

Ohio 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 Ohio Department of Education (ODE) reported that the State utilizes multiple components of its general supervision system to identify noncompliance and to ensure that local educational agencies (LEAs) comply with requirements of the Individuals with Disabilities Education Act (IDEA). The State makes its determinations on the extent of monitoring each LEA will receive based on the State Performance Plan/Annual Performance Report (SPP/APR) data LEAs submit to ODE. During the verification visit, OSEP primarily examined monitoring activities and data from the 2007-2008 school year; thus allowing for an examination of the State's effort in correcting noncompliance. The State informed OSEP that ODE had a similar monitoring process for the 2008-2009 school year. The State reported using the following components to identify noncompliance:

- 1) Self-Assessment Monitoring: At the end of each year, LEAs are required to report their compliance rates for Indicators 11 (Percent of children who were evaluated within 60 days of receiving parental consent for initial evaluation), 12 (Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an individualized education program (IEP) developed and implemented by their third birthdays) and 13 (Percent of youth with IEPs aged 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment and transition services). LEAs that are below 100% compliance¹ on any of the above Indicators are issued notification of noncompliance and are required to create an action plan to address the noncompliance. No other IDEA requirements are covered by Self-Assessment monitoring.
- 2) Selective Reviews: The Selective Review process also relies upon year-end data. LEAs are required to conduct self reviews for Indicator 4A when an LEA has a significant discrepancy in the rate of suspensions and expulsions for children with IEPs, and for Indicators 9 and 10 if disproportionate representation or significant disproportionality exists for children with disabilities. In the Selective Review process, LEAs are required to complete a checklist related solely to the specific issue identified in the data reviews and report whether district policies, practices, or procedures are resulting in potential noncompliance.
- 3) IDEA Monitoring (formerly called Focused Monitoring): Each year ODE conducts on-site monitoring of 20 to 25 LEAs. ODE reported that LEAs are selected based on performance on all SPP/APR indicators with an emphasis on student performance on statewide assessments and least restrictive environment (LRE) data. The process consists of reviewing individual student records and issuing a formal report with findings of noncompliance when noncompliance is

¹ The threshold was raised from 90% to 100% in response to OSEP Memorandum 09-02, issued October 17, 2008 (OSEP Memo 09-02) and guidance on the Reporting of Noncompliance in the Annual Performance Report.

identified. In addition, in the 2008-2009 school year, all LEAs selected for on-site IDEA Monitoring were required to conduct a self study entitled “State Performance Plan Probes.” This process was designed with the intent of examining district practices that may adversely impact the district’s ability to meet SPP/APR targets for all indicators, but was not designed to identify noncompliance.

4) Management Assistance Reviews: Similar to IDEA monitoring, Management Assistance Reviews (MARs) are on-site reviews. According to information on ODE’s website, the State selects LEAs for MARs through a combination of six criteria that include district size, significant changes in student enrollments of children with disabilities, and concerns identified through other ODE monitoring activities. MARs examine how LEAs submit accurate data, child find activities, and time and effort of IDEA-funded staff. The State conducted 41 MARs during the 2007-2008 school year.

5) State Complaints: When ODE receives a written complaint alleging noncompliance by an LEA, ODE conducts an investigation, issues findings of fact and conclusions and makes a determination as to whether a district’s actions were in accordance with IDEA.

OSEP Conclusions

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the State must identify noncompliance by issuing findings of noncompliance when the State obtains reliable data reflecting noncompliance with Part B requirements. Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes that the State does not have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components, as explained below:

1) The Self-Assessment Monitoring process uses invalid and unreliable data from the Education Management Information System (EMIS) as the basis for findings of noncompliance (an explanation about EMIS can be found in the data critical elements of this enclosure). The errors result from improper data entry at the LEA level. For example, OSEP found, and the State acknowledged, that LEAs undercount the number of students who transition from Part C to Part B services. Specifically, one large urban LEA reported a compliance rate of 95% based on 16 out of 17 students transitioning from Part C to Part B. During the verification visit, OSEP examined the Part C data for children who were transitioning to the same LEA from Part C to Part B and found this figure to be approximately 275 children. Furthermore, while the State required the LEA to provide additional reports to ODE throughout the school year regarding transition data, the State did not issue a finding of noncompliance for the submission of invalid and unreliable data.

2) Management Assistance Reviews do not include a mechanism to make findings for all noncompliance uncovered through this process. OSEP reviewed six of the 41 MARs conducted by ODE during the 2007-2008 school year. Three of the six MARs indicated that the LEAs had reported children with disabilities to ODE who did not have a current IEP in place. OSEP found, and ODE confirmed, that ODE did not make findings or require corrective action in any of the three LEAs on the basis of this information.

3) IDEA Monitoring (on-site monitoring) only uses information from individual student record reviews to identify noncompliance. While the State’s individual student record review is

comprehensive, and an effective method for examining whether LEAs have developed IEPs and related documents that comply with IDEA, IDEA Monitoring does not include interviews or other mechanisms to determine whether the records reflect actual practice.

