

**Tennessee Part B 2008 Verification Visit Letter
Enclosure**

I. 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

Through interviews and document reviews, the Tennessee Department of Education (TDE) reported that the State utilizes multiple means to identify noncompliance and ensure that local educational agencies (LEAs) comply with requirements of the Individuals with Disabilities Education Act (IDEA). Since the previous verification visit, the State has modified its monitoring process twice. The first change occurred at the start of the 2005-2006 school year. The State modified the monitoring process to align with the Federal State Performance Plan/Annual Performance Report (SPP/APR) and created the "Cyclical Performance Review of Local Educational Agencies." According to TDE, the Cyclical Performance Reviews (CPRs) were designed to review all LEAs and State operated schools for the blind and deaf on a four-year cycle. Based on OSEP's review of all 30 monitoring reports issued to LEAs by the State in 2006-2007, OSEP found that during the CPR process, the State conducted multiple site visits to interview staff and review student records. In addition, the State reviewed section 618 data, and other data submitted by the LEA for SPP/APR indicators and State indicators (e.g., data on timely reevaluations). TDE notified LEAs of findings of noncompliance in reports issued within one to three months following the on-site visit. The reports included a cover letter with a table attached identifying the LEA's compliance status for each of the indicators and a Program Improvement Plan (PIP). The PIP consisted of corrective actions for both results and compliance indicators. Of the 30 reports reviewed, 29 monitoring reports identified noncompliance. TDE also provided 34 monitoring reports issued to LEAs by the State in 2007-2008, all of which contained findings of noncompliance.

Through the verification process, the State informed OSEP that for the 2008-2009 school year it is implementing a new monitoring system to monitor all LEAs on an annual basis. The new system consists of three components. The first component is the System Profile Annual Monitoring (SPAM). The SPAM generates a system data profile for each LEA by October 15th that is based on section 618, selected SPP/APR Indicators and State-required data. After TDE generates the system data profile, the LEA will have an opportunity to examine the SPAM for errors. The State will send an Annual Letter of Compliance Review to every LEA in December that is based on a review of the data and will identify areas of noncompliance in the letter. The State will use data collected in the SPAM to report on SPP/APR Indicators 1, 2, 4a, 5, 6, 11, 12 and State Indicator, 11a, which measures the percentage of children who received timely re-evaluations.

The State anticipates notifying all districts in December of their SPAM results. Similar to the CPRs, the State has multiple targets. For results Indicators 1-6, LEAs that do not meet the State's APR targets for these indicators will be required to submit a PIP. For compliance Indicators 11, 11a, and 12, if the LEA's data does not indicate substantial compliance, which the State defines as 95%, the State will require the LEA to develop a Corrective Action Plan (CAP).

The State reported in interviews with OSEP if the LEA's data indicates substantial compliance but is below 100%, the State will require the LEA to correct the individual cases of noncompliance. It will be important for the State to establish mechanisms to track correction of noncompliance in individual cases to ensure that correction is timely.

The second component of the monitoring system includes site visits to all LEAs on a four year cycle to conduct fiscal monitoring of Federal programs (e.g., Title I and IDEA) and special education monitoring for APR Indicator 13 and the following State indicators: (1) Indicator 8(a), ensuring that facilities are accessible to individuals with disabilities; (2) Indicator 11b, reviewing student records to ensure compliance with IDEA and State requirements; and (3) Indicator 11c, ensuring appropriate child find activities are conducted. The State plans to issue the results of its on-site activities within 90 days of the site visit. OSEP's review of the monitoring instrument for the on-site review indicated that the State would not require a CAP unless 10% of the records reviewed have noncompliance in the same focus area. Similar to the SPAM process, the State reported that LEAs with a compliance rate greater than 90% but less than 100% will be required to correct individual cases of noncompliance.

Finally, the State will conduct the third component, a focused monitoring of specific LEAs. Through both interviews and document reviews, the State indicated that it would select an issue for focused monitoring that may be based on complaints with findings, data reviews or patterns of noncompliance. The State reported that this is a continuation of current practice. For example, in one focused monitoring report that OSEP reviewed, the focus area was the provision of a free and appropriate public education to children with disabilities who received long-term suspensions. The State reported that it chose this issue because it received numerous State complaints and had made multiple findings against the LEA. In the focused monitoring report, the State identified a finding of noncompliance and required the LEA to offer compensatory services to all children with disabilities who received a long term suspension but whose parents were not afforded the procedural safeguards (e.g., a manifestation determination meeting) required under IDEA.

The State uses a separate monitoring instrument for monitoring private schools that only serve students with disabilities and State facilities, such as juvenile justice centers. The State conducts these reviews every two years and reports the findings of noncompliance on its website.

In addition to the above components, the State uses other means to identify noncompliance such as its complaint system, annual review of districts to determine significant disproportionality, joint fiscal monitoring, and its data system, which examines whether IEPs are more than one year old. The State reported that LEAs could lose partial State funding for expired IEPs.

