performance of the priority areas to the Secretary and the public consistent with IDEA in the State's Annual Performance Report. The State indicated it relies on section 616 of the IDEA as its authority to enforce the implementation of Federal requirements and that the State has adopted the enforcement actions cited under section 616 of IDEA for districts at risk⁹, in need of assistance, needs intervention, and needs substantial intervention.

OSEP verified that the State met its reporting requirement by publishing a district profile for each LEA on the SEA's website. The State reports the LEA's performance against targets in the State's SPP and the State reviews each LEA's compliance and performance on SPP/APR indicators.

OSEP reviewed documents to verify that local determinations were made for the FFY 2005 and FFY 2006 for each school district in relation to the State's targets for performance Indicators 1 (Graduation rates), 2 (Dropout rates), and 3 (Assessments). The State's determinations for FFY 2006 were based on a review of data from all school districts in the State against the State's performance and compliance targets. A review of a comparison of the school districts identified last year when compared to this year's performance showed significant improvement: (a) 36 school districts that were identified as needs assistance or intervention last year, were identified this year as meet requirements even though the State's targets were more rigorous; (b) six districts that were in needs intervention last year now meet requirements; (c) eight districts improved from needs intervention last year to needs assistance; (d) 57 school districts were determined to be in needs assistance; and (e) 26 school districts were determined to be in need of intervention.

Beginning with the FFY 2007 determinations, all school districts, regardless of determinations, received written summaries of its special education performance based on the State targets for performance Indicators 1, 2 and 3. The districts also received letters notifying them of the State's determination for the district as well as the district's compliance on Indicators 9, 10, 11, 12, and 13. The State further noted that in making determinations, the State considers whether the districts: (1) demonstrated compliance or that it corrected noncompliance in a timely manner, or if it did not demonstrate compliance, nonetheless had made significant progress in ensuring compliance over prior performance in that area; (2) provided valid and reliable data that

⁹ The State has created an additional determination category, 'at risk,' which puts a district on notice that targets will become increasingly more difficult to attain. A school district is identified at risk for future years, if it did not make Adequate Yearly Progress for the subgroups of students with disabilities in either grades 3-8 English-Language Arts (ELA) and also had a combined Performance Index of less than 96 in ELA or less than 105 in math. The district was not identified as at risk, if, based on latest total cohorts, the four year graduation rate was at least 52% or the five year graduation rate was at least 58%.

reflected the measurement for the indicator; and (3) had other IDEA compliance issues that were identified in the Department's monitoring, audit or other activities, and the district's progress in resolving those problems.

Significant Disproportionality and CEIS

As a result of the passage of the State's legislation in 1999 (Chapter 405 of the Laws of 1999), the State has been identifying school districts for disproportionality based on race and ethnicity issues among other special education issues since the 2000-2001 school year. The State reported during the visit and in its SPP, that its definitions of significant disproportionality and disproportion are synonymous. Prior to the visit, OSEP received the State's notification affirming the change of its child count date in the 2008-2009 school year from December 1 to October 1 in order to make calculations and notifications based on over- and under-representation by April 2009. As required under IDEA, in the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, the State: (1) provides for the review and if appropriate revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of IDEA; (2) requires any LEA identified to reserve fifteen percent of funds under section 613(f) to provide comprehensive, CEIS to serve children in the local education agency, particularly children in those groups that were significantly over identified; and (3) requires the LEA to publicly report on the revision of policies, practices, and procedures related to disproportionality.

Private Schools

The State reported recent revisions to its policies and procedures regarding funding as well as quality assurance activities to ensure its oversight of private schools serving agency-placed or referred and parentally placed children with disabilities consistent with Federal requirements. The State's policies and procedures apply to school district placements of students in non-district units including approved private schools, Special Act School Districts, and State-supported or State-operated programs. Additional guidance is provided to school districts when students with disabilities are parentally placed in nonpublic schools located in that school district including: (1) child find and individual evaluations; (2) CSE responsibilities; (3) provision of special education services to residents of the State and out-of-State residents; (4) consultation with nonpublic schools and parent representatives; (5) due process responsibilities; (6) data collection and reporting, and (7) use of Federal funds.