OSEP discovered two instances in which the individual student record review alone was insufficient to identify noncompliance because the IEPs as developed were either not implemented as agreed, or LEA practices that were not included in the individual student records violated IDEA. For example, in an interview with OSEP during the verification visit, an ODE contractor reported working with an LEA that limited children with disabilities access to services in the LRE. OSEP identified a district practice that assigned all middle school students with disabilities to resource rooms or other segregated settings even though students' IEPs called for placements with nondisabled children. ODE confirmed that it did not have a mechanism to identify noncompliance with this practice because of ODE's sole reliance on information from individual student records.

Also, during the focused monitoring visit, OSEP staff interviewed LEA personnel and reviewed a collective bargaining agreement that permits regular education teachers to limit the number of children with disabilities in their classes to either three or four children depending on grade level. In interviews with special education teachers at the LEA, OSEP found that many children with disabilities were not educated in the regular education classroom with nondisabled children as required by their IEPs. Instead, these children were routinely placed in resource rooms and other settings outside the regular education classroom because regular education teachers refused to admit the children into their classrooms, citing the collective bargaining agreement.

In both examples, ODE acknowledged that it was not effectively ensuring that children with disabilities in these LEAs were removed from regular education environments only because their education in regular classes with supplementary aids and services could not be satisfactorily achieved, consistent with 34 CFR §§300.114(a)(2) and 300.116.

According to ODE documents, IDEA Monitoring is ODE's most comprehensive mechanism for identifying noncompliance, a process that reaches approximately 2% of LEAs each year (20 out of 1000). With approximately 1,000 LEAs² and over 250,000 children with disabilities, ODE has ten full-time staff members and three part-time staff members who conduct IDEA Monitoring. ODE officials reported that it has insufficient monitoring staff, and has not been allowed to hire additional staff - even if the staff can be funded through the State's IDEA funds under 34 CFR §300.704.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must submit revised procedures for identifying noncompliance that: (1) ensure data used to identify noncompliance are valid and reliable; (2) ensure findings are issued for all noncompliance regardless of the component through which they are discovered; (3) ensure that the State has a method for identifying all noncompliance with program requirements; and (4) address how the State will maintain a monitoring effort of sufficient size and scope to reasonably identify existing noncompliance in all of its LEAs.

² Because of the large number of LEAs, which includes traditional school districts, charter school LEAs, Developmental Disabilities Centers, and Educational Service Centers, ODE was unable to give OSEP an exact number of LEAs in Ohio.

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 (Memo) 09-02, dated October 17, 2008, 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.

ODE uses different approaches to determine whether noncompliance within an LEA has been corrected in a timely manner depending on the monitoring component used to identify the noncompliance. OSEP reviewed a sample of corrective actions resulting from noncompliance identified through each monitoring component and conducted follow-up interviews with ODE staff. Below is a summary of the approaches ODE utilized.³

1) Self-Assessment Monitoring: The Self-Assessment monitoring process requires that LEAs develop a corrective action plan and demonstrate compliance through updated data. ODE requires LEAs to submit corrective action plans when LEAs do not meet 100% compliance for Indicators 11, 12, and 13. The corrective action plans OSEP reviewed consisted of: (1) specific actions that LEAs will undertake to correct the noncompliance; and (2) additional data demonstrating that the noncompliance has been corrected. ODE informed OSEP that the LEAs with identified noncompliance in 2007-2008 that submitted corrective action plans in 2008-2009, had corrected the noncompliance in a timely manner. The State’s standard for adequate corrective action was for LEAs to develop a plan to identify root causes for noncompliance and to develop steps that will result in compliance when the State conducted its next review of data. The State did not specifically require that the LEA correct individual cases of noncompliance as part of its corrective action plan and the State did not verify that the individual cases of noncompliance had been corrected. Due to the large number of action plans received each year (greater than 500), ODE accepts the action plans and considers the LEA actions to have corrected the noncompliance.

2) IDEA Monitoring: OSEP reviewed all 21 IDEA monitoring files for the 2007-2008 school year including corrective actions. OSEP found that each LEA addressed the noncompliance through its corrective action plan and the State verified correction through subsequent on-site monitoring within the one-year timeline. ODE confirmed that before making a determination that the LEA has corrected noncompliance, ODE monitors review individual student records to verify that the LEA corrected all individual cases of noncompliance and is correctly implementing the specific regulatory requirements, consistent with OSEP Memo 09-02.

³ OSEP will not address Selective Reviews in this critical element as it is a mechanism through which the State has not identified noncompliance.

3) Management Assistance Reviews: According to ODE documentation, when ODE identifies noncompliance through MARs, LEAs are required to develop a corrective action plan to address the findings of noncompliance. OSEP reviewed six of the 41 MARs conducted by ODE during the 2007-2008 school year. In three of the six MARs, ODE identified findings indicating that the LEAs had reported to ODE children with disabilities who did not have a current IEP in place. OSEP found, and ODE confirmed, that ODE did not require corrective action for these three LEAs.