OSEP Conclusions

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the State must identify noncompliance by issuing findings of noncompliance when the State obtains reliable data reflecting noncompliance with Part B requirements. Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes that the State has a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components. OSEP cannot, however, without collecting data at the local level, determine whether the State's procedures are fully effective in identifying noncompliance in a timely manner.

Required Actions/Next Steps

No action is 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

OSEP reviewed the corrective action plans, referred to as PIPs, included with the 29 LEA monitoring reports with identified noncompliance issued during the 2006-2007 school year. As part of the CPRs, the State required LEAs to develop and implement PIPs when the LEAs did not meet the State's target for performance on results indicators or reach 100% on compliance indicators. The State reported that in order to expedite approval of individual PIPs, regional consultants offered to work with the LEA to develop the PIP between the time following the visit and the issuance of the monitoring report. The PIPs consisted of specific corrective actions for both results and compliance indicators. In the 2007-2008 monitoring reports, TDE stated that all areas of noncompliance must be corrected as soon as possible, but no later than one year from the monitoring validation. TDE required LEAs to implement the action steps in each PIP, to document completion, and to submit required documentation verifying correction to the State regional consultant. The State regional consultant would provide technical assistance, depending on the issues, and visit the LEA during the year to gauge the LEA's progress in completing the PIP. In addition, according to State procedures, the regional consultant conducted a follow-up visit within 12 months of the issuance of the monitoring report to verify completion of the improvement activities and collect evidence of correction, as needed. After the regional consultant reviewed the LEA's documentation that the corrective actions identified in the PIP had been completed, TDE issued a final letter verifying that the noncompliance identified in the monitoring report was corrected, and/or processes had been implemented to prevent future noncompliance. The final letter also included a statement that the State had concluded its monitoring process for the particular LEA.

As described in the previous section, TDE is implementing a new monitoring system during the 2008-2009 school year. The State will send an Annual Letter of Compliance Review to every LEA in December that is based on its review of the LEA's data profile generated by the SPAM. Areas of noncompliance will be identified with corrective actions and timelines for correction.¹ For those LEAs selected to have a Fiscal/On-Site monitoring visit, any noncompliance will also be identified with corrective actions and timelines for correction in the December Annual Letter of Compliance Review. If the Fiscal/On-Site monitoring visit occurs after November, the report with corrective actions and timelines for correction will be issued as an addendum to the December letter. TDE plans to have LEAs complete all action steps and provide documentation verifying correction to TDE by a specified date or no later than June 30 of every year.

Through a combination of interviews and document reviews, OSEP found that TDE was not verifying correction of noncompliance within one year after the State's identification of noncompliance. The State provided OSEP with the dates when TDE verified that the LEAs'

¹ Unlike in the 2006-2007 monitoring reports, where a PIP addressed both results and compliance indicators, TDE will require PIPs when an LEA does not meet a State target in a results indicator and will require a Corrective Action Plan when an LEA does not meet substantial compliance (less than 95%) for a compliance indicator.

noncompliance had had been corrected. OSEP found that TDE verified correction of noncompliance identified in 20 of the 29 monitoring reports that were issued in 2006-2007 more than one year after the date the monitoring reports were issued.

In the FFY 2005 and FFY 2006 APRs, the State's reported data on correction of noncompliance no later than one year from identification were 100%. OSEP visited an LEA to examine student records and interview staff regarding TDE's monitoring process and to verify whether the findings that the State identified in May 2007, and determined were corrected in May 2008, were in fact corrected by the LEA. OSEP's review found that the same issues of noncompliance identified in May 2007 still existed. For example, OSEP found files where children with disabilities who were transitioning from Part C to Part B since May 2008, had their IEP meeting after their third birthday, resulting in a delay of services. Also, in reviewing records of children with disabilities who had been suspended for more than 10 days during the 2008-2009 school year, one student had no record of a manifestation determination as required under 34 CFR §300.530(e). In addition, none of the records where the behavior was a manifestation of the child's disability included documentation that the child received, as appropriate, a functional behavioral assessment or behavior intervention plan as required in 34 CFR §300.530(f)(1). Although the LEA made progress in correcting the noncompliance in both the transition of children with disabilities from Part C to Part B and the suspension of secondary students with disabilities, noncompliance was still evident in both areas. It is noteworthy that TDE continues to provide technical assistance to address the noncompliance it identified in this LEA.

OSEP Conclusions

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 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. Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP found that the State does not have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner. The State has modified its system and the State believes that the new procedures in place will correct noncompliance in a timely manner. Since the one-year timeline has not passed for correction of noncompliance identified under TDE's new monitoring system, OSEP cannot determine whether these procedures will result in the timely correction of noncompliance.

