

Delaware Part B 2009 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

The Delaware Department of Education (DDOE) identifies noncompliance using components of its general supervision system including on-site monitoring, dispute resolution, specific indicator data collections, and a database system. At the time of the verification visit, the State reported that a finding of noncompliance is a violation of any Federal or State regulation. In addition, DDOE reported that written findings are issued prior to 90 days and in some cases within two to three weeks of identification of the noncompliance.

DDOE conducts on-site monitoring visits to each of the 19 Local Educational Agencies (LEAs) and 17 charter schools every year. These annual visits are a coordinated effort between multiple offices in DDOE including Title I and Title II. Schools are notified of visits two days prior to on-site monitoring. The on-site monitoring involves a desk audit of a sample of individualized education programs (IEPs) with a specific focus on State requirements including: (i) the date of the IEP; (ii) the appropriate participants; (iii) goals and objectives; (iv) the disability category; and (v) prior written notice. Those five areas are related to the information financial auditors verify during their audit, and are linked to local funding. Indicator 13 data is also collected during the desk audit when the State visits a high school.

OSEP learned during the verification visit that DDOE does not have a general supervision system in place to monitor for all Part B IDEA requirements. The State reported that it conducts monitoring activities for compliance indicators (specifically Indicators 11, 12 and 13) and for the State requirements that are reviewed during the desk audit, but that it does not monitor other IDEA requirements. For example, the State does not monitor for the requirements related to least restrictive environment (LRE), despite OSEP previously identifying the State's funding formula as a contributing factor to LRE noncompliance.

The State reported that it uses a "substantial compliance" standard to identify child specific or systemic noncompliance, relative to Indicators 11, 12, and 13. If the district has "substantial compliance" which is defined as at least 95%, or lower if the district has a small *n*, DDOE neither issues a finding, nor informs the school district in writing that the noncompliance must be corrected. OSEP reviewed monitoring reports issued to 18 local districts and charter schools in 2008 and found that 13 of those districts and charters were below 100% compliance for Indicator 13 and findings were not issued by DDOE. In those instances, the State told the districts that follow-up training and a technical assistance visit would be scheduled. In addition, the monitoring report for one district noted that required items were missing from the prior written notice form that was being used. DDOE did not issue findings for these instances of noncompliance related to prior written notice, but instead instructed the districts to review previous guidance issued by the State.

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Identification of noncompliance for Indicator 11 is conducted through the collection of data from the Pupil Accounting System (eSchool Plus). DDOE identifies instances of timeline infractions through the results of data queries that are run once per year. The State requests reasons for the delays from the LEAs and DDOE then reviews the reasons provided by the districts to determine if there is noncompliance. The State reported that local districts are required to verify the accuracy of data and provide reasons for timeline infractions within 30 days. DDOE reported that a formal letter is issued if it is determined that the timeline infraction is an instance of noncompliance. During the verification visit, and in its FFY 2007 APR submission, DDOE reported to OSEP that it only requested reasons for delays from districts that were below 90% compliance.

Data for APR Indicator 12 is collected annually from districts through an Excel spreadsheet using the Indicator 12 measurement as the metric. DDOE follows up with districts if clarification is needed and issues a letter if it is determined that there was an instance of noncompliance. OSEP reviewed three letters written to districts regarding 2006-2007 data and file reviews for Indicator 12. For two districts below 100% (91.1% and 98.25%) DDOE did not make a finding, but instead suggested steps that could be implemented to ensure that timeline infractions did not occur in the future.

As mentioned previously, data for APR Indicator 13 is also collected during the on-site monitoring process, although the State may not select IEPs for review for students who should have secondary transition plans in every LEA every year. The State reported that it ensures that Indicator 13 data is collected for all LEAs at least once during the span of the SPP.

During the verification visit, OSEP expressed concern regarding DDOE's ability to report valid and reliable data for Indicators 11, 12 and 13 in the FFY 2008 APR, due February 1, 2010. For those districts that achieved 95% or above, and those with a small *n*, OSEP told the State to review the FFY 2007 data for Indicators 11, 12, and 13 to determine if noncompliance existed and, if so, report that information in the FFY 2008 APR.

OSEP Conclusions

In order to effectively monitor implementation of Part B of 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. In addition, 34 CFR §300.120 specifically requires a State educational agency (SEA) to carry out activities to ensure that LEAs are properly implementing LRE. Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined the State did not, at the time of the verification visit, demonstrate that it has a general supervision system in place that is reasonably designed to monitor for all IDEA Part B requirements including LRE and prior written notice, to ensure identification of noncompliance in a timely manner using its different components.

OSEP also finds that the State's use of a "substantial compliance" model for identifying noncompliance and requiring correction was inconsistent with Part B monitoring and correction requirements in 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 told OSEP that as of October 2009, DDOE has revised and implemented on-site monitoring protocols to ensure the timely identification of all noncompliance related to Indicator 13 and other State specific statutory requirements relative to the IEP. The State provided OSEP with six monitoring protocols completed in October 2009

demonstrating the timely identification of all noncompliance related to Indicator 13 and the IEP requirements.

OSEP told the State that it also must revise its monitoring procedures to ensure that all noncompliance is identified, regardless of the level of compliance achieved by the LEAs, specifically for Indicators 11 and 12.

