

**Montana 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 Montana Office of Public Instruction (OPI) has an integrated and comprehensive general supervision system designed to ensure compliance with Part B of the Individuals with Disabilities Education Act (IDEA or Part B). The components include local educational agency (LEA) applications for Part B funds, cyclical compliance reviews of LEAs, dispute resolution mechanisms (due process, mediation, and complaints), focused intervention, fiscal monitoring, interagency agreements, LEA State Performance Plan (SPP)/Annual Performance Report (APR) determinations, and its statewide data collection system.

Since OSEP's last Verification Visit in September 2006, OPI has partially revised its monitoring system. The changes include: 1) offering technical assistance to LEAs prior to an on-site monitoring visit so that noncompliance can be addressed proactively; 2) updating the record review form in an electronic format to ensure a more consistent and efficient review; and 3) monitoring the records of students found not eligible for special education. The system still includes a five-year on-site compliance monitoring cycle of all LEAs with a primary focus on collecting compliance information through reviewing student records. OPI defines noncompliance as any failure of the LEA to meet the statutory and regulatory requirements of IDEA. At least one record of every special education teacher in every district is reviewed for compliance with IDEA. Follow-up interviews are conducted with service providers to verify the information collected in the student records. OPI also implements a focused monitoring component that targets LEA outcomes and program improvement in priority areas. For example, OPI previously targeted LEAs with poor graduation and drop-out rates. Recently, focused monitoring was conducted to address disproportionality. OPI is phasing out the focused monitoring component and replacing it with annual local determinations through the APR process to drive program improvement.

The primary barriers that OPI faces in identifying noncompliance are the large geographical area of Montana, the small number of OPI staff, and the large number of districts (324). Driving from the OPI office to some of the out-lying school districts can take more than one day each way. In addition, there are only four full-time monitoring staff to conduct the local compliance monitoring. OPI addressed these challenges in a variety of ways. OPI employs 12 part-time staff, who are located throughout Montana to address accessibility, and monitors LEAs together through cooperatives to better utilize resources. In addition, OPI has changed to an electronic format for record reviews and has started utilizing its statewide student data system, Achievement in Montana (AIM), to use its resources more efficiently.

OPI uses data from the statewide data system (AIM) and E-Grants system (local grant application) to inform its on-site monitoring system. For example, OPI is better able to monitor the provisions in 34 CFR §§300.130-300.144 for children with disabilities enrolled by their parents in private schools because the E-Grants system provides the proportionate share of IDEA funds that must be spent on

these children and the AIM system provides a list of names of the children receiving equitable services. With the assistance of the OPI advisory panel, OPI reviews the results of its monitoring findings and data reported through the APR process to determine the effectiveness of its general supervision system and to develop technical assistance and improvement activities. OSEP verified OPI's monitoring process through interviews with OPI administrators responsible for its monitoring process and lead Monitoring Specialists, and a review of various documents, including OPI's monitoring manual, OPI's monitoring log, and a sample of five monitoring reports with corrective action information.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with OPI personnel, OSEP concludes that OPI 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 OPI'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**

During the visit, OPI demonstrated that correction of noncompliance occurs as soon as possible, but no later than one year from written notification of the noncompliance to the LEA, as required by 34 CFR §300.600(e). OPI issues a report to the LEA within 90 days from the date of the site visit. The report includes findings of noncompliance, required corrective actions, the evidence that the LEA must provide to OPI to demonstrate correction of the identified noncompliance, and a timeline for providing the evidence to OPI. When OPI issues the report, the State assigns an employee to follow-up on any corrective actions until compliance is verified. Each area of noncompliance is tracked electronically. In most cases, the LEA submits the documentation required by the corrective action plan (CAP) to close out the noncompliance. Depending on the nature of the noncompliance and the LEA's ability to address the noncompliance, OPI may visit the LEA, provide technical assistance, and/or conduct trainings. OPI may require the LEA to submit additional information to demonstrate that the practice is consistent with approved policies and procedures. To ensure that correction has occurred within one year from the issuance of the report, OPI typically requires LEAs to complete the corrective actions within three to four months after the issuance of the report, allowing OPI time to conduct necessary follow-up activities and verify that that the LEA has corrected the noncompliance. A final letter is sent to the LEA closing out any noncompliance once OPI has verified correction.

OSEP reviewed OPI's log of 23 monitoring reviews and a sample of six LEA monitoring files from OPI's compliance monitoring for 2007-2008. The log indicated that all 23 reviews were closed within one year from the issuance of the monitoring report. In the sample of six LEA files, OSEP verified that the noncompliance was corrected within one year of the issuance of each LEA's monitoring reports.