4) State Complaints: ODE informed OSEP that when ODE identifies noncompliance through the complaint process, complaints must be closed and all noncompliance must be corrected within one year. When an LEA is required to complete a corrective action, technical assistance is typically provided by the State regional resource center to ensure that corrective action occurs. Prior to the verification visit, OSEP received phone calls and emails from approximately ten different parents regarding complaints they had filed against one LEA in Ohio. As reported by the parents and confirmed by ODE, each parent had filed a complaint against the LEA and ODE made findings of noncompliance and ordered corrective actions. The parents were concerned that corrective actions were not implemented and the same problems persisted. During the verification visit, OSEP discussed this matter with ODE, and ODE has agreed to conduct additional monitoring of the LEA during the 2009-2010 school year to ensure that the LEA in question is both correctly implementing the specific regulatory requirements and has corrected each individual case of noncompliance. As of the date of the verification visit, ODE had yet to make a formal determination as to whether the LEA was in compliance, as the one-year timeline to correct noncompliance had not yet expired.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with ODE staff, OSEP believes that ODE does not have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner using each of its components. Specifically, OSEP found the following components do not meet the requirements set forth in OSEP Memo 09-02:

Self-Assessment Monitoring: ODE collected a year's worth of data from LEAs for Indicator 11 to identify noncompliance, but collected data over a three-week period to determine if the noncompliance had been corrected. Based on a review of data from the 2007-2008 and 2008-2009 school years, OSEP found multiple LEAs that had similar rates of noncompliance despite the State reporting that correction had been successfully completed. During interviews, ODE acknowledged that a three-week period for data review was not sufficient to determine that noncompliance had been corrected for Indicator 11. Further, the State does not require that the LEAs correct the individual cases of noncompliance that are resulting in a compliance rate of less than 100%.

Management Assistance Reviews: As reported by ODE, the State intends to expand the scope of the MARs to examine additional LEA fiscal practices. If the State intends to utilize the MARs process to identify and correct noncompliance, ODE needs to establish a process within MARS that is consistent with the requirements set forth in OSEP Memo 09-02.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must provide updated information regarding its general supervision system, including a description of the revisions made to components of its system for correcting noncompliance. The State must take into account and inform OSEP about how the system will be revised to ensure: (1) effective correction of noncompliance that utilizes an appropriate amount of data to verify that correction has occurred in an LEA; and (2) correction of all individual cases of noncompliance.

The processes the State utilizes to correct noncompliance must meet the requirements of OSEP Memo 09-02. Specifically, 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.

Critical Element 3: Dispute Resolution

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

Verification Visit Details and Analysis

The State reported that ODE is responsible for investigating and resolving State complaints. The State subcontracts its two-tiered due process hearings and mediations to independent third party contractors. ODE reported that it is responsible for ensuring that requests for mediation and due process are communicated to the contractors in a timely manner, and enforcing the decisions made by hearing officers.

ODE reported that the State makes information on procedural safeguards and dispute resolution options available to families consistent with State and Federal regulations in the handbook, *Whose IDEA Is This? A Parent's Guide to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA)*. The handbook is posted on the State's website, and includes the requirements for filing a State complaint, a model complaint form, and definitions, steps, and timelines for dispute resolution processes.

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

OSEP's review of documents and interviews with ODE staff indicated that the State is not ensuring compliance with the requirement that hearing officers issue decisions within the above timelines. Specifically, OSEP found decisions that were not issued within the 45-day timeline for issuing a final decision where an extension was not granted, and also found decisions that were not reached and mailed to the parties by the new date set forth in the extension. This

represents noncompliance with the requirements in 34 CFR §300.515(a) and (c) governing timely due process hearing decisions.

ODE reported that it contacts both parents and LEAs to ensure that hearing officer decisions are implemented. ODE also informed OSEP that it reviews hearing officer decisions and will terminate the contract with individual hearing officers if their decisions are repeatedly overturned by State-level reviewing officers.

State Complaints: OSEP reviewed 11 State complaint files where ODE issued a written decision between July 1, 2008 and June 30, 2009, and found that the State's written decisions contained findings of fact and conclusions and the reason for the State's final decision, as required in 34 CFR §300.152(a)(5)(i) and (ii).

The Part B regulations at 34 CFR §300.152(a) and (b) require the State education agency to investigate each State complaint and to issue a written decision to the complainant within 60 days after the complaint is filed, unless the time limit is extended because exceptional circumstances exist with respect to a particular complaint or the parties agree to extend the time to engage in mediation or other alternative dispute resolution, if available in the State. Based on a review of the complaint files and interviews with ODE staff, OSEP found that two of 11 written complaint decisions exceeded the 60-day timeline by 17 and 34 days with no documented exceptional circumstances with respect to the particular complaints or evidence that the parties agreed to engage in mediation or other alternative dispute resolution.

Additional Issue: OSEP examined hearing decision SE 2299-2009E when it was reviewing due process hearing decisions. In this matter, the LEA filed for a due process hearing in order to have a hearing officer invalidate a State special education law that is inconsistent with IDEA. Ohio Revised Code 3323.08(B)(3), states the following:

If at the time an individualized education program is developed for a child a school district is not providing special education and related services required by that individualized education program, the school district may arrange by contract with a nonpublic entity for the provision of the special education and related services, provided the special education and related services meet the standards for special education and related services established by the state board *and is provided within the state.* [Emphasis added.]