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must demonstrate that it has revised its general supervision procedures to monitor all IDEA Part B requirements, including requirements relative to LRE, prior written notice, timely evaluations, and ensuring that IEPs are implemented by the 3rd birthday and identify all noncompliance discovered, regardless of the level of compliance demonstrated.

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

The Part B regulations in 34 CFR §300.600(e) require that, in exercising its monitoring responsibilities under 34 CFR §300.600(d), the State must ensure that when it identifies noncompliance with the requirements of Part B by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. As explained in OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02), and previously noted in OSEP's monitoring reports and verification letters, in order to demonstrate that previously identified noncompliance has been corrected, a State must verify that each LEA with noncompliance is: (1) correctly implementing the specific regulatory requirements; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA.

As described in the GS-1 section of this report, DDOE reported that a written finding of noncompliance is issued within 90 days from the identification of the noncompliance. DDOE reported that correction of identified noncompliance occurs as soon as possible, but no later than one year from written notification to the LEA of the noncompliance. DDOE evaluates correction of identified noncompliance in a timely manner by tracking specific areas of noncompliance and the required due dates within the corrective action plans (CAP). Regarding State complaints, DDOE reported that when instances of noncompliance are identified, it tracks and ensures the implementation of CAPs ordered through the complaint process. Regarding due process hearings, DDOE reported that it reviews hearing decisions when they are submitted to the department and verifies that LEAs correct all noncompliance identified in the decisions. The State reported that among the techniques it uses to verify the correction of noncompliance within the year from written notification to the LEA are the following: (1) reviewing updated data in the electronic database; (2) requiring the submission of revised policies and procedures; and (3) conducting follow-up monitoring visits.

DDOE reported that for Indicators 11 and 12, the correction of child specific noncompliance was confirmed through its review of data in the State's database or excel spread sheet to ensure that the child received the required service, although late. However, the State did not assess whether the LEA was currently correctly implementing the regulatory requirements related to these

indicators. For Indicator 11, some districts demonstrated that no children were referred during the period of correction, therefore a review of policies and procedures, training, and technical assistance was conducted to confirm timely correction. As of October 2009, the State verifies correction of child-specific noncompliance for Indicator 13 through the review of documents, and revised IEPs implemented following the issuance of the written findings. DDOE reported that for the verification of correction of systemic noncompliance, the State may recommend access to technical assistance or training. When the LEA demonstrated it had accessed the technical assistance or training, DDOE would determine the noncompliance to be corrected.

The State reported that it has the regulatory authority to impose sanctions as it has adopted all of the Federal regulations including those that provide the range of enforcement actions available. DDOE has utilized this authority in the past through the issuance of a sanction. In that instance, DDOE directed the district's use of funds as a result of noncompliance for two years in the area of Part C to B transition. During the verification visit, OSEP reviewed written correspondence to the district dated July 14, 2008 that outlined DDOE's enforcement action and the statutory regulations that gave the State the authority to do so.

DDOE instituted a compliance monitoring database as of September 2009 to track the correction of all noncompliance that includes: information regarding the date the noncompliance was identified; a description of each area of noncompliance with the accompanying regulation; the corrective action required; the due date for completion of the corrective action; the DDOE staff assigned to track the status of the correction; and the date the noncompliance was resolved. OSEP reviewed a printed copy of the monitoring database while on-site.

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 personnel, OSEP determined the State has not demonstrated that it has a general supervision system in place that is reasonably designed to ensure correction of identified noncompliance in a timely manner. Specifically, the State's procedure for determining timely correction for violations it identifies as child-specific based solely on whether a child subsequently received a required benefit, without also determining whether the school division is currently in compliance with regard to the specific regulatory requirement, is inconsistent with sections 612(a)(11) and 616 of the IDEA, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), and with the guidance in OSEP Memo 09-02. Further, the State's procedure for determining timely correction for violations it identifies as systemic solely on a review of policies, procedures and practices, without also evaluating whether the LEA is currently correctly implementing the regulatory requirements, is also deficient.

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must provide a written assurance that it has revised its procedures for determining timely correction of noncompliance, so that it only determines that a finding of noncompliance has been corrected when the LEA both: (a) has correctly implemented the specific regulatory requirements; and (b) has corrected each individual case of student-specific noncompliance (even if late for timeline requirements). In addition, the State must report data in its FFY 2009 APR due February 1, 2011 that demonstrates

it has a methodology to correct all instances of noncompliance in a timely manner consistent with OSEP Memo 09-02.

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 must have in place procedures to implement its dispute resolution responsibilities under Part B of the IDEA as set forth in IDEA, section 616(a), and 34 CFR §§300.140, 300.151 through 300.153. OSEP conducted interviews with DDOE staff and reviewed documentation related to each component of the State's dispute resolution system including State complaints, due process hearings, mediation and the resolution process. Specifically, OSEP reviewed DDOE's State Complaint and Due Process Hearing Procedures and a sample of final decisions and orders for due process hearings and complaints.