OPI has available a number of mechanisms to ensure compliance when LEAs fail to follow the CAP and achieve compliance, including providing or contracting for services directly, withholding State education funds, withholding in whole or in part IDEA funding, or changing the LEA's accreditation status. In the past two years, OPI reported that there was only one occasion when it was necessary to warn an LEA that it would impose sanctions because the LEA had not corrected its noncompliance within one year. In this instance, the noncompliance was corrected within three to four months after the one-year timeline.

#### Nature of Required Corrective Action

OPI makes findings of noncompliance regardless of the level of noncompliance. However, the State has an informal practice of requiring LEAs to only correct noncompliance identified in individual student records if the level of compliance is 83% or higher. A level of compliance identified at less than 83% triggers a requirement that the LEA correct the specific instances of noncompliance and make comprehensive, systemic corrections including a change of policies, practices, or procedures within the district if necessary. OPI administrators explained that OPI established this threshold for determining the nature of correction based on the size of districts and OPI's experience in correcting noncompliance in Montana. In determining the type of corrective action that the LEA must take, OSEP recommends that the State consider a variety of factors, including: (1) whether the noncompliance was extensive or found in only a small percentage of files; (2) whether the noncompliance showed a denial of a basic right under the IDEA (e.g., a long delay in initial evaluation beyond applicable timelines with a corresponding delay in the child's receipt of FAPE, or a failure to provide any services in accordance with the IEP); and (3) whether the noncompliance represents an isolated incident in the LEA, or reflects a long-standing failure to meet IDEA requirements. See Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan (SPP)/Annual Performance Report (APR), September 3, 2008.

#### Standard for Verification of Correction

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 IDEA requirements by LEAs, the State ensures that 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. A State's conclusion that an LEA is "correctly implementing the specific regulatory requirements" that formed the basis of the finding of noncompliance, "must be based on the State's review of updated data such as data from subsequent on-site monitoring or data collected through a State data system." OSEP Memo 09-02.

When OPI identifies noncompliance as systemic, it ensures that each individual case of noncompliance has been timely corrected, and ensures that the LEA is correctly implementing the specific regulatory requirements. However, when OPI identifies noncompliance as child-specific, it ensures that each individual case of noncompliance has been corrected, but it does not review updated

data or otherwise monitor to ensure that the LEA is “currently implementing the specific regulatory requirements” that formed the basis of the finding of noncompliance.

### **OSEP Conclusions**

Although the State has an extensive system in place designed to ensure the timely correction of identified noncompliance, based on the review of documents, analysis of data, and interviews with OPI, OSEP finds that OPI does not have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner using its different components consistent 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 the OSEP Memo 09-02. OSEP bases its finding on the fact that when OPI identifies noncompliance as child-specific, rather than systemic, it does not review updated data or otherwise monitor to ensure that the LEA is currently implementing the specific regulatory requirements that formed the basis of the finding of noncompliance.

### **Required Actions/Next Steps**

Within 60 days from the receipt of this letter, OPI must submit to OSEP revised policies and procedures that confirm that the State is verifying correction of noncompliance consistent with OSEP Memorandum 09-02, specifically that the State verifies 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.

### **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 dispute resolution procedures in place to implement its dispute resolution responsibilities under sections 612 and 615 of the IDEA and 34 CFR §§300.151-300.153 and §§300.500-300.537.

#### State Complaint System

OPI employs one complaint investigator who is a lawyer, and one staff person to maintain the records and manage the complaint process. OPI receives fewer than ten requests for complaint investigations a year. OPI implements an Early Assistance Program that OPI staff concludes is effective in informally resolving issues before they rise to the level of a formal complaint. OSEP reviewed the complaint log and two complaint investigation request files for 2008 and 2009. OSEP verified that the timelines for resolution of complaints were consistent with applicable provisions in 34 CFR §300.152.

#### Mediation

During 2008-2009, OPI reported that it had one mediation request. Hearing officers and trained mediators are available to conduct mediation when needed.

#### Due Process Hearings

OPI process and procedures for managing due process hearing requests have remained the same since OSEP's last visit in 2006. OPI maintains a list of approximately 25 hearing officers. Training of hearing officers is conducted at least once a year through the Mountain Plains Regional Resource

Center. OPI employs a staff person to maintain the records and manage the due process requests. OSEP reviewed files for all five due process hearing requests in 2008 and 2009. OSEP verified that the timelines for due process hearings were consistent with applicable provisions under 34 CFR §300.515.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with OPI, OSEP concludes that OPI has a general supervision system that is reasonably designed to implement the dispute resolution requirements of IDEA.