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must provide documentation that its procedures for ensuring the correction of noncompliance identified in CPRs and in the three components of the new monitoring system include that the State must: (1) verify correction of identified noncompliance no later than one year after the State's identification of noncompliance; and (2) determine in each LEA with identified noncompliance that the LEA is correctly implementing the specific statutory or regulatory requirement. This determination must be based on the State's review of updated data, including but not limited to, examining student records from subsequent on-site monitoring or data collected through a State data system. (20 U.S.C. 1412(a)(11), 20 U.S.C. 1416, 34 CFR §300.149, 34 CFR §300.600, 20 U.S.C. 1232d(b)(3)(A)).

Also, in the State's FFY 2007 APR, due February 2, 2009, for Indicator 15, the State must ensure that data reported for FFY 2007 for Indicator 15 indicates that not all findings of noncompliance identified in FFY 2006 (2006-2007) were corrected within one year from identification. In addition, the State must report on whether the findings of noncompliance identified in 2006-2007

in the LEA visited by OSEP have been corrected since the verification visit, and if they have not been corrected, describe what actions, including technical assistance and enforcement actions that the State has taken.

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

The State reported that TDE maintains responsibility for investigating and resolving Part B State complaints. Effective July 1, 2007, the Tennessee Department of State, Administrative Procedures Division (APD) is responsible for conducting due process hearings and mediation. APD provides administrative judges to conduct hearings for TDE and other State administrative agencies, and develops rules of procedure for conducting those hearings that are consistent with the Uniform Administrative Procedures Act. TDE reported that it is responsible for ensuring that requests for mediation and due process are communicated to the APD in a timely manner, and enforcing the decisions made by APD administrative law judges.

TDE reported that the State makes information on procedural safeguards and dispute resolution options available to families in State regulation and in *A Guide to Special Education Administrative Complaints* available on the State's website. TDE staff indicated that the guide includes the requirements for filing a State complaint, a model complaint form, and definitions, steps, and timelines for dispute resolution processes.

Due Process Hearings: During the verification visit, OSEP reviewed due process complaint files and met with the State's chief administrative law judge and his staff to examine whether the State had developed processes that meet the statutory and regulatory requirements of IDEA. The Part B regulations at 34 CFR §300.515(a) require that a final decision in a due process hearing is reached and mailed to the parties not later than 45 days after the expiration of the 30-day resolution period under 34 CFR §300.510(b), or the adjusted time periods described in 34 CFR §300.510(c). In addition, under 34 CFR §300.515(c), a hearing officer may grant specific extensions of time beyond the 45-day timeline at the request of either party. Pursuant to these requirements, a hearing officer may only extend the 45-day timeline for a hearing decision at the request of a party, and, in extending the timeline, must specify either the length of the extension or the new date by which the hearing officer must mail the decision to the parties.

OSEP's review of documents and interviews with APD staff indicated that the State is not ensuring compliance with the requirement that hearing officers grant specific extensions of the 45-day timeline for issuing final decisions in due process hearings that specify either the length of the extension or the new date by which the decision must be reached and mailed to the parties as required at 34 CFR §300.515(c). OSEP reviewed all three due process hearing request files that were initiated prior to January 8, 2008 and were still in process due to requested extensions at the time of the site visit. OSEP found that in one of the cases, the administrative law judge did not grant specific extensions of time to reach a final decision in the hearing but rather, in an order of a third continuance, indicated that the administrative law judge would issue the final decision 30 days after receipt of the post hearing reply briefs. This represents noncompliance with the requirements of 34 CFR §300.515(a) and (c) governing timely due process hearing decisions.

TDE described a number of internal processes in which regular communication occurs between TDE's Office of Legal Services and TDE's Special Education Division aimed at reviewing the results of dispute resolution processes and tracking the resolution and enforcement of decisions made in those processes.

State Complaints: Through a review of approximately 25% of the Part B State complaint decisions from 2006 to present, OSEP determined that written decisions issued by TDE did not contain finding of facts and conclusions and the reason for the State's final decision, as required under 34 CFR §300.152(a)(5)(i) and (ii). The written decisions only included a list of documents and sources gathered and reviewed during the investigation, and the State's final decision (e.g., the IEP was implemented). The State reported that in many cases, informal means, including telephone calls with families involved in dispute resolution processes, are used to convey this information.

The Part B regulations at 34 CFR §300.152(a) and (b) require the SEA to investigate each State complaint and to issue a written decision to the complainant within 60 days after the complaint is filed, unless the time limit is extended because exceptional circumstances exist with respect to a particular complaint; or the parties agree to extend the time to engage in mediation or other alternative dispute resolution, if available in the State. A review of the administrative complaint files from 2006 to present indicated that if the 60-day timeline was extended, the State did not document the reason exceptional circumstances existed with respect to the particular complaint or that the parties agreed to engage in mediation. In interviews, the State reported that it recorded in a log when it notified parties that a complaint would require additional time to resolve. However, the State did not respond to OSEP's request to provide the log during or after the verification visit. Therefore, OSEP could not determine if extensions were properly granted in accordance with 34 CFR §300.152(b)(1).

The State also reported that it permits complaints to be reconsidered by the SEA director, and that it does not have mechanisms to ensure that the reconsideration occurs within the 60-day timeline for issuing a written decision or within a properly granted extension, as required under 34 CFR §300.152(a) and (b).