State Complaint System

During the verification visit, DDOE reported that upon receipt of a complaint, it assigns an investigator and notifies the relevant parties of the receipt of the complaint. The investigator then reviews the complaint and the allegations that will require investigation. In addition, the educational records pertinent to the complaint are reviewed and interviews conducted with the pertinent individuals. DDOE reported that the letter of findings which includes findings of fact, conclusions for each allegation, and corrective action steps, as appropriate, are issued within the 60-day timeline. The State's primary complaint investigator is a Delaware attorney. DDOE reported that it uses a database to track timelines to ensure that complaints are resolved in a timely fashion. OSEP was provided with a printout of the database to illustrate how the tracking is completed. The due date for the resolution of each complaint is written on the front of each complaint file as a further measure to ensure timeliness. As a method of ensuring the implementation of complaint decisions, DDOE reported that it assigns a staff person, usually the primary investigator, to follow up with the implementation of the decision. Delaware does not have an appeals process. State complaint final reports are posted on the DDOE website after all personally identifiable information about the student is redacted.

In its FFY 2007 APR, Delaware's actual target data for Indicator 16 was 100%, based on eight complaints. Out of those eight complaints, the State reported that four were issued within timelines, and the remaining four were issued with extended timelines. During the verification visit, OSEP reviewed a sample of complaint files from FFY 2008 and FFY 2009. Of the four complaint files reviewed, two were not resolved within timelines and there was no record that the timeline was extended consistent with the regulations. The Part B regulations at 34 CFR §300.152(a) require each State to include in its State complaint procedures a time limit of 60 days, after the complaint is filed under 34 CFR §300.153, to initiate and complete the activities listed in 34 CFR §300.152(a)(1) through (5), unless, in accordance with 34 CFR §300.152(b)(1)(i)-(ii), the timeline 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.

Due Process Hearings

Delaware has a one-tier due process hearing system. Non-expedited due process hearings are adjudicated by a three member hearing panel consisting of: (i) a Delaware attorney; (ii) a special educator; and (iii) a layperson with a demonstrated interest in special education and approved by the State's advisory council. The State reported that it monitors the scheduling of the hearing dates and the completion of the case with the panel chair to ensure the decision is issued within the required timeline. DDOE reported that it uses a database to track timelines and ensure that due process hearings are resolved in a timely fashion, and provided OSEP with a printout of the database to illustrate how the tracking is completed. Due process hearing decisions are posted on the DDOE website in the order of date of decision. Prior to posting hearing decisions, personally identifiable information is redacted to protect student privacy. DDOE reported that there have been very few resolution sessions in the State since 2006. Under Indicator 18, Delaware has reported a total of two resolution sessions in its SPP/APR submissions between FFY 2005 and FFY 2007. Specifically, the State had one resolution session in FFY 2005, zero sessions in FFY 2006, and one session in FFY 2007. OSEP reviewed DDOE's Due Process Hearing Procedures, which outlined the State's resolution process. Hearing Officers are responsible for overseeing that the LEA is scheduling resolution meetings and confirming that those meetings have been held.

The Department contracts with the University of Delaware, Institute for Public Administration, to provide mediation services for special education dispute resolution under "Partnership for the Amicable Resolution of Conflict (SPARC)" and the Conflict Resolution Program. DDOE ensures that mediators are qualified and impartial through ongoing training and experience. SPARC also issues an annual report to the Department detailing the results of mediation for due process, and non-due process cases, and parent and LEA comments concerning the mediation process.

OSEP examined a sample of due process hearing files for hearings that were conducted during the 2006-2007 and 2007-2008 school years. In the three files reviewed, OSEP found that hearing decisions were not properly extended at the request of a party. The Part B regulations at 34 CFR §300.515(c) require that 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. In each of the files OSEP reviewed, the hearing officer extended for reasons other than the request of a party. DDOE staff reported that scheduling conflicts between the parties and the hearing panelists was a barrier to the adjudication of due process hearings within the 45-day timeline. During the verification visit, DDOE provided OSEP with copies of training materials and guidance documents issued to hearing officers regarding the proper extension of hearing decisions. DDOE reported that Delaware statute requires that hearing officers have to be Delaware attorneys; however, the size of the state and limited number of attorneys was also a challenge. The State further reported that changing the statute to allow attorneys from States in close proximity to Delaware to serve as hearing officers would be beneficial.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined the State has not demonstrated that it has procedures and practices that are reasonably designed to implement all of the dispute resolution requirements of IDEA. Specifically, OSEP finds that the State has failed to demonstrate compliance with the requirements in 34 CFR §300.515(c) that a hearing officer may grant specific extensions of time beyond the 45-day timeline at the request of either party. The State has also failed to demonstrate compliance with the requirements in 34 CFR §300.152(a) and (b)(1)(i) for timely complaint resolutions.

Required Actions/Next Steps

In the FFY 2009 APR, due February 1, 2011, DDOE must provide the following: (1) data that demonstrates it has a methodology to ensure that timelines for due process hearing decisions are being extended at the request of either party; and (2) for every State complaint that is extended beyond the 60-day timeline in 34 CFR §300.153 between February 1, 2010 and December 31, 2010, DDOE must provide documentation to OSEP that includes the exceptional circumstances that existed with respect to the complaint to justify the extension. The State also must ensure that with its FFY 2009 APR, due February 1, 2011, in reporting data for Indicator 17, the State counts a due process hearing decision as being 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, and that either the length of the extension, or the new date by which the decision must be reached and mailed to the parties, is specified.

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 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 technical assistance, discretionary grants and professional development.