### **Required Actions/Next Steps**

No action is required.

### **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**

OPI described multiple procedures and practices employed to improve educational results and functional outcomes for students with disabilities throughout the State. OPI has a number of initiatives that have continued since OSEP's previous verification visit including the Indian Education for All, Response to Intervention, and the Montana Behavioral Initiative Project. OPI has also initiated a number of new activities including a training certification for paraprofessionals that is recognized across districts and a training program for speech pathologists at the University of Montana, which has been a critical need for Montana. With the availability of local APR data, OPI has developed targeted improvement activities based on the regional needs of school districts around its five Comprehensive System of Personnel Development regions.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, demonstration of the system capabilities and interviews with State personnel, OSEP concludes that 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 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.

OSEP found that the State made local determinations in conformance with the requirements under section 616 of the IDEA and 34 CFR §§300.600(a)(2) and 300.603(b)(1). The State reported that it made its determinations in May 2009 based on 2007-2008 performance data. LEA determinations are not publically reported; rather, OPI sends a letter to each LEA reflecting its determination. OPI designated forty LEAs as “needs assistance” for the May 2009 determination. OPI found the remaining LEAs to be in “meets requirements.”

With respect to the public reporting of LEA performance on the targets in the APR, OPI publishes the performance of each LEA against the State’s targets for each APR indicator on OPI’s web site. LEA performance on the APR indicators triggers OPI improvement activities and State intervention.

#### Significant Disproportionality and CEIS

As required in 34 CFR §300.646, in the case of a determination of significant disproportionality based on race and ethnicity with respect to the identification of children as children with disabilities, including the identification of children with disabilities with a particular impairment and the placement in particular educational settings of such children, the State reported that it: (1) provides for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that these comply with the requirements of IDEA; (2) requires any LEA identified with significant disproportionality, including significant disproportionality based on race and ethnicity with respect to the incidence, duration, and type of disciplinary actions, to reserve fifteen percent of funds under section 613(f) of IDEA to provide comprehensive coordinated early intervening services (CEIS) to serve children in the LEA, particularly children in those groups that were significantly overidentified; and (3) requires the LEA to publicly report on the revision of policies, practices and procedures related to disproportionality.

OPI determines that LEAs have significant disproportionality if, given a minimum “n” size of 30, LEAs demonstrate a higher weighted risk ratio than the target ratio of 3.0, within a 99 percent confidence interval. Because of the small population size of many of the districts, OPI indicated that it could not analyze approximately 75% of the LEAs. OPI reported to OSEP that it had identified three LEAs as having significant disproportionality based on FFY 2007 data. These LEAs were required to reserve fifteen percent of their funds under section 613(f) to provide comprehensive coordinated early intervening services, as required by 34 CFR §300.646(b)(2). OPI reported that it identified no LEAs as having significant disproportionality based on FFY 2008 data.

#### Private Schools

The State reported that it 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 amount that each LEA must expend for parentally-placed private school children and requires each LEA to budget the required amount through its local application (E-Grant). Expenditures for this requirement are verified through end-of-the-year reports. The State verifies implementation of the requirements for parentally-placed children with disabilities through the cyclical monitoring process.

#### 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 State School for the Deaf and the Blind has been designated to administer NIMAS. All requests for materials go through the State School for the Deaf and Blind. Information

and requests are easily accessible through its web site and the School employs nine outreach staff to assess needs, and provide services and technical assistance to LEAs.

### Assessments

Since OSEP's last visit, Montana has transitioned its statewide assessment system, called the Montana Comprehensive Assessment System (MontCAS), from the Iowa Tests of Basic Skills and the Iowa Test of Educational Development, a norm-based test, to its current Criterion-Reference Test. The MontCAS meets the requirements in 34 CFR §300.160, including alternate assessments at 34 CFR §300.160(c).

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. The State provides comprehensive technical assistance through statewide training, on-line instruction, and the dissemination of policies and procedure manuals to LEAs.

The State's public reporting on the participation of children with disabilities in statewide assessments is consistent with 34 CFR 300.160(f). The participation and performance data from the MontCAS is readily available on the State educational agency (SEA) web site.

### **OSEP Conclusions**

Based on the review of documents, analysis and data, and reviews with State personnel, OSEP concludes that 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.