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP determined the State has not demonstrated that it has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA. Specifically, OSEP finds that the State failed to demonstrate compliance with requirements for granting specific extensions of the 45-day timeline for issuing final decisions in due process hearings (34 CFR §300.515(c)); requirements regarding issuing a written decision to a complainant that contains findings of fact and conclusions and the reasons for the State's final decision (34 CFR §300.152 (a)(5)); and requirements regarding issuing a written decision within the 60-day timeline or a properly granted extension (34 CFR §300.152 (a) and (b)). Further, no information was provided in TDE's complaint files or logs documenting that extensions of the 60-day timeline were granted only if exceptional circumstances existed with respect to a particular complaint or the parties agreed to engage in mediation, as required under 34 CFR §300.152(b)(1).

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must provide documentation that:

- 1) The State ensures compliance with the requirement that hearing officers grant specific extensions of the 45-day timeline for issuing final decisions in due process hearings at the request of a party that specify either the length of the extension or the new date by which the decision must be reached and mailed to the parties (34 CFR §300.515(a) and (c)).
- 2) The State issues written decisions resolving State complaints that contain findings of fact and conclusions and the reasons for the State's final decision (34 CFR §300.152(a)(5)(i) and (ii)). The State must provide copies of written decisions issued since OSEP's verification visit to ensure the decisions include the required content. In the event no written decisions are issued by TDE within 60 days from the date of this letter, TDE must submit with its Part B FFY 2009 application, copies of any State complaint decisions issued since OSEP's verification visit.
- 3) The State ensures compliance with the requirement that written decisions resolving State complaints are issued within 60 days after the complaint is filed, unless the timeline is extended and that it is properly documenting that extensions are granted only if exceptional circumstances exist with respect to a particular complaint or the parties agree to engage in mediation (34 CFR §300.152(a) and (b)(1)).

Also in the State's FFY 2007 APR, due February 2, 2009, the State must ensure that data reported for FFY 2007 for Indicators 16 and 17 are consistent with the timeline requirements of Part B of the IDEA (i.e., that for Indicator 16, the State counts a State complaint decision as timely only if the State issues the decision within 60 days from the date that the State received the complaint or within an appropriately extended timeline; and that for Indicator 17, the State counts a due process hearing decision as reached within an extended timeline only if there is documentation that the hearing officer granted a specific extension of the 45-day timeline at the request of a party that specified either the length of the extension or the new date by which the decision must be reached and mailed to the parties.

Critical Element 4: Improving Educational Results

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 reported on multiple initiatives that it is undertaking to improve educational results and functional outcomes for children with disabilities. The State provided information regarding the following practices.

Tennessee has utilized its State Improvement Grant to implement a model for Response to Intervention. Currently, the State partners with 20 LEAs and reports that it intends to expand its partnership to 35 LEAs during the 2008-2009 school year. The model includes a research base with professional development, model literacy approaches, and collaboration with higher education institutions.

The State's post secondary transition program, entitled the Transition Outcomes Project (TOPs) provides technical assistance to LEAs scheduled for on-site monitoring. The State indicated that it is utilizing its individualized education program (IEP) system to provide real-time feedback to LEAs regarding the transition planning activities that are occurring in schools. Further, the

State's website provides two videos, approximately 25 documents, and 10 links regarding secondary transition.

The State has contracted with two universities to provide training to LEAs on school-wide positive behavior supports (SWPBS). The State reports that the universities work with approximately 30 LEAs. Activities vary from district to district, but included: 1) creating nearly 400 professional development plans for educators across the State; 2) providing 24 hours of training on SWPBS to approximately 450 educators; 3) teaching school psychologists to be coaches in developing SWPBS; and 4) working with individual districts on an as needed basis.

Finally, the State reported that it has over 150 contracts with institutions of higher education, advocacy agencies, other departments of State government, education cooperatives, the State's Council on Developmental Disabilities, the Very Special Arts of Tennessee and LEAs. The State reported that these contracts provide a wide range of technical assistance and support in improving outcomes for children with disabilities. Technical assistance activities include work on transition and self-determination, licensure for education professionals, assistive technology services and engineering, SWPBS, speech/language, services for children with traumatic brain injury, strategies for inclusion, vision supports and increasing services for children with autism.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State 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 action is required.

Critical Element 5: Implementation of 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, CEIS, NIMAS and assessment)?

Verification Visit Details and Analysis

Public Reporting and Determinations: As a part of its monitoring and enforcement responsibilities under section 616 of the IDEA and 34 CFR §§300.600 and 300.602, each State must annually report to the public on the performance of each LEA against the State's SPP/APR targets and must make an annual determination for each LEA. The State meets the reporting requirement by publishing a district profile for each LEA on the SEA's website, in which the State reports the LEA's performance against targets in the State's SPP. For LEA determinations for the 2006-2007 school year, the State relied upon the data from Indicator 4A, the percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than 10 days in a school year. Starting with data collected during the 2007-2008 school year, the State reported that the determination will be based upon Indicators 4A, 9 and 10. The State anticipates issuing determinations each December.

