

Virginia Part B 2009 Verification Visit Letter

Enclosure

The Division of Special Education and Student Services (SESS) is the component within the Virginia Department of Education (VDOE) that is responsible for the administration of special education. At the local level, there are 132 local educational agencies (LEAs), known as school divisions, which include the Virginia School for the Deaf and Blind, and which are spread out over eight planning regions.

General Supervision System

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 State uses its general supervision system, including dispute resolution processes, focused monitoring, and data submissions, to identify noncompliance. The State is in the early stages of instituting a new self-assessment process that will also be used to identify noncompliance. The State monitors all entities that provide a free appropriate public education (FAPE), including school systems, State schools, juvenile detention centers, juvenile and adult correctional facilities, and private day and residential programs. The State also monitors private schools.

The State chooses school divisions for focused monitoring visits based on a combination of a formula and random selection. Using data from 14 Annual Performance Report (APR) indicators, the State used a weighted formula to assign each school division an "indicator point score," and has selected school divisions whose score showed the greatest need for on-site focused monitoring visits, choosing approximately 20 to 25 school divisions per year according to the rank order of scores, and in addition randomly selecting one school division per year from each of the State's eight planning regions. The State removes a school division from the list if it had a visit the prior year. The State plans to conduct an on-site focused monitoring visit to each of its 132 school divisions within a six-year period.

Prior to an on-site focused monitoring visit, the monitoring team reviews the school division's: (1) APR data; (2) data for discipline, placement in the least restrictive environment (LRE), graduation, dropout, assessment, transition, and school improvement; (3) previous monitoring reports; (4) dispute resolution information; and (5) other division-specific information in order to develop the school division's monitoring profile and to identify targeted areas that the State will address in its focused review. Additionally, if a school division's data vary significantly from State norms, the State considers those data in determining the monitoring priorities and specific areas for monitoring in that school division. While on-site, the monitoring team visits: (1) the school division's administrative office; (2) at least one elementary, middle and high school; and (3) any juvenile and adult facilities, State-operated programs, hospitals, and private schools. The team conducts interviews and reviews records (generally, 20% of the individualized education programs (IEPs) for students with disabilities within the school division, which may be as many as 200, or fewer if noncompliance can be clearly determined). The record review specifically focuses on compliance for requirements regarding the development and implementation of IEPs. The State notifies school divisions of findings of noncompliance in a monitoring report issued approximately eight weeks after the conclusion of the on-site visit. The report outlines the findings of noncompliance and the related regulatory requirements, suggests actions to correct the noncompliance, requires the development and submission of a corrective action plan (CAP), and includes a statement that the

State will work with the local special education director to ensure compliance within one year. The monitoring reports also identify “areas needing improvement,” for which the State does not require correction; the State assured OSEP, however, that when it finds noncompliance it makes a finding and requires correction.

Each year, the State collects data for APR compliance Indicators 9, 10, 11, 12, and 13 to report in the State’s APR and to identify noncompliance. For Indicators 9 and 10, the State requires school divisions that have disproportionate representation to use a State-created checklist to review individual student records for the racial/ethnic/disability groups with disproportionate representation and to identify any violations of procedural or regulatory requirements related to the identification of students. School divisions must then submit a written summary of their student record review to the State, which makes a final determination as to which divisions have disproportionate representation that is the result of inappropriate identification. For Indicators 11 and 12, the State requires each school division to review student records and submit census data on compliance through an electronic data base. For Indicator 13, the State requires each school division to review the IEPs for a minimum of 20% of its students aged 16 and older, and to submit the results of this review electronically. The State issues a letter to a school division identifying noncompliance and requiring correction only if the school division’s self-reported data for the compliance indicators are: (1) less than 96% compliance on Indicators 11, 12, and 13; or (2) less than 90% compliance on Indicators 9 and 10. The State contacts school divisions with less than 100% compliance on these indicators, but greater than the 96% and 90% thresholds, by telephone and/or at meetings, but neither issues a written finding of noncompliance nor informs the school division in writing that it must correct the noncompliance. Further, the State does not include these instances of noncompliance in its data for Indicator 15 in the APR.