NIMAS

The State explained that it has a long history of State legislative actions to ensure students with disabilities have access to curriculum materials. New York is an open territory State whereby districts can select any text book, making it more difficult to implement NIMAS requirements. However, current legislation related to NIMAS requires that each Board of Education establish a plan to ensure that all instructional materials to be used in the schools are made available to a student with a disability in a useable alternative format. The State further reports that it coordinates with the National Instructional Materials Accessibility Center (NIMAC). The

process that SEAs use to ensure that children with print disabilities have access to accessible instructional materials is: (1) the LEA's CSE identifies student need; (2) the LEA contacts the Resource Center for the Visually Impaired (RCVI); (3) the RCVI searches all repositories including NIMAC for the textbook file set; and (4) the RCVI facilitates the procurement of the book or sends the NIMAC file to Helen Keller Services for the Blind for conversion and forwarding to the LEA. The State also noted its Accessible Instructional Material Consortium Plan and its grant with the Center for Applied Science and Technology (CAST) to ensure understanding of statutory and regulatory responsibilities, to identify students with print disabilities, determine appropriate formats and tools, and to serve as regional contacts for training and technical assistance. Ultimately, the best practices identified through CAST's involvement with the State will be shared with other States in the Consortium.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes the State has demonstrated it has procedures and practices that are reasonably designed to implement selected grant assurances (i.e., monitoring and enforcement, significant disproportionality, private schools, CEIS, NIMAS and assessment). OSEP cannot, however, without also collecting data at the local level, determine whether the State fully implements selected grant assurances.

Required Actions/Next Steps

No further action is required.

Data Systems

Critical Element 1: Valid and Reliable Data

Does the State have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner?

Verification Visit Details and Analysis

During the visit, the State reported its use of multiple data systems to collect and report valid and reliable data and information to the Department and the public in a timely manner. The State's individual student record system, Student Information Repository System (SIRS), is used to collect data for the State's Office of Elementary, Middle, Secondary and Continuing Education (EMSC) specific to state assessment and cohort data as required under the No Child Left Behind Act. The State emphasized the importance of the collaboration with EMSC to accommodate reporting requirements in the SPP specific to Indicators 1, 2, and 3 and section 618 Tables for 1 (Child Count), 3 (Least Restrictive Environment), 4 (Exiting) and 6 (Assessments) using the SIRS. Aggregate data are reported through the State's web-based system, Pupils with Disabilities (PD), which is promulgated by LEAs and reported to the SEA. The PD system currently collects data for SPP Indicators 4, 7, 9, 10, 13, 14 as well as section 618 Tables 2 (Special Education Personnel) and 5 (Disciplinary Removals). This data system also serves as a means for verification and certification of special education data collected through SIRS. The State's Basic Education Data System (BEDS) collects enrollment data for all students, including

enrollment by race/ethnicity which is used for classification rates and disproportionality calculations. BEDS data is used partially for SPP Indicators 9 and 10 and section 618 Table 2. Data collection for dispute resolution involving due process hearings and resolution sessions is accommodated by the State's IHRS from the point of request through the rendering of the decision or the closure of the case as a corrective action. This data system enables the State to monitor the timeliness of decisions as identified in SPP Indicator 17 and collect data on hearing requests resolved through resolution sessions as identified in SPP Indicator 18. It also provides data for section 618 Table 7 (Dispute Resolution). The State's CSEIS provides a mechanism to monitor the identification and correction of noncompliance identified in SPP Indicators 4, 9, 10, 11, 12, 13, 15 and collects data for timeliness related to State Complaints identified in SPP Indicator 16 and mediation agreements identified in SPP Indicator 19. However, the State did not provide data for the appropriate year for Indicators 9 and 10 in the APR submitted February 1, 2008.

Following the on-site verification visit, the State provided OSEP with further information describing the changes that were made to their data collection process in order to submit valid and reliable data for Indicators 9 and 10 in the FFY 2007 APR, due February 2, 2009. The State reported that beginning in the 2007-08 school year, data for Indicators 9 and 10 was collected on an individual student level for both special education and general education students using SIRS. Additionally, during the 2008-09 school year, the State changed its child count date from December 1st to the first Wednesday in October to enable the State to finalize the child count and least restrictive environment data earlier, make the required computations for Indicators 9 and 10, and arrange for the review of policies, practices and procedures in order to report on the results in the APR.

The State described mechanisms involving local and regional training and technical assistance to ensure valid, reliable, and timely data by including the identification and correction of anomalies that ultimately serve as the impetus for change in practice to correct anomalies. These mechanisms are employed to ensure its validity and reliability and apply to section 618 data reporting requirements. The State explained that consistent and frequent training and technical assistance are provided through email, teleconferences and/or in person to ensure understanding of processes and data definitions¹⁰.