As the hearing officer correctly determined, Ohio's code is inconsistent with IDEA, because a State cannot limit where services are provided if the limitation results in a denial of a free appropriate public education (see IDEA section 612(a)(1)(a) and 34 CFR §300.101).

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP determined the State has not demonstrated that it has procedures and practices that are reasonably designed to implement all the dispute resolution requirements of IDEA. Specifically, OSEP finds that the State did not, in all cases: (1) demonstrate compliance with the requirements for granting specific extensions of the 45-day timeline for issuing final decisions in due process hearings (34 CFR §300.515(c)); and (2) issue a written decision within the 60-day timeline or a properly granted extension (34 CFR §300.152 (a) and (b)). Additionally, Ohio Revised Code 3323.08(B)(3) appears to inappropriately limit access to a free appropriate public education if appropriate services are not available within State.

Required Actions/Next Steps

Within 60 days of the date of this letter, the State must provide documentation of the steps it has taken to ensure that:

(1) hearing officers grant specific extensions of the 45-day timeline for issuing final decisions in due process hearings at the request of a party that specify either the length of the extension or the new date by which the decision must be reached and mailed to the parties (34 CFR §300.515(a) and (c)); and (2) State complaint decisions are issued by ODE within 60 days from the filing date of the complaint (34 CFR §300.152(a)), unless the timeline is extended, and that it is properly documenting that extensions are granted only if exceptional circumstances exist with respect to a particular complaint or the parties agree to engage in mediation or other alternative dispute resolution (34 CFR §300.152(a) and (b)(1)).

Additionally, as both OSEP and a State hearing officer determined that Ohio Revised Code 3323.08(B)(3) is inconsistent with IDEA, the State must submit an assurance that ODE is operating consistent with IDEA Part B (34 CFR §300.101) and that implementation of Ohio Revised Code 3323.08(B)(3) does not result in delays of the appropriate placement of children with disabilities.

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

Ohio utilizes a significant part of its IDEA State set-aside funds to provide technical assistance that is designed to improve educational results and functional outcomes for children with disabilities. Ohio has 16 regional technical assistance centers that provide support to LEAs on a range of issues, from how best to implement and provide services under IDEA, to examining school district practices through the Ohio Improvement Process (OIP). ODE reported that OIP has its origins in Ohio's State Personnel Development Grant (SPDG) funded through OSEP. The SPDG provided the seed money to develop a process in which ODE, LEAs, and Ohio's technical assistance centers examine improving outcomes for all students within an LEA, avoiding separate improvement processes for children with disabilities.

The OIP process is designed for all LEAs, but is more extensive for LEAs that are struggling to make Adequate Yearly Progress or who are not meeting benchmarks in their State report card. Rather than focusing on individual schools, the OIP is district-driven, with LEA leadership participating and driving the process.

To improve functional outcomes, ODE works with the State Transition Work Group to implement the State Capacity Building Transition Grant and the Ohio Rehabilitation Services Commission Grant. These grants provide technical assistance to adult services agencies, LEAs, and families related to evidence-based transition practices that increase post-school success for students with disabilities. ODE also co-sponsors the annual Special Education Leadership Conference, which places a heavy emphasis on how to improve results and outcomes for children with disabilities.

As indicated in Ohio's SPP, the State is also working on improving preschool outcomes, providing: professional development and training in the Early Learning Content Standards;

information on IEP development and implementation in relationship to the standards; training on data collected from the State's outcomes summary assessment; and with the Ohio Coalition for the Education of Children with Disabilities, assistance to enhance parents' understanding of their child's progress and outcomes.

OSEP Conclusions

Based on the review of documents, analysis of data, demonstration of the system capabilities and interviews with State personnel, OSEP believes 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 a part of its monitoring and enforcement responsibilities under section 616 of the IDEA and 34 CFR §§300.600 and 300.602, each State must annually report to the public on the performance of each LEA against the State's SPP/APR targets and must make an annual determination for each LEA. The State met the reporting requirement and the June 2, 2009 reporting timeline by publishing a spreadsheet file with all of the LEAs and their performance against targets in the State data on the SEA's website. For LEA determinations for the 2007-2008 school year, the State examined performance on compliance indicators, whether LEAs submitted data, and uncorrected noncompliance from other sources. The State reported that it did not consider whether the reported data were valid and reliable and did not consider audit findings as part of the determination process. For the 2007-2008 school year, all but two LEAs met requirements.

Private Schools and Proportionate Share Calculations: The State monitors to ensure that LEAs are spending a proportionate amount of Federal Part B funds on providing special education and related services for parentally-placed children with disabilities in accordance with 34 CFR §300.133(a). The State calculates the proportionate share for each LEA based on data provided by LEAs. The State requires that each LEA maintain an inventory of equipment and supplies placed in private schools.