The State has several initiatives to improve performance on graduation, dropout and post-school outcomes for children with disabilities, and as a result, Delaware has seen progress in its performance on Indicators 1 and 2 as reported in its SPP/APR submission. Many of these activities are described, in depth, in the State's SPP, and the progress of improvement activities is discussed in its APR. Examples of these initiatives include the introduction, in the 2006-2007 school year, of Student Success Plans (SSP) as a requirement for all students from 8th to 12th grade. The focus of the SSPs includes student long-range planning for postsecondary pursuits, identification of courses leading to that goal, and supports and other activities that will assist the student towards high school completion and career preparation. DDOE reported that it collaborates with Delaware Division of Vocational Rehabilitation (DVR). Delaware's Early Start to Supported Employment Project is an agreement between DDOE and DVR to support students engaged in employment while still enrolled in school. DDOE staff also remarked that regional and State transition meetings are held to identify issues, trends, and needed supports to ensure success for students. In addition, the Delaware Transition Community of Practice, which

is supported by the IDEA Partnership, works to improve the outcomes of students with disabilities.

The State's previous State Improvement Grant (SIG) focused on improving early literacy for students with disabilities, and increasing access to the general curriculum. Delaware's current State Personnel Development Grant (SPDG) continues the focus of the previous SIG but does so under the framework of Response to Intervention (RTI). There is also an additional focus on recruitment and retention of highly qualified special education teachers.

The State's Access to the General Education Committee advises and provides recommendations to DDOE on Indicators 3 and 5 in the SPP/APR. The committee is comprised of both State and district personnel and the focus is access to the general education curriculum for all students with disabilities, and achievement on the State assessment. During the verification visit, DDOE provided OSEP with a brief history of the projects and initiatives that have been developed to support the education of children with disabilities with their nondisabled peers to the maximum extent possible. As described under Critical Element 1 and the Focused Monitoring section of the report, while the State provided technical assistance and implemented initiatives it did not monitor for the LRE requirements despite long standing noncompliance in this area. In its FFY 2007 APR Delaware reported slippage for Indicator 5C in the FFY 2007 APR and did not meet its target for Indicators 5A and 5C.

The State supports the education of preschool children with disabilities with nondisabled peers to the maximum extent appropriate. DDOE implemented the Expanded Opportunities Initiative to support LRE in preschool. As a part of this national initiative, Delaware was one of five States to develop a State plan for addressing LRE for preschoolers with disabilities. In addition the State has also implemented Expanding Inclusive Early Intervention Opportunities (EIEIO). This initiative is in collaboration with the Part C program in an effort to promote inclusive opportunities for young children.

OSEP Conclusions

Based on the review of documents, analysis of data, demonstration of the system capabilities and interviews with State and local personnel, OSEP believes that with the exception of LRE, the State has procedures and practices that are reasonably designed to improve educational results and functional outcomes for children with disabilities. As described in Critical Element 1 and the Focused Monitoring section of this report, DDOE's failure to monitor for LRE is inconsistent with the regulations at 34 CFR §§300.120, 300.149 and 300.600.

Required Actions/Next Steps

As noted in GS-1, within 60 days from the date of this letter, the State must demonstrate that it has revised its general supervision procedures to monitor all IDEA Part B requirements, including LRE.

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 part of its monitoring and enforcement responsibilities under section 616 of the IDEA and 34 CFR §§300.600(a) 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 public reporting requirement by publishing a district profile for each LEA on the SEA's website, in which the State reports the LEA performance against the State's SPP/APR targets. DDOE reported to OSEP that district profiles are posted on the State's website no later than 120 days following the submission of the APR to OSEP. In the FFY 2007 response table, OSEP noted that the State had failed to report publicly on the performance of each LEA for Indicators 9, 10 and 11. Prior to the verification visit, OSEP reviewed public reporting for FFY 2007 and 2008, which demonstrated that DDOE had revised its public reports to include the performance of LEAs on these indicators.

The State has developed a methodology to make its determinations based on IDEA requirements including: compliance on SPP/APR compliance indicators, submission of valid and reliable data, and information obtained from audits, monitoring visits, due process procedures and other publicly available information. DDOE reported that it makes its determinations and notifies LEAs in writing as soon as possible following the disaggregation and analysis of data. During the verification visit, OSEP reviewed determination letters that included the criteria for making LEA determinations, as well as guidance issued by the State regarding how annual determinations are made. In addition, OSEP reviewed a listing of LEA determinations made by the SEA.

Significant Disproportionality and CEIS

The State collects and examines 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. The determination is made with respect to the identification of children as children with disabilities, including identification in specific disability categories, the placement of these children in particular educational settings, and the incidence, duration, and the type of disciplinary actions in accordance with 34 CFR §300.646(a). If the State makes a determination of significant disproportionality based on the examination of an LEA's data, the State requires the LEA to: (1) conduct a review, and if appropriate, revision of policies, procedures and practices used in the identification, placement, or discipline of children with disabilities to ensure compliance with Part B; (2) reserve 15 percent of Part B funds for coordinated early intervening services (CEIS); and (3) report publicly on the revision of policies, procedures and practices consistent with 34 CFR §300.646(b).

As noted in the State's SPP, DDOE currently determines significant disproportionality as occurring when a district's relative difference is greater than the statewide relative difference of 1.54. In the FFY 2007 Response Table, OSEP required the State to clarify in its February 1, 2010 SPP/APR submission whether it defines significant disproportionality to be the same as disproportionate representation since it used both terms in its SPP, and in responding to the indicator in its FFY 2007 APR. During the verification visit, DDOE reported that it is considering its current definition and may revise it based on research, discussion with stakeholders and technical assistance received from OSEP. The State determines significant disproportionality by analyzing data from DDOE's Pupil Accounting System.