Consistent with sections 616(a) and (e) of IDEA, at a minimum, a State's annual determination process must include consideration of the following factors: an LEA's performance on all SPP/APR compliance indicators, whether an LEA submitted valid and reliable data for each

indicator, LEA-specific audit findings, and any uncorrected noncompliance from any source. (See Determinations FAQs dated 10/19/2006 and 12/4/2007 and OSEP Guidance on Determinations of the Status of Local Programs by State Agencies under Parts B and C of IDEA dated March 7, 2007)

Private Schools and Proportionate Share Calculations: The State monitors to ensure that LEAs are spending a proportionate amount of Federal Part B funds on providing special education and related services for parentally-placed children with disabilities in accordance with 34 CFR §300.133(a). The State calculates the proportionate share for each district based on data provided by LEAs. The State Joint Fiscal Monitoring Instrument monitors compliance with the proportionate share requirements by examining documentation on how the proportionate share is expended. Specifically, the State examines whether LEAs have agreements with private schools, invoices and lists of parentally-placed private school students with disabilities. Each LEA must maintain an inventory of equipment and supplies placed in private schools. Monitoring occurs annually through an LEA self study and on-site visits by TDE staff every four years.

Significant Disproportionality and Coordinated Early Intervening Services (CEIS): The State has developed a comprehensive system to examine data for each LEA to determine if significant disproportionality based on race and ethnicity is occurring in the State and in the LEAs of the State with respect to the identification of children as children with disabilities, including in specific disability categories, the placement of these children in particular educational settings, and the incidence, duration, and type of disciplinary actions in accordance with 34 CFR §300.646(a). Based upon each LEA's data, the State determines whether the LEA has significant disproportionality. During interviews, the State reported that, for the 2007-2008 school year, it identified 21 LEAs with significant disproportionality for overrepresentation of students with disabilities. Each LEA with significant disproportionality is required to reserve 15% of Part B funds for CEIS. In addition, the LEA must complete a self assessment and plan for improvement using a template from the National Center for Culturally Responsive Educational Systems. LEAs submit both the self assessment and the plan for improvement to the State. The State reviews these documents and, if appropriate, requires an LEA to revise its policies, procedures, and practices to ensure they comply with the requirements of Part B of IDEA and publicly report on the revisions within the Tennessee Comprehensive Systemwide Planning Process. OSEP acknowledges the State's serious efforts and strong commitment to identifying and addressing significant disproportionality among its LEAs.

LEAs determined to have significant disproportionality (and LEAs without significant disproportionality who choose to use CEIS funds) are required to annually submit documentation within their Special Education Application to address how CEIS funds will be utilized. The State monitors the LEAs' use of funds based on their plan and the State or the LEA can develop a report on each student receiving CEIS through the student information system. The State ensures that LEAs with significant disproportionality reserve and expend 15% of their Part B funds by monitoring expenditures through completion reports and CEIS documentation incorporated within the end of the year report. The State verifies data reported by LEAs through its joint fiscal monitoring instrument.

NIMAS: The State has adopted the National Instructional Materials Accessibility Standard (NIMAS) and coordinates with the National Instructional Materials Access Center (NIMAC) in accordance with 34 CFR §300.172. The Tennessee School for the Blind is responsible for working with LEAs in providing accessible material. The State partners with audio and large

print vendors and has its own Braille production center. As reported through interviews, for LEAs that agree to utilize the State as a provider of accessible materials, the State reviews IEPs to ensure that there is a documented need prior to providing the requested materials. The State has reported that all LEAs have signed an agreement with the TN School for the Blind to secure and/or provide textbooks and adaptive educational materials to blind persons or other persons with print disabilities.

Assessment: The State ensures that LEAs comply with Part B requirements for statewide and districtwide assessments in accordance with 34 CFR §300.160. The State provides LEAs technical assistance through regional training sessions across the State, instructional documents, and sample completed forms on the State's website. The State reported that it reviews all requests for nonstandard accommodations for the Tennessee Comprehensive Assessment Program. Further, the State reported that it monitors student records during on-site monitoring visits to ensure that accommodations are appropriately documented in a student's record. The State's public reporting on the participation and performance of students with disabilities on statewide assessments occurs consistent with 34 CFR §300.160(f).

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes that, with the exception of the annual determinations process, the State 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 State and local levels, determine whether these procedures and practices are sufficient to ensure that LEAs in the State effectively implement these selected grant assurances. OSEP finds that when making annual determinations on the performance of their LEAs the State does not consider an LEA's performance on all SPP/APR compliance indicators, whether an LEA submitted valid and reliable data for each indicator, LEA-specific audit findings, and any uncorrected noncompliance from any source.