Significant Disproportionality and Coordinated Early Intervening Services (CEIS): The State has developed a comprehensive system to examine data for each LEA to determine if significant disproportionality based on race and ethnicity is occurring in the State and in the LEAs of the State with respect to the identification of children as children with disabilities, including in specific disability categories, the placement of these children in particular educational settings, and the incidence, duration, and type of disciplinary actions in accordance with 34 CFR §300.646(a). Based upon each LEA's data, the State determines whether the LEA has significant disproportionality. During interviews, the State reported that, for the 2008-2009

school year, no LEAs met the State's threshold for significant disproportionality (a risk ratio that exceeds 3.5).

OSEP recognizes that States have discretion in defining significant disproportionality, however, OSEP is concerned that ODE's definition of significant disproportionality (an LEA must have a risk ratio exceeding 3.5) sets the bar too high and makes it likely that no LEAs will be identified with significant disproportionality. In fact, ODE has not identified significant disproportionality in any LEAs using this definition. The Data Accountability Center (DAC) has a guidance document, entitled "Methods for Assessing Racial/Ethnic Disproportionality in Special Education: A Technical Assistance Guide" (July 2007), on methods for assessing disproportionality at <https://www.ideadata.org/Products.asp>. We suggest that ODE review the guidance and/or seek DAC's assistance to determine if it can develop a statistically sound definition of significant disproportionality based on numerical analysis of data that encourages LEAs to address the racial or ethnic significant disproportionality in special education that they face.

LEAs choosing to use CEIS funds are required to annually submit a plan with their Special Education Application within their Comprehensive Continuous Improvement Plan (CCIP), to address how CEIS funds will be utilized. The State monitors the LEAs' use of funds based on the CCIP and CEIS documentation. For the 2009-2010 school year, the State will, for the first time, require LEAs to submit data on the number of students who receive CEIS and whether they subsequently received special education services. OSEP is concerned that the State will not have sufficient data to adequately report its May 1, 2011, IDEA section 618 Table 8 Section D data on: 1) The number of children who received CEIS; and 2) The number of children who received CEIS and subsequently receive special education and related service during the preceding two year period.

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 Ohio State School for the Blind houses the Center for Instructional Supports and Accessible Materials and is responsible for working with LEAs in providing accessible material. The State partners with audio and large print vendors and houses a Braille production center. For the 2008-2009 school year, 396 LEAs registered with the Ohio School for the Blind and 1470 students were provided instructional support and accessible material. LEAs register students individually and require a district representative to complete an "Ohio Certification of Eligibility to Use NIMAS Materials" prior to a student receiving materials.

Assessment: The State widely disseminates information regarding assessment requirements through Ohio's Statewide Assessment Program *Rules Book* and provides technical assistance to LEAs through regional training sessions across the State, instructional documents, and sample completed forms on the State's website. The State reports to the public on the participation and performance of students with disabilities on statewide assessments consistent with 34 CFR §300.160(f).

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes that, with the exception of LEA determinations, the State has procedures and practices that are reasonably designed to implement selected grant assurances, (i.e., significant

disproportionality, private schools, CEIS, NIMAS and assessment). OSEP cannot, however, without also collecting data at the State and local levels, determine whether these procedures and practices are sufficient to ensure that LEAs in the State effectively implement these selected grant assurances.

OSEP finds that when making annual determinations on the performance of their LEAs, the State does not consider: (1) LEA-specific audit findings; and (2) whether LEAs submitted valid and reliable data.

Required Actions/Next Steps

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

II. Data 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

Ohio's data collection system, EMIS, is a platform that: (1) identifies the fields of data that need to be collected for students and personnel; (2) sets the parameters of each field (e.g., the length and type of data to be entered); (3) receives reports from each of the LEAs; and (4) performs edit checks to ensure that the data meet parameters set by the State. Currently, EMIS has over 600 fields of data, and approximately 60 of the fields are for special education purposes. LEAs in Ohio submit data to EMIS through 40 different student management software programs. Data are currently submitted by LEAs in October, December, February, March and at the end of the school year. Based on the data collected, LEAs submit approximately 170 reports to ODE. In order to facilitate the submission of data to the State, each LEA is required to have an EMIS coordinator who serves as the ODE contact person for the LEA, and is responsible for submitting valid and reliable data. ODE has informed LEAs that their level of funding is directly related to accurate reporting. For example, LEAs that mistakenly fail to report a student as a child with a disability will not receive additional State funding for the student.

To assist LEAs in submitting valid and reliable data, the State has multiple pages on its website dedicated to EMIS submissions including manuals, handbooks, and presentations. ODE partners with the Association of EMIS Professionals and has established a voluntary Certified EMIS Professional and Master Certified EMIS Professional certificate program based on experience and hours of professional development. By having a certificate program for individuals who submit data, ODE reports that they have created a system that ensures that data are submitted by individuals who have received extensive training on data collection and reporting requirements. By State law, Ohio has Educational Service Centers (ESCs), which may act as data intermediaries between the LEA and the State and assist in the data collection and submission process.

Despite the measures ODE has developed and the potential financial ramifications for reporting inaccurate data, OSEP found instances of data submitted for IDEA section 616 to both the Department and the public that were not valid and reliable, for example, Indicator 12 (transition from Part C to Part B). A detailed discussion addressing OSEP's concerns with valid and reliable data is included above in Critical Element 1 under General Supervision.