DDOE reported that during the current fiscal year, 15 districts were required to allocate 15% for CEIS. The State provided evidence that it has a process in place for ensuring that the

requirements in 34 CFR §300.226 are met if a district provides CEIS mandatorily or voluntarily. During the verification visit, OSEP reviewed letters issued to LEAs that were being required to reserve 15% for CEIS as a result of having been determined to have significant disproportionality. This written correspondence outlined the LEA's responsibilities and the applicable State regulations. DDOE also presented evidence, through a case study example and the demonstration of its web based Consolidated Grant application, showing how the State monitors the use of IDEA funds in providing CEIS. As part of the consolidated grant application, districts using IDEA funds to meet the CEIS requirements must provide a written explanation of how they will use the funds as well as provide a budget proposal that outlines the use of funds.

Private Schools

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). DDOE reported that it calculates proportionate share and then issues a memo to LEAs identifying the proportionate share that must be identified in the consolidated grant application. LEAs have been directed through memos to conduct meaningful consultation, and DDOE staff report that they participate in county-wide meetings with LEAs and participants from private schools to review the requirements for parentally-placed children with disabilities. Additionally, districts are required to identify the equitable services in their consolidated grant applications.

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. Delaware is a member of the Accessible Instructional Materials (AIM) Consortium and receives discretionary grant funding through the Center for Applied Special Technology (CAST) partnership.

Assessments

The State reported that it monitors to ensure that LEAs comply with Part B requirements for statewide assessments in accordance with 34 CFR §300.160. DDOE reported that it uses an on-line system to track the assessments students will participate in, and the accommodations they will receive. In addition, the State performs an accommodation audit during the State assessment. The State's public reporting on the participation of children with disabilities in statewide assessments occurs consistent with 34 CFR §300.160.

OSEP Conclusions

Based on the review of documents, analysis of data and reviews 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 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.

Required Actions/Next Steps

No further action is required.

II. Data System

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

The State uses multiple data systems to collect and report valid and reliable data and information to the Department and the public in a timely manner. During the verification visit, DDOE demonstrated how the systems (i.e., Delaware Student Information System (DELSIS), eSchool Pupil Accounting System and IEP Plus) are used to collect data and how they are integrated. Delaware reported 84.1% for Indicator 20 in its FFY 2007 SPP/APR. DDOE reported that slippage in this indicator occurred as a result of lack of oversight in some submissions as the data manager was new to the Department. Staff explained that DDOE maintains confidentiality through the use of passwords, user identification numbers, and limitations on the number of State and local program staff that can enter, view, and modify information in the system. DELSIS assigns unique student identifiers and it is integrated with the eSchool system which is used to manage student information once a student is enrolled. The eSchool system has a DDOE Special Education screen and information on this screen must be completed by the district for a student to be counted for local funding purposes. DDOE reported that all districts and charter schools are required to use the eSchool Pupil Accounting System for registration and on-going student management. IEP Plus is the State's new on-line IEP system and is currently in various stages of implementation in districts. DDOE reported that it anticipates all districts in the State will be using IEP Plus by fall 2010. The IEP Plus system is integrated with eSchool and all demographic information is downloaded to IEP Plus and information regarding due dates is uploaded to eSchool. The State reported that information is uploaded several times per day.

Delaware uses a Data Acquisition calendar to schedule data collections. Data collection definitions are provided to districts with extended notice time for questions and issues. In addition, possible error reports are provided to districts in order for them to identify data issues in advance. DDOE reports that it ensures validity of data by using a system of anomaly reports to detect potential issues.

DDOE provides opportunities for training and technical assistance in a variety of formats. These opportunities include training, the development and dissemination of technical assistance documents, and the availability of a Help Desk for questions regarding eSchool and IEP Plus to ensure valid, reliable, and timely data.

As part of the verification visit, OSEP inquired into the State's guidance and data collection methodology for SPP/APR Indicators 4, 7, 8, 9, 10, 11, 12 and 13. The State provided information demonstrating that the data it collected for these indicators were consistent with the required measurements. The State reported that the eSchool Pupil Accounting system collects 618 data for child count, educational environment, preschool environment, exiting, and discipline. Assessment data is collected through DELSIS, and personnel data is collected through the State Education Personnel Database.

OSEP Conclusions

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 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 in a manner that is consistent with Part B of the IDEA.

Required Actions/Next Steps

No action is required.

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, and these processes reflect actual practice. The State ensures that the data it collects and reports reflect actual practice through a series of checks and balances and training of personnel at all levels. Data is analyzed to determine district performance against the prior year's performance, against other districts, and to overall State performance. Results are shared with stakeholders to determine if anomalies exist, verify results, and to make conclusions about performance and future targets. DDOE reported that it ensures the validity of data by using a system of anomaly reports to detect potential issues.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes 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

The State uses its data systems for continuous improvement, monitoring, technical assistance, and ongoing support for LEAs. LEAs use data to develop local improvement plans and to direct professional development activities. DDOE staff provided examples of how data are used to focus State and local efforts. DDOE reported that in one district, seven schools worked together to focus instructional planning and create action plans using analysis of disaggregated placement data, State targets, national averages, and outcome data. An additional example is the Access to

General Education Curriculum (AGEC) subcommittee's use of Indicator 5 data. The AGECE compares these data across years to determine if districts are making systemic changes towards meeting targets, and if there has been slippage or improvement in district data. These data are considered when the AGECE is making recommendations regarding the SPP/APR improvement activities.