Required Actions/Next Steps

Within 60 days of the date of this letter, the State must provide documentation that, consistent with section 616(a) and section 616(e) of IDEA, its procedures for making future annual determinations on the performance of its LEAs includes consideration of an LEA's performance on all SPP/APR compliance indicators, whether an LEA submitted valid and reliable data for each indicator, LEA-specific audit findings, and any uncorrected noncompliance from any source.

II. Data

Critical Element 1: Collecting and Reporting 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

In the February 6, 2004 Verification Letter to the State, OSEP reported that TDE was transitioning from a data system implemented in the 1991-1992 school year, that had numerous barriers impeding the State's ability to submit valid and reliable data and information to the U.S. Department of Education. The system, described in the previous Verification Letter, relied on a combination of paper and electronic data transfers to a contractor who compiled, analyzed and provided the data to TDE. According to documents on TDE's website, in early 2004, the State entered into an agreement with a new vendor that agreed to provide two services for LEAs in the State: First, an online data reporting system for selected section 618 and State data submissions, and second, an on-line IEP system. These data collection tools are used in the Special Education Component of the Statewide Student Management System (SSMS).²

Additional documents on the TDE website indicate that there are 106 LEAs (out of 136) that participate in the general education component of SSMS, which is a separate online reporting system. For these 106 districts, information between the regular and special education components is updated on a daily basis. Therefore, when a child with a disability moves into one of these LEAs, personal and enrollment data would be entered in the general education system and the special education system would be able to locate the child and enter IEP information on the next day. The remaining 30 LEAs create their own arrangements with the Special Education Component of SSMS so that they can submit section 618 and State data. While the SSMS is voluntary, the State anticipates that for the section 618 data reports due February 1, 2009 (i.e., the 2008-2009 school year child count and educational environments), the State will collect data from its reporting system for 135 out of 136 LEAs, and State Operated Educational Service Agencies (e.g., Tennessee School for the Blind), from the Special Education component of SSMS. The remaining LEA has agreed to utilize the State's data reporting system and will submit subsequent reports through the State's Special Education Component of SSMS.

During the site visit, the State demonstrated the capabilities of SSMS to identify and correct errors and provided OSEP with the potential errors that may result through the data transmission process. The State has developed an extensive list of error messages that the LEA must address as necessary, in order to submit data to the State. The State has the ability to examine each LEA's data in real time, including IEPs in 121 LEAs, and assist LEAs in correcting unresolved

² TDE's Division of Special Education is responsible for collecting and reporting on the following section 618 data through the Special Education Component of the Statewide Student Management System (SMSS): Child Count (Table 1), Personnel (Table 2), Educational Environments (Table 3), Exiting (Table 4), and Discipline (Table 5). Assessment (Table 6) data is obtained from the No Child Left Behind Accountability Workbook, and Dispute Resolution (Table 7) data is collected from data housed at the TDE and the Tennessee Department of State. For the purposes of the section 618 data collection the report addresses the data collected in Tables 1, 2, 3, 4 and 5. Table 6 data is reported through the State's assessment program (Tennessee Comprehensive Assessment Program), which requires uniform data collection and reporting to ensure test validity and reliability. Finally, Table 7 does not require the State to collect data from LEAs, as the State houses all the complaint, due process and mediation data.

errors. The State indicated that SSMS is a significant improvement over the previous system, as the State can examine “real time” LEA data.

During interviews the State also reported that it has established on-line help for users, conducts weekly technical assistance phone calls regarding the Special Education component of SSMS, and has a toll free number that LEA employees may call to receive answers about inputting data and running reports. The State also reports that it established nine regional user groups to facilitate self-help and collaboration among the SSMS users.

During the verification visit, OSEP specifically inquired about the State’s guidance and data collection methodology for SPP/APR Indicators 3B, 8, 11 and 15. The State reported that it anticipates correcting the anomalies identified in OSEP’s June 6, 2008 response to the State’s FFY 2006 APR for Indicators 3B, 11 and 15 in the FFY 2007 APR submission, and will submit data consistent with the required measurement for Indicator 8 in the FFY 2008 APR. TDE provided a plan to collect valid and reliable data for Indicator 8 beginning in the FFY 2008 APR, due February 1, 2010. Beginning with the FFY 2008 APR, due February 1, 2009, the State will use data collected in the SMSS and documented in the SPAM to report on SPP/APR Indicators 1, 2, 4a, 5, 6, 11, and 12 and data from the second component of its monitoring system, which includes site visits to all LEAs on a four year cycle, to collect data for Indicator 13. The State assured OSEP that if there are anomalies in future APRs, the State would fully explain the reasons behind the anomalies and provide specific improvement strategies in upcoming APR submissions.

OSEP Conclusions

With the exception of data collection issues regarding Indicator 8 and the timeliness of State complaint and due process hearing decisions addressed in General Supervision-Critical Element 3, based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes that the State has 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. OSEP cannot, however, without also conducting a review of data collection and reporting practices at the local level, determine whether all public agencies in the State implement the State’s data collection and reporting procedures that results in data that are consistent with Part B.