OSEP Conclusions

Based upon the review of data and interviews with ODE staff, OSEP does not believe that the State has a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner.

Required Actions/Next Steps

Within 60 days from the date of this letter, ODE must report to OSEP on the changes it will make to its data systems to be able to collect and report valid and reliable data for the Indicator 12 in the FFY 2009 APR due February 1, 2011.

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

ODE reported comparing the data reported through EMIS with data collected from IDEA Monitoring and MARs to ensure that data are reported accurately. For 177 LEAs that comprise approximately one-fifth of the student population in Ohio, data are automatically transferred from data entry into EMIS through a student information software application entitled ESIS. For example, if an LEA is utilizing EMIS and develops an IEP for a student, the relevant data are transferred directly from the IEP. For the remaining LEAs, the State has developed an EMIS tool that summarizes data from the IEP and provides it to the individual(s) who enter LEA data and submit the data to the State.

To verify whether data reflected actual practices, OSEP interviewed ODE staff members and discussed two years' worth of LEA data for Indicator 13 (secondary transition). As evidenced in the LEA self-reported data for Indicator 13, over 10% of the LEAs in Ohio reported a zero percent compliance rate for this indicator during the 2007-2008 school year and three percent reported 100% compliance in 2007-2008. To address the low rates of compliance, LEAs created action plans through Self-Assessment Monitoring (which OSEP reviewed). The plans addressed correct entry of data into EMIS, not that IEPs should be developed that meet the requirements under 34 CFR §300.320(b). The data for the 2008-2009 school year states that only six percent of the LEAs in Ohio have data below 95% compliance for this indicator, and the majority of LEAs report 100% compliance. ODE acknowledged that it has no means of determining whether the increase in reported compliance is resulting from more compliant IEPs or because of a change in the way LEAs were coding data.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes that the State has procedures that are not reasonably designed to verify that the data collected and reported reflect actual practice and performance. As discussed above, data for Indicator 13 from a large number of LEAs indicated that compliance rates went from 0% to

100% and ODE is unable to verify whether LEAs are actually developing IEPs that meet the secondary transition requirements of 34 CFR §300.320(b).

Required Actions/Next Steps

Within 60 days from the date of this letter, ODE must submit a report to OSEP on the revised procedures it has developed and will implement to ensure that data reported in the APR under Indicator 13 reflect actual practice.

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

Each year, ODE issues a Special Education Performance Profile and Monitoring Plan that summarizes compliance data for each LEA. ODE utilizes the compiled data to make its decisions regarding monitoring priorities and the scope and depth of monitoring activities for each LEA.

As discussed above, Ohio's improvement process, OIP, is an intensive, data driven process that focuses on improving results for children with disabilities. Through this process, ODE examines student achievement data to identify up to two content areas needing the most improvement, gathers data regarding district capacity to serve its students, and identifies root causes for student success and ongoing challenges, all of which impact a district's ability to improve results for children with disabilities.

ODE's Office for Exceptional Children (OEC) also funds contractors who have developed software and work with LEAs in further examining their child achievement data to better understand the implications of their data and to assist LEAs with the OIP.

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

ODE reported that the State is able to flow IDEA funds by July 1 of each year to LEAs that submit an approved budget. The application process is completed electronically through the State's CCIP website. Budgets must reflect required components including, but not limited to program goals, reservation of Part B funds for CEIS, and proportionate share of Part B funds to be used for children with disabilities who are parentally-placed in private schools.

The State reported that it monitors the obligation and liquidation of Part B funds throughout the year as funding requests are made through CCIP. In this process, the State's grants management staff reviews all special education requests for funds and approves disbursements to LEAs. For each request, the LEA agrees to use the funds in accordance with the Cash Management Improvement Act of 1990 (see 31 USC §§6501-6508), and assures that the funds are for one month of future expenses or to reimburse the LEA for expenditures incurred.

ODE follows a "First in First Out" methodology to ensure that funds are timely expended within the 27-month period of availability. On June 30th each year, the State freezes disbursements from its Federal grants so that the LEAs can complete end of the year fiscal reports. After the reports are submitted and approved by the State, the unexpended funds are then added to the subsequent grant award and are automatically drawn down first. All FFY 2006 and FFY 2007 IDEA section 611 and 619 funds have been obligated and liquidated by the State.

OSEP Conclusions

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

Required Actions/Next Steps

No action is required.

Critical Element 2: Appropriate Distribution of IDEA Funds

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

Verification Visit Details and Analysis

The State follows the allocation requirements for Part B funds for required State-level activities and LEA subgrants, after receiving the Part B grant award. The OEC is responsible for the calculation of LEA subgrants for section 611 funds and section 619 funds. ODE reported that all LEAs, including county boards and charter schools that are their own LEAs, complete an application on the CCIP website in the same manner as traditional LEAs that apply for and receive funds.