The State's data system has functions that allow users to disaggregate, compile, and compare data. In addition, data analysis results are presented to parents, teachers, principals, and other stakeholders to ensure the investment of stakeholders in improvement activities. DDOE reported that it uses analysis of data to identify trends, problematic areas, and to determine appropriate technical assistance and professional development activities.

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

The State monitors obligation and liquidation of Part B funds throughout the year through its Delaware Financial Management System (DFMS). DDOE reported that DFMS is updated nightly and draw downs are made bi-weekly. In addition, payroll is budgeted so that it ends on September 30 and contracts and obligations are made prior to September 30. During the verification visit, DDOE demonstrated DFMS from encumbrance to liquidations. In addition, OSEP reviewed State policies and procedures regarding obligation and liquidation of funds.

OSEP confirmed through the U.S. Department of Education's Grant Administration and Payment System (GAPS) that the State expended all of its FFY 2005 funds, and all but \$111,147 of 611 funds and \$12,098 of 619 FFY 2006 funds in a timely manner. As of January 4, 2010 GAPS showed that the State had unexpended funds for FFY 2007 which totaled \$225,457.16 for 611 and \$502.84 for 619. During the verification visit, the State told OSEP that \$64,000 from its unexpended FFY 2006 funds was from the High Risk Pool. Regarding the unexpended FFY 2007 funds, the State reported that districts' lack of follow through with encumbrances has contributed to the State's failure to liquidate its funds by December 31.

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 the timely obligation of IDEA funds. However, the State has some challenges with the timely liquidation of funds as evidenced by the unexpended balances noted in FFY 2006 and FFY 2007.

Required Actions/Next Steps

No action required. However, OSEP encourages the State to review its procedures carefully to maximize the amount of IDEA Part B funds that it can obligate and liquidate in an appropriate and timely manner.

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

The State complies with Federal requirements in calculating subgrant allocations to LEAs and other State agencies. DDOE reported that it calculates subgrant allocations by using the base amount, population and poverty. The State uses the original base amounts and current census poverty data provided by the U.S. Department of Education and derived poverty census data for charter schools and vocational schools. Charter schools in Delaware are LEAs. DDOE reported that it calculates derived poverty census data and develops a “base” rate for a charter school. In the case of an expanding charter, the State reported that after approval is obtained as a significantly expanded charter, a reallocation and unit count certification are completed. The State requires all entities that receive funds, including charter schools, provide assurances regarding maintenance of effort (MOE), supplement not supplant, and other appropriate accounting procedures.

DDOE reported that LEAs must complete an on-line consolidated grant application before receiving their annual Part B grant award. During the verification visit, the State demonstrated the on-line grant application. The State provides information to LEAs each year regarding the distribution process including how Part B funds must be used.

The State has established an LEA Risk Pool. DDOE reported that it has separate funding appropriations and object codes for the Risk Pool funds, and these funds are used to support approved requests through an application process. The Risk Pool application is located on the State’s website.

DDOE reported that LEAs with students parentally-placed in private schools must identify the equitable services that will be provided to those students in the consolidated grant application. DDOE reported that it currently calculates the proportionate share and identifies the required amount to LEAs; however, DDOE is amending the application next year so that the calculation is automatically provided with a separate column. This will enable the State to better track expenditures on equitable services.

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 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 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

The State ensures that LEAs use Part B funds to supplement, and not supplant State, local, and other Federal funds through the required LEA application assurances, budget approval, monitoring of LEAs and State audits. The State, through its State appropriations system, uses codes which delineate Part B funds from any other funds in the accounting system. During the verification visit, DDOE described its procedures to ensure compliance with supplement not supplant requirements, CEIS, excess costs, and other related fiscal requirements. In order to receive their annual Part B funds, LEAs must submit an IDEA-B project application. The application includes sections that demonstrate how LEAs meet the excess cost and MOE requirements. Excess costs and MOE are reviewed annually by DDOE's Education Associate for Federal Funds to verify the completeness of the application. In addition, the applications are checked by independent certified public accountants contracted through the State Auditor's Office for A-133 audits. The Education Associate for School Federal Funds is the liaison for gathering the findings and corrections from the single audits and dispersing the information to the schools and the program managers.

To address excess cost and MOE, Delaware's LEAs must complete, as part of the State's IDEA-B project application, a funding totals worksheet requiring the use of financial data from the previous year. LEAs are determined to meet the excess cost requirement of section 611(g) of the application if they spend a minimum average amount for the education of children with disabilities which is calculated separately at the elementary level and at the secondary level before using Part B funds. The amount may not include capital outlay or debt service. Section 611(18) of the application requires that to meet the MOE requirement, the total amount or average per capita amount of State and local school funds budgeted by the LEA for expenditures in the current fiscal year for the education of children with disabilities must be at least equal to the total amount or average per capita amount of State and local school funds expended for children with disabilities in the most recent preceding fiscal year. The application also notes that allowances may be made for: (1) increases in enrollment of children with disabilities; and (2) unusually large amounts of funds expended for such long-term purposes as the construction of school facilities.