OSEP Conclusion

As explained above, the State has not yet demonstrated that it can provide appropriate year data for Indicators 9 and 10 of its APR, as required by IDEA section 616(a)(4), 34 CFR §300.601(b)(1), and U.S.C. 1416. The State reported that it has revised the data collection process to require that child count data be reported earlier by the LEA, thus allowing the State to report valid, reliable, and timely data for Indicators 9 and 10.

¹⁰ Guidelines for data extracts and data dictionary are available for SIRS data systems policy manuals. BEDS and PD data definition are conveyed through form directions. IHRS and CSEIS data definitions are communicated through help files and manuals.

Required Actions/Next Steps

As required by OSEP's June 2008 response to the State's FFY 2006 APR, the State was required, in its FFY 2007 APR, due February 2, 2009, to demonstrate that the State had collected and reported valid and reliable data for Indicators 9 and 10. To the extent that the State is unable to provide the required data, the State must, with its FFY 2008 APR, due February 1, 2010, provide the required data that demonstrates compliance.

Critical Element 2: Data Reflect Actual Practice and Performance

Does the State have procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance?

Verification Visit Details and Analysis

The State reported that multiple data collection and reporting processes are used to collect valid and reliable data. These data reports are continuously monitored to ensure each report reflects actual practice. The processes included, but were not limited to (a) State staff review processes to ensure each process is consistent with OSEP directives and directions; (b) service providers aggregate reports and verify data at the local level; (c) student management system vendors receive update notices regarding NYSED data collection changes throughout the year; (d) special education student management system vendors receive routine updates regarding changes in special education data collection requirements; (e) State staff convene weekly conference calls with staff based in Regional Information Centers and in large cities to ensure consistent communications, applications, and definitions; (f) State staff maintain an email notification service to share questions and answers with large groups; and (g) ongoing communication with the policy staff is maintained to ensure consistency of data collection requirements in laws and regulations. The State informed OSEP that the data are corroborated through public reports; reasonability checks; collaboration between field and central office staff; and engaging in a limited number of data 'policing' activities or audits.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has demonstrated it has procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance. OSEP cannot, however, without also collecting data at the local level, determine whether the State's procedures fully verify that the data collected and reported reflect actual practice and performance.

Required Actions/Next Steps

No further action is required.

Critical Element 3: Compilation and Integration of Data

Does the State compile and integrate data across systems and use the data to inform and focus its improvement activities?

Verification Visit Details and Analysis

The State discussed strategies to compile and integrate data across systems to improve program and systems operations including the formation of a 616 Workgroup that serves as a cross unit team to inform all aspects of the SPP and APR, annual review and discussion of results by all State staff, joint responsibility for APR data collection and reporting across program offices, and reporting to the Commissioner's Advisory Panel. The State indicated that data are also used across systems to inform the State regarding LEA determinations; regional planning for quality assurance and technical assistance resources; focusing quality improvement processes; and identification of policy issues and setting priorities for training and technical assistance needs. Additional strategies were cited specifically to improve and sustain compliance and improve results including reporting results to the public, the State's Board of Regents, the Commissioner's Advisory Panel, State-funded technical assistance providers; and review of data across indicators to select monitoring protocols.

The State reported that it believed that the recent changes in its data system would permit: 1) greater analysis/research capacity once the State has longitudinal data; 2) greater capacity to aggregate data in different ways as needed for various stakeholders; 3) easier annual modifications to the data system, definition revisions or data element additions; and 4) easier school district training on one unified Department data system rather than on separate systems.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has demonstrated it compiles and integrates data across systems and uses the data to inform and focus its improvement activities.

Required Actions/Next Steps

No further action is required.

Fiscal Systems

Critical Element 1: Timely Obligation and Liquidation

Does the State have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds?

Verification Visit Details and Analysis

The State described its procedures to ensure the timely obligation and liquidation of IDEA funds. The State emphasized the collaboration with its Office of Fiscal Management and Special Education Managers to ensure that all grant funds obligated to the SFA are liquidated. Each LEA must also submit a final expenditure report to a separate audit unit in the State within 90 days after the end of the annual IDEA Part B section 611 and section 619 projects. In addition, the State's Office of Audit Services participates in annual audits of LEAs which includes the IDEA Part B projects as part of its audit review. The State monitors final expenditure reports and completes liquidation procedures for the funding period.

OSEP staff reviewed local applications, award notifications, and selected discretionary project applications. These reviews served as examples of how the State ensures the timely obligation and liquidation of funds.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds. OSEP cannot, however, without also collecting data at the local level, determine whether the State has procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds.