### **Required Actions/Next Steps**

No 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**

OPI currently uses multiple web-based applications to collect and report valid and reliable data to the Department and the public in a timely manner. Although the applications are separate, OPI employs consistent data entry screens and file layouts to assist the users in data entry. These data collection processes are similar to the methods OPI utilized during OSEP's last verification visit in 2006. Within the next three to four months, OPI will utilize its statewide individual student-level data collection system for special education, called Achievement in Montana (AIM). The State has used AIM to collect data in general education for the past two to three years with the special education component becoming fully functional this school year. AIM will permit OPI (and LEAs) to have instant access to all special education information collected on students, including, for example, eligibility, referral, Individualized Education Program, evaluation, transition, and performance data.

The State provides training and technical assistance in a variety of ways to ensure that the data collected are valid and reliable and conform to reporting requirements. Training of LEA staff occurs in a variety of formats, including phone conferencing, instructional manuals, web-based trainings and presentations, and on-site visits. OPI reports that it maintains a strong working relationship with the LEAs and makes staff readily available to assist LEAs.

OPI reported that it uses several strategies to ensure that its data are valid and reliable. Validation checks are built into each application so data tables cannot be submitted with, for example, blank fields or inconsistencies between data elements. Certain data fields are prefilled from previous collections to reduce entry errors. OPI staff run manual checks to look for anomalies, like unusual entries and illogical data trends. OPI provides technical assistance documents and training to LEA staff to make certain that they understand the reporting requirements and the importance of reporting accurate data. An authorized representative in each LEA is required to provide a signed assurance regarding the accuracy of the data being reported.

As part of the verification visit, OSEP inquired into the State's guidance and data collection methodology for SPP/APR Indicators 4A, 7, 8, 9, 10, 11, 12, 13, and 14. The State provided information demonstrating that the data it collected for these indicators were consistent with the required measurements.

### **OSEP Conclusions**

The implementation of the AIM system for special education appears to be a significant enhancement to Montana's data collection. The State reported that AIM will permit OPI to collect extensive data at the student level. This will result in: 1) instant access to a variety of special education data; 2) the elimination of duplicate reporting; 3) the reduction of human errors caused by pulling and aggregating the data; and 4) OPI's ability to analyze the information in a variety of ways.

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that OPI 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 a 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.

### **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 it verifies that the data it collects and reports reflect actual practice through a series of checks and balances and training of personnel at all levels. OPI matches data from student records to verify the data that the LEA reports to OPI. Data provided by the LEAs through the various collections are compared to statewide student databases to ensure the consistency of reporting across collections. OPI staff provides extensive direct support to LEAs to help ensure that the data reflect actual practice in each LEA.

### **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 also conducting a review of data collection and reporting practices at a local level, determine whether all public agencies in the State report data that reflect actual practice and performance.

### **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 mechanism for processing both Federal and State funds is OPI's web-based electronic consolidated application, called E-Grants. Each LEA must submit a budget (and provide assurances) each fiscal year through the E-Grant application prior to receiving any funds. After the application is approved, LEAs make electronic funding requests to the State's centralized accounting system using unique Revenue Source and Program Expenditure codes. LEAs typically request funds on a monthly basis, although smaller LEAs may choose to make quarterly requests. LEAs are required to expend the funds within 30 days from the time they are requested. The E-Grants system is designed to ensure that carryover funds from a previous fiscal year are automatically disbursed before funds from the current fiscal year are liquidated.

OSEP confirmed through the U.S. Department of Education's Grants Administration and Payment System that the State expended all of its FFY 2005, 2006, and 2007 funds in a timely manner. OSEP staff reviewed the E-Grants process, including a review of local project applications, to ensure the State timely obligates and liquidates funds.

### **OSEP Conclusions**

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

The State requires all entities that receive funds to provide assurances required by IDEA and other applicable Federal laws through the E-Grants system. Each applicant for Part B funds must complete a budget indicating the intended use of Part B funds. Certain items, like Part B flow-through amounts to LEAs, required CEIS expenditures, proportionate share amounts for parentally-placed private school children with disabilities, and local maintenance of effort are prefilled by the State into the E-Grant application. The State's calculations reduce calculation errors by LEAs and assist LEAs in developing budgets that include Part B fiscal requirements. All LEA Part B budgets are reviewed by the State Part B fiscal manager prior to approval to ensure compliance with the requirements of Part B and the allowable cost guidelines. The State provides information and technical assistance through trainings, telephone conferencing and instructional materials to LEAs each year regarding the distribution process, including how Part B funds must be used. Montana's Department of Administration (DOA) conducts audits and fiscal reviews of LEAs. The State has not established an LEA Risk Pool and has no charter schools.