Required Actions/Next Steps

With the FFY 2007 APR, due February 2, 2009, the State must provide under Indicator 8 its plan to collect valid and reliable data for this indicator beginning in the FFY 2008 APR, due February 1, 2010.

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

As mentioned in the previous section, the State provided documentation indicating that 89% of the LEAs and State operated institutions in Tennessee (121 out of 136) use the State’s SMSS system to collect and report selected section 618 data and develop IEPs. The State demonstrated to OSEP how the SMSS system allows each LEA to access its students’ data. TDE has access to

the data and can examine student data in real time—both composite data (e.g., section 618 data), and data in an individual student's IEP. The State also demonstrated that it is able to run specific checks on subgroups of students (e.g., students with emotional disturbances who are in the 8th grade at a specific middle school). This allows the LEAs and the State to target problems with data input, the quality of the data, and potential causes for the errors.

Further, as a means of determining State aid and verifying that students are accurately counted, the State requires each LEA to submit monthly special education membership reports, which track student enrollments and withdrawals, thus allowing the State to track attendance changes and potential anomalies of data. The State also requires LEAs to submit reports on promotion and retentions of children with disabilities, exiting status of 12th grade students with disabilities and an annual report of the average daily membership of children with disabilities. In total, there are up to 24 separate reports that an LEA must submit to the State on an annual basis.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes that the State has procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance. OSEP cannot, however, without conducting a review of data collection and reporting policies at the local level, determine whether all public agencies in the State implement the State's data collection and reporting procedures in a manner that reflects actual practice and performance.

Required Actions/Next Steps

No action is required.

Critical Element 3: Integrating Data Across Systems to Improve Compliance and Results

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

Throughout the verification visit, the State demonstrated how it utilizes data to inform and focus its improvement activities. The State has a Division of Accountability whose mission is to improve the effectiveness of the State's schools and school systems. Its first two goals listed on the division's website are to: (1) assist educators in understanding the use of student performance data for school improvement; and (2) provide an inclusive reporting document for each school and school system which details disaggregated student performance data. The division has been responsible for the restructuring of the Metro Nashville Public Schools due to the district's inability to make Adequate Yearly Progress. The Division of Special Education is increasing its emphasis on data collection and reporting with the creation of the SPAM, which relies on numerous data points to perform annual monitoring on all LEAs.

As reported by TDE, all public schools in Tennessee are required to participate in the Tennessee Comprehensive System-wide Planning Process (TCSPP). This process includes submitting School Improvement Plans at least every three years. School Improvement Plans are data driven and require each school to determine needs for all students, including students with disabilities. This data collection process also requires LEAs and schools to examine their AYP results and determine areas of strength and weaknesses. The first component of the School Improvement

Plan is to gather and analyze data. After the data is collected, each school is required to analyze whether their curriculum and instructional practices are meeting the needs of their students.

OSEP Conclusions

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

Required Actions/Next Steps

No action is required.

III. Fiscal System

Critical Element 1: Timely Obligation and Liquidation of Funds

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

Verification Visit Details and Analysis

TDE reported that the State instructs LEAs to submit their budgets based on the prior year's allocation. Budgets must reflect program goals, maintenance of effort (MOE), and reservation of Part B funds for CEIS, and proportionate share of Part B funds to be used for children with disabilities who are parentally-placed in private schools.

The State monitors the obligation and liquidation of Part B funds throughout the year. TDE reported that the State has safeguards in place to monitor the drawdown of monies through the State's FACTS (Federal Application Consolidated Tracking System). FACTS monitors all LEA expenditures. The State special education staff monitors fiscal issues and reviews all special education budgets. Funds are liquidated through the Office of Local Disbursements for Formula and Discretionary funds. Each LEA can request its Part B flow-through funds electronically through the State's disbursement and tracking system (FACTS). For each request, the LEA agrees to use the funds according to Federal and State laws and State program guidelines.

The Office of Local Disbursements ensures that the request is within the 27-month period of availability for an LEA to ensure that there are no over-obligations or overpayments. LEAs are required to submit electronic reports on a quarterly basis through FACTS on expenditures related to the requests for funds. The State notifies LEAs when 50% of funds have not been drawn down within a specific timeframe. TDE reported that the State has a mechanism in place to stop LEA requests and disbursements if there is a need to suspend the flow of funds. TDE reported that the State has procedures in place to ensure that all obligations are liquidated no later than 90 days after the end of the obligation period. The State reported that it follows the fiscal principle of "first in-first out" for expending IDEA funds within the respective Federal grant period.

The Office of Local Disbursements provides each Division with information from the Office of the Chief Financial Advisor concerning GAPS financial data. All expenditures are accounted for at the end of the project. The State requires LEAs to complete a "Federal Project Completion Report" at the end of 12 months and again at 27 months. For FFY 2005, the State expended all but \$4,286 of its 611 funds and all but \$7,828 of its 619 funds.