Required Actions/Next Steps

No further action is required.

Critical Element 2: Distribution of IDEA funds

Does the State have procedures that are reasonably designed to ensure distribution of IDEA funds within the State?

Verification Visit Details and Analysis

OSEP reviewed the State report documenting the calculations of subgrants for both section 611 and 619 projects. The report was consistent with IDEA requirements. To be eligible to awarded subgrants under section 611 and 619, an LEA must meet the definition of an LEA consistent with Federal and State law. An LEA is constituted as a city school district, a central school district or a union free school district under current New York State law or is a State agency, a State-operated school or a Special Act School district.¹¹ Each LEA is required to complete an on-line application that is posted on the State's public Web site each spring prior to the funded school year. The LEA has 8-10 weeks prior to the due date to complete and submit a substantially approvable application to the State in order to receive funds. The State distributes final allocation notices to each LEA and distributes funds within 60-days. OSEP determined that the State applies the IDEA funding formula consistent with 34 CFR §300.705(b). The State indicated that it does not reserve section 611 funds to establish a LEA Risk Pool.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures that are reasonably designed to ensure distribution of IDEA funds within the State. OSEP cannot, however, without also collecting data at the local level, determine whether the State has procedures that are reasonably designed to

¹¹ Directions are provided to LEAs regarding distribution of a proportionate share of IDEA funds to Charter schools. The State's allocation website provides data to allow a computation of the proportionate share of allocation for each student in Charter schools and students with disabilities placed in private schools by their parents. The State has a provision, Charter School intercept, whereby should a 30-day delay in distribution of funds by the LEA occur, the Charter school can request the State to pay for services. Special Act Schools are in-state, separate educational settings for agency-referred and placed low incidence students.

ensure distribution of IDEA funds within the State.

Required Actions/Next Steps

No further action is required.

Critical Element 3: Use of IDEA funds

Does the State have procedures that are reasonably designed to ensure appropriate use of IDEA funds?

Verification Visit Details and Analysis

The State reported that it works closely with the Office of Fiscal Management and Special Education Managers to ensure that all grant funds obligated to the SEA are liquidated. The processes currently in place enable the State to use a separate and distinct accounting system that includes an audit trail to track and account for Federal IDEA Part B and State aid funds in order to clearly delineate Part B funds from other funds.

To ensure that funds are used to supplement and not supplant other State and local funds, computations are made each year. To receive IDEA Part B funding, an LEA is required to provide information concerning its expenditure of Federal IDEA Part B funds to supplement its local funds and its maintenance of effort (MOE) for the previous year as part of the approval process of its IDEA Part B section 611 and section 619 projects. Upon receipt of each individual Federal aid application, proposed section 611 and section 619 budgets are screened by trained staff to ensure that State and local funds will be used to supplement and not supplant other State and local funds. Additional scrutiny is conducted by the State's Office of Audit Services. Based on OSEP's review of the prior and current year fiscal expenditure reports, the State and its LEAs have met or exceeded MOE each year.

Any LEA that reduces local expenditures under 34 CFR §300.205(a) would be required to submit documentation as to the use of funds demonstrating compliance with this regulation. The SEA has developed required procedures to be completed by an LEA as part of the application process for any proposed comprehensive early intervening services activities under 34 CFR §300.226. During the screening of the Federal aid application, State staff can easily make the determination that such proposed expenditures are consistent with 34 CFR §300.205(d).

The State reported that Federal IDEA Part B and State funds are tracked and accounted for through a separate and distinct accounting system that includes an audit trail. The State further noted that directions are provided in the IDEA Part B memorandum to LEAs regarding the permissive use of IDEA funds and each Federal aid application is individually reviewed by trained personnel. If an LEA submits an annual application with reduced MOE for a prior school year in the required fields, the LEA is contacted by the State and is required to submit supporting documentation to substantiate the MOE reduction prior to the release of funds. In cases where Part B funds are not used during the first 15 months of the grant period, to ensure that these funds are obligated within the additional 12 month period provided under the Tydings Amendment, LEAs are required to use any unexpended prior year Federal IDEA Part B funds in

the following school year's project(s) before the SEA releases current year project funds to the LEA.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures that are reasonably designed to ensure appropriate use of IDEA funds. OSEP cannot, however, without also collecting data at the local level, determine whether the State has procedures that are reasonably designed to ensure appropriate use of IDEA funds.

Required Actions/Next Steps

No further action is required.