In cases where LEAs do not maintain effort, LEAs are given an opportunity to provide an explanation based on an allowable exception. After the explanations are reviewed and discussed with the LEA, the State sends acceptance or rejection by electronic mail. OSEP's review of the MOE documentation for the period 2004-2008 school years showed that there were 2 instances where districts did not meet MOE; however they met the allowable exceptions.

The DDOE finance office calculates the State-level MOE annually and its conclusion that the State is meeting State-level MOE is verified by DDOE's Education Associate for Federal Funds. Staff reported that the only source of State level funding appropriated for children with disabilities is those provided to the DDOE. Other State agencies do not provide services to children with disabilities. OSEP's review of the State's Excel spreadsheet regarding the State-level MOE calculations for the period of 2004-2008 school years showed that, according to its calculations, the State has consistently maintained effort over this five-year period.

OSEP Conclusions

Based on the review of documents, analysis of data, feedback from stakeholders and interviews with State staff, OSEP finds that the State has procedures as described above that appear reasonably designed to ensure appropriate use of IDEA funds at the State level, but has not reviewed source documentation regarding implementation of these procedures. OSEP cannot, 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.

IV. Focused Monitoring Component of the Verification Visit: Least Restrictive Environment Background

Following its December 5, 1994 Monitoring Visit, OSEP issued a Letter of Findings to DDOE, dated March 6, 1995, which stated that Delaware's funding formula created disincentives to placement in the least restrictive setting because in order for a student to be counted as a special education student, and for an LEA to receive funding for that student, he/she had to have 12.5 hours of special education services on their IEP. 'Special education services' only included services that were delivered by a special education teacher. In its December 15, 2003 Verification Visit Letter, OSEP noted that the funding formula continued to be a barrier to educating children in their LRE.

To address this issue, beginning with the 2004-2005 school year, DDOE piloted a needs-based funding structure in Brandywine and Seaford School Districts, that was gradually expanded to other LEAs. However, as of the 2008-2009 school year, there were still seven districts that had not moved to the needs-based funding structure. These included Red Clay, Smyrna, Colonial, and Indian River School Districts. In July, 2009, DDOE reported to OSEP that Delaware's General Assembly approved Section 341 of Delaware's budget epilogue, authorizing DDOE to continue the implementation of the needs-based funding formula for another year and to expand this funding structure to all districts and charter schools during the 2009-2010 school year. In correspondence dated September, 2009, OSEP required DDOE to submit documentation demonstrating that the needs-based funding structure has been finalized through statutory changes by July, 1, 2010. At the time of the verification visit, DDOE reported that all districts and charter schools in Delaware had implemented the needs-based funding structure.

Due to Delaware's long standing failure to comply with requirements of 34 CFR §300.114(b), OSEP selected LRE as an area of concern for focused monitoring in Delaware. The State reported the following data under Indicator 5 in their FFY 2007 APR: (1) 5A: (children with IEPs aged 6 through 21 removed from the regular class less than 21% of the day) - 53.2%; (2) 5B: (children removed from the regular class greater than 60% of the day) - 18.3%; and (3) 5C: (children served in public or private separate schools, residential placements, or homebound or hospital placements) - 6.4%.

OSEP visited five of Delaware's 34 LEAs: Indian River School District, Seaford School District, Red Clay School District, Colonial School District, and Brandywine School District. Districts were selected based on Indicator 5 data and several other factors including demographic information, special education student enrollment, and school or district participation in LRE-related initiatives. A team of two OSEP staff conducted interviews with local staff at each of the

five sites. Interviewees included teachers, related service providers, educational diagnosticians, building administrators, and district directors. State staff attended the interviews as observers in one district.

At each of the sites OSEP staff reviewed: (1) student records; (2) school and district policies and procedures for determining placement in the LRE; (3) training schedules and technical assistance materials related to LRE (provided by the district and the State); and (4) other documents used by the schools or districts to support the effective implementation of LRE requirements. In addition, school and district staff discussed the process of making placement decisions and various initiatives currently being implemented which would impact student placement in the least restrictive environment.

Focused Monitoring Visit Details and Analysis

I. Monitoring Activities

The State conducts on-site monitoring, which involves individual student file reviews, for every district every year. On-site monitoring in each school is coordinated with the district level administrator responsible for Special Education and the Educational Diagnostician, who serves as the school level Special Education Coordinator. Through interviews with school and district staff, OSEP learned that the State utilizes on-site monitoring to determine compliance with the following components of the IEP: (1) disability category; (2) date of IEP; (3) meeting participants; (4) measurable goals; and (5) prior written notice. Educational Diagnosticians and school administrators in every district indicated that the State provides the district with a report following an on-site monitoring visit; however, the State had not issued findings from the on-site monitoring related to LRE.

One district reported that they were directed by the State to correct the noncompliance that was identified during the file review, but only as it related to the specific IEP requirements reviewed by the State. District and school staff also reported that they had received technical assistance to address issues identified as a result of the monitoring visit.

As described in the General Supervision section of this report, DDOE reported that it does not monitor for the requirements related to LRE. Interviews with district and school staff confirmed that the State did not engage in monitoring activities for LRE. Pursuant to the regulations found at 34 CFR §300.600, the State is required to monitor the implementation and ensure that public agencies are meeting the requirements of Part B.