The State reported that it complies with IDEA requirements in calculating subgrant allocations to LEAs and other State agencies. As indicated in Critical Element 1 above, LEAs apply for Part B funds annually through the State's CCIP website. After approving each LEA's application, the State notifies the LEAs of their grant awards so they may begin using the money on July 1. All public agencies that receive IDEA funds, including charter and State-operated schools, must give assurances regarding maintenance of effort (MOE), supplement not supplant, and other appropriate accounting procedures. ODE calculates the amount of funds that must be expended for students who are parentally-placed in private schools and LEAs must budget on their application how the proportionate share funds will be expended.

Pursuant to 34 CFR §300.704(c), ODE has established a "High Cost Fund." ODE reported that the State has procedures on the ODE website that ensure that funds from the "High Cost Fund" are not used for costs associated with establishing, supporting, and administering the fund. The

State expends these funds to address the high needs of children with disabilities that are eligible under IDEA. The State verifies all requests for high cost funds prior to approval and subsequent reimbursement to the LEAs.

OSEP Conclusions

Based on the review of documents, analysis of data, feedback from stakeholders and interviews with State personnel, OSEP finds that the State has procedures 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 the timely obligation and liquidation of IDEA funds.

Required Actions/Next Steps

No action is required.

Critical Element 3: Appropriate Use of IDEA Funds

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

Verification Visit Details and Analysis

While the State's CCIP website requires that LEAs provide multiple assurances in order to receive Federal funds, ODE acknowledged during the verification visit that they do not have systems in place to monitor the use of IDEA funds as required under 34 CFR §300.202, and 34 CFR §80.40. Therefore, ODE is initiating new activities during the 2009-2010 school year to ensure the proper use of IDEA funds.

In order to gauge the number of fiscal problems in LEAs, OSEP's pre-site work included a review of LEA A-133 audit reports with findings related to IDEA, which are available on Ohio's Auditor of State website.⁴ OSEP found five audit reports related to IDEA issues and of the five reports, the findings were not on specific IDEA issues, e.g., LEA maintenance of effort, but were more general in nature, such as using funds during the appropriate obligation period. OSEP specifically inquired about the lack of IDEA audits, and ODE staff reported that the Auditor of State typically audits Title I and School Lunch programs to achieve the percentage of coverage rule found in the A-133 Circular under §520(f), as these two programs typically exceed the 50% of Federal funds given to a specific LEA.

In addition to the A-133 Audits, ODE has a fiscal monitoring process for Federal funds entitled Program Audit Compliance Tracking Systems (PACTS). This system conducts reviews of all LEAs on a three year cycle and consists of a self-evaluation, desk review, telephone survey and on-site visit. OSEP's review of the documentation found that the IDEA components of PACTS primarily focus on whether IEPs are in effect for children who are identified as requiring special education services. This narrow focus of PACTS requires ODE to rely upon the application in CCIP as the primary means to determine whether LEAs will be expending funds in an appropriate manner.

⁴ The Ohio Auditor of State's website was redesigned in the fall of 2009 and the ability to search by specific terms (e.g., the "Individuals with Disabilities Education Act" was removed).

During the verification visit, ODE reported to OSEP that the State meets the State MOE requirement in 34 CFR §300.163(a) by examining ten special education budget lines within ODE's overall budget, the budgets for the Ohio State School for the Deaf, and the Ohio State School for the Blind, and ensuring that the overall total remains the same or increases from year to year. Based on a comparison of the above appropriations from FY 2009 to FY 2010, ODE reported an overall increase of \$749,972,155 in FY 2009 to a preliminary budget of \$764,121,417 in FY 2010. ODE conducts an examination at the end of each fiscal year to ensure that the allocation is the amount actually expended. The State reported that it does not take into account expenditures that may be made by State agencies other than the SEA in completing these calculations.

OSEP examined and discussed with ODE the State's worksheet for examining LEA excess cost requirements. While ODE requires an assurance that IDEA funds are used by LEAs for the excess cost of providing special education and related services for children with disabilities, ODE's forms for examining whether LEAs met the excess cost requirements are based on an average per pupil expenditure for each district rather than separate calculations for elementary schools and secondary schools, as required by 34 CFR §§300.16, and 300.202.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes that the State does not have procedures that ensure the appropriate use of IDEA funds. As currently structured, ODE does not have systems in place to monitor its LEAs under 34 CFR §80.40 to ensure compliance with applicable Federal requirements, to ensure that the State maintains State support for special education and related services, as required by 34 CFR §300.163, and to ensure that IDEA funds are utilized for the excess costs of providing special education and related services for children with disabilities as required by 34 CFR §§300.16, 300.202 and Appendix A to the IDEA Part B Final Regulations, 34 CFR Part 300.

While CCIP provides general budget lines in which LEAs report on how the funds will be used, without a subsequent examination of actual expenditures by ODE, there are no means to determine if the funds were used as proposed or whether they were used in accordance with IDEA. Further, ODE has no means of determining whether LEAs are following appropriate fiscal standards, including the processes for procuring goods and services that meet appropriate Federal standards. These determinations are based on the lack of A-133 audits that examine how IDEA funds were utilized, and the lack of fiscal monitoring of subrecipients as required under the General Education Provisions Act and its regulations in the Education Department General Administrative Regulations. Neither the assurances provided within the State's LEA application for use of funds in the CCIP, nor the PACTS monitoring system effectively examine whether LEAs are appropriately using IDEA funds.