OPI reported to OSEP that the State meets the State maintenance of effort (MOE) requirement in IDEA section 612(a)(18) and 34 CFR §300.163(a) by ensuring that the line item for Special Education in OPI's legislative allocation remains the same or increases from year to year. For example, OPI showed OSEP that the State allocation for special education increased from \$40,434,302 for FY 2008 to \$41,647,331 for FY 2009. The State reported that it does not take into account allocations that are made by State agencies other than the SEA for the provision of special education and related services. Under 34 CFR §300.163(a), the State must not reduce the amount of "State financial support for special education and related services for children with disabilities," or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year (emphasis added). As defined in 34 CFR §300.40, "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas, and is not limited to the SEA. Because the State does not take into account the amount of State financial support provided (made available) by State agencies other than the SEA, Montana is not currently collecting complete information of State financial support for special education and related services. Without this information, the State cannot determine whether it is in compliance with 34 CFR §300.163(a) for the current fiscal year. See OSEP Memorandum 09-5, dated December 2, 2009.

In addition, the Division of Special Education reported that the only method that OPI has to ensure that LEAs meet the excess cost requirement in 34 CFR §300.202(a)(2) is through an assurance that the LEAs provide through E-Grants. OSEP notes that an assurance alone from the LEAs may not be sufficient to demonstrate that LEAs are in compliance with the excess cost requirement.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that, with the exception of the State MOE requirement in IDEA section 612(a)(18) and 34 CFR §300.163(a), the State has procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State. However, because OPI does not include the level of financial support made available from other State agencies for special education and related services

in its calculation of MOE, OSEP cannot determine whether OPI's State level MOE calculations are correct. Although OSEP does not find OPI in noncompliance with the excess cost requirement in 34 CFR §300.202(a)(2), OSEP recommends that OPI develop procedures for monitoring LEAs for compliance with this requirement.

### **Required Actions/Next Steps**

With the State's Part B FFY 2010 Application due May 10, 2010, the State must provide:

1. A separate written assurance that the State has met the IDEA MOE requirements in IDEA section 612(a)(18) and 34 CFR §300.163 and has included in its calculations funds other agencies provide to the SEA for special education and related services, funds other agencies provide directly to LEAs for special education and related services, and funds other agencies directly pay to staff or contractors for the delivery of special education and related services pursuant to an IEP; and
2. A copy of the correspondence in which OPI has informed its State audit office of the need to review under the State's Single Audit, conducted under the Single Audit Act, the State's procedures to comply with the tracking of the level of State financial support made available to meet the MOE requirements in IDEA section 612(a)(18) and 34 CFR §300.163.

### **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 appropriately use Part B funds and other Federal funds through assurances provided in the LEA application, checks-and-balances built into the electronic budgeting (E-Grants) process, State audits, and the end-of-year expenditure report (Trustee's Financial Summary). The State Part B Program Manager maintains frequent contact with the Part B program accountant and Fiscal Services staff to ensure compliance with all Part B requirements. As discussed above, OPI uses the electronic E-Grants system to account for the use of Part B and all other Federal and State funds. Certain items, like CEIS, local MOE, and proportionate share, are automatically calculated for the LEA. The system uses unique revenue and expenditure codes to clearly identify the appropriate revenue streams. LEAs that vary over 50% from the budgeted line item amount are required to submit an amendment to OPI for approval. LEAs designated by OPI as "high risk" can only receive reimbursement for their expenditures.

Each LEA must annually provide to OPI a Trustees Financial Summary of its actual expenditures of State and local funds. The report is utilized to determine State aid and to ensure that the actual amounts spent meet MOE requirements under Part B. Any LEA which is found to have not maintained effort is given the opportunity to explain if it qualified for an exception under 34 CFR §300.204. If the SEA finds that the LEA did not meet the requirements for such an exception, the LEA is required, after an opportunity for a hearing, to repay the required amount. Under these circumstances, the SEA returns the amount to the Department of Education, ensuring that the funds returned do not come from Federal funds for which accountability to the Federal Government is required.

Every LEA submits, at the end of the fiscal year, a Trustee Financial Summary which is audited. The scope of the audit varies based on the amount of money expended. Audits of major programs under

OMB Circular A-133 are conducted by the DOA on those LEAs that receive more than \$500,000 in Federal funds. In addition, the State conducts a Regular Audit, known as a “Yellowbook Audit,” on LEAs with total revenues over \$500,000 or a financial review (not an audit) at least every four years for those LEAs with total revenues less than \$500,000. The DOA resolves the audit findings. Audit findings are communicated to the Division of Special Education as warranted to ensure that any programmatic issues related to an audit finding are addressed. Audit findings are factored into local level determinations and can also result in the LEA being designated as “high risk.”

**OSEP Conclusions**

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