II. Technical Assistance

School and district personnel provided OSEP with samples of technical assistance and training activities provided by the State to ensure that educators are informed of their responsibilities for implementing LRE provisions. Professional development for school staff that supported improved results around LRE included training on the State's IEP Plus, positive behavior intervention and support, RTI, and inclusion practices. Additionally, several special education teachers discussed the State's on-line training program that is offered. This program includes topics related to differentiated instruction and use of technology for children with disabilities in the general education classroom.

Building administrators from all sites visited discussed ways that they have utilized the guidance and technical assistance provided by the State to work collaboratively with their districts and develop programs to meet the needs of students. General and special education teachers, related

service providers, and school building administrators from all districts visited discussed inclusion practices in their respective schools and districts, and the use of innovative co-teaching and co-planning models. Additionally, personnel provided OSEP with information about various programs including Stetson, Learning Focus, and Universal Backwards Design that are being implemented in individual schools throughout districts to support placing students in the LRE.

III. Placement Decisions

OSEP conducted a review of 77 IEPs from six LEAs. IEPs were selected across race/ethnicities, ages, gender, special education classifications and various placements to ensure that all categories were represented. OSEP selected these IEPs from the LEAs that were selected for on-site visits, as well as from Smyrna School District.

OSEP reviewed IEPs to determine compliance with the following IDEA requirements: 34 CFR §300.114 (LRE Requirements); 34 CFR §300.116 (Placements); 34 CFR §300.320(a)(4) and (5) (Definition of IEP); 34 CFR §300.321 (IEP Team); 34 CFR §300.322(a) (Parent Participation); 34 CFR §300.324(a)(2) (Development, Review, and Revision of IEPs); 34 CFR §300.327 (Educational Placements); and 34 CFR §300.503 (Prior Notice).

OSEP found that ten IEPs did not contain a statement of the special education and related services, and supplementary aids and services that will be provided to enable a child to be involved in and make progress in the general education curriculum and to participate in extracurricular and other non academic activities, and to be educated and participate with other children with disabilities and nondisabled children consistent with 34 CFR §300.320(a)(4)(ii)-(iii). Additionally, 25 IEPs did not contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class consistent with 34 CFR §300.320(a)(5). These elements were contained in some records with older IEPs, but not in records that contained IEPs developed on the new statewide IEP (IEP Plus).

Local and district staff in all districts were able to demonstrate that data is evaluated to determine student need and that removal of children with disabilities from the regular educational environment only occurs if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids cannot be achieved satisfactorily consistent with 34 CFR §300.114(a)(2)(ii). School staffs across the LEAs visited were able to provide examples of accommodations, modifications, and supplementary aids and services that are provided in their schools to ensure that students with disabilities can be successful in the LRE.

IV. Funding Formula

In July 2009, DDOE facilitated training for district personnel to review the memo issued by the State on the needs-based funding structure. The training provided detailed information regarding the funding formula change and also included a presentation by Brandywine School District (one of the original pilot districts) on calculating the unit count and use of the “rubric” which is being used to categorize student needs and determine staffing patterns. Based on discussions with both district and school level administrators, there seems to be a varied level of understanding on when and how the funding change is being implemented. Specifically, several building administrators in one district reported that the needs-based funding formula was being “piloted in the elementary schools this year” however, DDOE reported to OSEP that it was being implemented in all districts and schools. All district level administrators interviewed reported that limited training or technical assistance had been provided by the State that addressed the

potential impact of funding changes on current policy and procedures and practices related to LRE.

OSEP Conclusion

Based on samples of monitoring reports provided by the State and interviews with State, district, and school level personnel, OSEP determined that the State has not been monitoring to ensure that LRE provisions are being implemented. This is inconsistent with Part B requirements in IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600. In addition, OSEP finds that the State has failed to demonstrate compliance with the requirements in 34 CFR §300.120 which states that: (a) the SEA must carry out activities to ensure that 34 CFR §300.114 is implemented by each public agency; and (b) if there is evidence that a public agency makes placements that are inconsistent with 34 CFR §300.114, the SEA must: (1) review the public agency's justification for its actions; and (2) assist in planning and implementing any necessary corrective action.

After review of a sample of IEPs, OSEP determined that the statewide IEP (IEP Plus) does not contain all of the required components. Pursuant to 34 CFR §300.320(a)(4)(ii)-(iii), the IEP must include a statement of the special education and related services and supplementary aids and services that will be provided to enable the child to be involved in and make progress in the general education curriculum and to be educated and participate with other children with disabilities and nondisabled children. Additionally, in accordance with 34 CFR §300.320(a)(5), the IEP must contain an explanation of the extent to which the child will not participate with nondisabled children in the regular class.

Required Action/Next Steps

Within 60 days from the date of this letter, DDOE must submit documentation to OSEP demonstrating that: (1) it has revised its statewide IEP (IEP Plus) to contain all of the components required under 34 CFR §§300.320(a)(4)(ii)-(iii) and 300.320(a)(5); and (2) as noted in General Supervision Critical Element 1, it has developed, and is implementing, monitoring procedures to ensure that it is monitoring for implementation of all IDEA requirements, including those regarding placement in the least restrictive environment.