ODE does not correctly calculate State MOE as required under 34 CFR §300.163(a). Under the State MOE requirement in 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 State educational agency.

Because the State does not take into account expenditures for special education and related services for children with disabilities that may be made by State agencies other than the SEA, Ohio is currently collecting incomplete information on State expenditures for special education and related services, and, therefore, the State cannot determine its proper level of expenditures from the prior fiscal year, and cannot determine whether it is in compliance with 34 CFR §300.163(a) for the current fiscal year.

For the purposes of examining whether LEAs are meeting the requirements of utilizing IDEA funds for the excess cost of special education and related services under 34 CFR §300.202, the excess cost definition at 34 CFR §300.16 requires computation of separate average per pupil expenditures figures for the elementary and secondary level. ODE's current practice of examining a single average per pupil expenditure calculation is not in compliance with IDEA in LEAs that have both elementary and secondary students.⁵

Required Actions/Next Steps

Within 90 days from the date of this letter, the State must submit:

- (1) a revision to its system for ensuring that IDEA funds are used appropriately and that ODE has a method of ensuring that LEAs are complying with Federal requirements;
- (2) a plan to collect information from other State agencies on the amount of financial support expended to provide special education and related services to children with disabilities served by those agencies, and a timeline for properly re-calculating its MOE for the current and the previous fiscal year; and (3) a plan to determine whether LEAs are utilizing IDEA funds for the excess costs of educating children with disabilities separately at the elementary and secondary levels as required in 34 CFR §300.202, and explained in Appendix A to the IDEA Part B Final Regulations, 34 CFR Part 300.

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

OSEP selected LRE as an area of concern for focused monitoring in Ohio. The decision was based on: (1) OSEP's previously identified concerns with the provision of a free appropriate public education in the LRE in Ohio as discussed in OSEP's 2001 State Monitoring Report. In the report, OSEP issued a finding regarding the "Failure to Make Individualized Decisions regarding Placement in the Least Restrictive Environment for Children Served by the County Board Programs"; and (2) the State's APR data showing that the percentage of placements of children in the regular classroom for more than 80% of the day and in separate facilities, while improved, remained below the national mean for four consecutive years.

OSEP visited seven LEAs in northeast Ohio to review records and interview general education and special education teachers and administrators. At ODE, OSEP interviewed four LEA special education directors and the leadership staff of five county developmental disability (DD) centers (County Board Programs) that serve children with disabilities (and are considered LEAs by Ohio statute).⁶ OSEP also reviewed records of children who attended the above DD centers.

⁵ ODE's current system for examining excess cost may be appropriate in some LEAs, for example, a charter school that only serves secondary students.

⁶ Ohio DD centers that serve children age 3-22 receive IDEA funds. The DD centers offer a range of services, but typically will serve preschool children with disabilities in inclusion-based settings who reside in multiple

Under the LRE requirements, States make an assurance to the Department that they will provide technical assistance and monitor the implementation of LRE requirements (see 34 CFR §§300.119 and 300.120, respectively). As noted in General Supervision Critical Element 1, above, OSEP found two instances where LEA practices were resulting in noncompliance with the LRE requirements, and ODE acknowledged it did not have a system in place that would discover the noncompliance. This is particularly problematic in Ohio, as there are at least 160 LEAs whose data from the 2007-2008 school year is below the State APR target of 48.40% for serving children in special education in the regular education setting greater than 80% of the time. While these data do not necessarily represent noncompliance with IDEA, OSEP found noncompliance resulting from LEA procedures that had not been discovered through Ohio's monitoring system.

OSEP found through its review of student records that Ohio's IEP form, which was in use until September 1, 2009, required an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. However, 24 of 37 IEPs reviewed included a statement of the student's placement (e.g., "Resource room with pull out"), but had no explanation of how the children with disabilities will participate with their nondisabled peers, a justification for nonparticipation, and information regarding actual school placement and service delivery consistent with 34 CFR §300.320(a)(4)-(5).

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and LEA personnel, OSEP determined the State has not demonstrated that it has procedures and practices that are reasonably designed to implement the LRE requirements within 34 CFR §§300.114-300.120. Specifically, OSEP determined that the State has not demonstrated that it has monitoring procedures and practices that ensure that LRE requirements are properly implemented as required in 34 CFR §300.120. Further, the State is not ensuring that IEPs are developed that include the content related to placement decisions, as required by 34 CFR §300.320 (a)(4) and (5).

Required Actions/Next Steps

Within 90 days from the date of this letter, the State must submit revised procedures to ensure that LEAs meet the LRE requirements in 34 CFR §§300.114-300.117, the IEP content requirements of 34 CFR §300.320 (a)(4) and (5), and that it is monitoring LEAs as required by 34 CFR §300.120. Additionally, the State must issue findings against the LEAs for the 24 records where OSEP found noncompliance. OSEP will contact ODE separately to provide further details regarding the specific student records.

communities within the county and will also serve children who are severely disabled and have IEP services where they are removed for the general education setting for most, if not all, of the day.