OSEP Conclusions

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

Required Actions/Next Steps

No action is required.

Critical Element 2: Appropriate Distribution of IDEA Funds

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

Verification Visit Details and Analysis

After receiving a grant award letter from OSEP, the State provides the amount of Part B funds reserved for administration and other State-level activities, as well as the amount that must be allocated to LEAs to personnel within the Office of Resource and Support Services. The Division of Special Education is responsible for uploading the spreadsheets for section 611 funds and section 619 funds into FACTS.

The State complies with Federal requirements in calculating subgrant allocations to LEAs and other State agencies. LEAs may apply for Part B funds annually through the LEA Comprehensive Application for Special Education Services. After approving the LEAs' Comprehensive Applications, the State notifies LEAs of their grant awards in May so they may begin using the money on July 1. All public agencies that receive funds, including charter and State-operated schools, must give assurances regarding MOE, supplement not supplant, and other appropriate accounting procedures. LEAs with students parentally-placed in private schools must complete a proportionate share form that indicates how these funds will be expended.

Pursuant to 34 CFR §300.704(c), TDE has established an LEA Risk Pool (High Cost Fund). TDE reported that the State has procedures on the TDE website that ensure that funds from the High Cost Fund are not used for costs associated with establishing, supporting, and administering the fund. The State expends these funds to address the needs of high needs children with disabilities that are eligible under IDEA. All requests for high cost funds are verified by TDE's Management Consultants prior to approval and subsequent reimbursement to the LEAs. The Management Consultants conduct data checks prior to approving reimbursements that are submitted to the Office of Local Finance for payment to the LEAs.

TDE reported that charter schools are part of the LEA and funds for charter schools flow from the State through LEAs to a charter school. The State monitors LEAs through its Joint Fiscal Monitoring Instrument for On-Site and Self-Assessment of Fiscal Requirements to ensure that the LEA provides Part B funds to charter schools that are public schools of the LEA on the same basis as the LEA provides Part B funds to its other public schools.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes that State has procedures that are reasonably designed to ensure

appropriate distribution of IDEA funds within the State. OSEP cannot, however, without collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures that ensure appropriate distribution of IDEA funds.

Required Actions/Next Steps

No action is required.

Critical Element 3: Appropriate 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

TDE reported that the State conducts multiple levels of review and approval before funds can be released to the LEA. LEAs submit their request for section 611 funds, section 619 funds, and State special education funds through the State's Comprehensive Application for Special Education Services that is due to the State by July 1. State regional consultants review the LEA grant applications from April to June to determine if the application is substantially approvable. A different regional consultant conducts a second review of the applications during the summer. The application is not fully approved until the State receives all required end of year data. The State initially releases 20% of the grant to the LEAs after the application has been determined substantially approvable. After the second reading and further review for IDEA requirements, the remaining grant award is released to the LEAs. All Federal funds are separated into different fund accounts (i.e., a section 611 account and section 619 account), and LEAs must request funds from the specific program areas.

TDE documents require that each LEA provide assurances in its application that Part B funds will be used in accordance with Part B requirements related to MOE, the proportionate share of Part B funds for parentally-placed private school children with disabilities, the high cost fund and CEIS. The State has a permissive use of funds form that must be completed to ensure that LEAs that elect to reduce local fiscal effort in certain fiscal years, to use IDEA funds to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act (ESEA), or to use IDEA funds to develop and implement CEIS meet the requirements in 34 CFR §§300.205, 300.206 and 300.226, respectively.

In addition to conducting an annual self-assessment, each LEA is on a four-year fiscal monitoring cycle during which TDE conducts a review of Federal fiscal requirements for IDEA and other Federal programs such as NCLB. Both through annual self-assessments and the TDE four year monitoring cycle, LEAs are monitored in the following areas: standard accounting/budgeting procedures; appropriate use of funds, including supplement not supplant requirements; proportionate share of Part B funds for parentally-placed private school children with disabilities, use of funds for CEIS, MOE, High Cost Fund, and records maintenance (personnel and equipment). The State reported that it provides an annual conference on Joint Fiscal Monitoring processes and procedures.

TDE reported that for both the State Educational Agency and for 89 of the State's 136 LEAs, the Tennessee Comptroller of the Treasury performs single audits. The remaining 47 LEAs contract with independent CPA firms through the local government or special school district to conduct single audits. Audit findings are reported to the Assistant Commissioner for Special Education

who, with his staff, develops a corrective action plan to address the finding(s). A status report on the progress of the corrective action must be submitted to the Comptroller of the Treasury six months after the release of the audit report. The Division of Special Education conducts follow-up visits to the LEA to review the audit finding(s) and the corrective action. The State also reported that additional technical assistance may be provided and monitoring may be conducted in the event of audit findings. Lack of improvement in correcting audit findings may result in the State designating the LEA as a "high risk" sub-recipient.

OSEP Conclusions

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 collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures that ensure appropriate use of IDEA funds.

Required Actions/Next Steps

No action is required.