Sections 612(a)(11) and 616 of the Individuals with Disabilities Education Act (IDEA), the Part B regulations in 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E) of the General Education Provisions Act (GEPA) require States to monitor and enforce the implementation of the IDEA. While the State may take into account the extent of the noncompliance in determining the steps an LEA must take to correct the noncompliance and to document such correction, and in making determinations about LEA performance, the State must identify noncompliance in a written notification to the LEA and ensure correction, within one year of the notification, of all noncompliance, notwithstanding the extent of the noncompliance.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined that the State has not demonstrated that it has a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components. Specifically, OSEP finds that the State’s use of percentage thresholds below 100% (less than 96% for making findings and requiring correction related to compliance Indicators 11, 12, and 13 and less than 90% for making findings and requiring correction related to Indicators 9 and 10) is inconsistent with sections 612(a)(11) and 616 of the IDEA, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E).

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must provide a written assurance that it has revised its procedure for making findings of noncompliance, removing the 90% and 96% thresholds, and making findings when a school division’s performance is below 100% for a compliance indicator. In Indicator 15 in its FFY 2009 APR due February 1, 2011, the State must report on the timely correction of all FFY 2008 noncompliance, including in situations where the

school division reported at least 96% compliance for Indicators 11, 12, and 13, or 90% for Indicators 9 and 10, but less than 100%.

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 State reported that its monitoring reports include a directive for the school division to describe its strategies for correction in a CAP, and to complete the required corrective action and demonstrate correction. State personnel are responsible for tracking and verifying correction of noncompliance via the implementation of the CAP. The State further reported that it verifies correction of noncompliance in various ways, including on-site visits, telephone calls and record reviews.

After a school division submits its CAP, the State determines, depending upon a number of factors, whether it will be necessary to conduct an on-site follow-up visit to the school division to provide technical assistance and/or verify the correction of noncompliance through interviews and record reviews. The State may review the records from which the noncompliance was found as well as a sample of additional records to ensure the noncompliance has been corrected while on-site.

For findings of noncompliance made through a review of school division self-reported data for APR Indicators 9, 10, 11, 12 and 13, the State informs school divisions with compliance below the State-established thresholds of 90% and 96% (see discussion under General Supervision Critical Element 1, above), by sending a letter to the school division notifying it of the noncompliance, and requiring the school division to develop a CAP and correct the noncompliance in a “timely manner.” The State informed OSEP that all school divisions know that “timely manner” means within one year, but that the written notification does not state this timeline expressly. Regardless of the specific level of noncompliance, if the State finds noncompliance in an LEA, it must notify the LEA in writing of the noncompliance, and explicitly inform the LEA of the requirement that the noncompliance be corrected as soon as possible, and in no case later than one year from the State’s identification. See OSEP’s Frequently Asked Questions Regarding Identification and Correction of Noncompliance, #3, dated September 3, 2008.

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

As indicated above in the discussion of General Supervision Critical Element 1, the State made findings of noncompliance based on school division self-reported data for APR Indicators 11, 12 and 13, only if the data were below 96%. The State made (and reported in the State’s FFY 2007 APR Indicator 15) a separate finding for each child who was denied the relevant benefit (i.e., timely initial evaluation, IEP in effect by age three, or required IEP content for secondary transition), and considered each finding corrected if the child denied the benefit subsequently received it, although

late, without regard to whether the school division was in current compliance with the regulatory requirements. For example, for Indicator 13, School Division A's data were 50% for FFY 2006 with slippage to 20% for FFY 2007; School Division B's data were 19% for FFY 2006 and 50% for FFY 2007; and School Division C's data were 91% for FFY 2006 with slippage to 51.6% for FFY 2007. Although serious noncompliance persisted in each of these divisions (and in others), and in some cases actually worsened, the State reported in Indicator 15 and in the narrative for Indicator 13 that all FFY 2006 findings of noncompliance for Indicator 13 were timely corrected.

The State reported that State regulations confer authority to use enforcement actions and sanctions. The State reported that it uses enforcement actions "when all reasonable expectations have not been met by a school division." The State further reported that it has not needed to use available enforcement actions because it works closely with school divisions in an effort to develop and refine a positive and supportive working relationship through a variety of meetings, activities and networking opportunities including regional and statewide training sessions, special education directors' council meetings and regional meetings.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP determined that the State has not demonstrated that it has a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner. Specifically, the State's procedure for determining timely correction based solely on whether a child subsequently received a required benefit, without also determining whether the school division is currently in compliance with regard to the specific regulatory requirement, is inconsistent with sections 612(a)(11) and 616 of the IDEA, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), and with the guidance in OSEP Memo 09-02.

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must provide a written assurance that:

1. It has revised its policies and procedures for determining timely correction of noncompliance, so that it only determines that a finding of noncompliance has been corrected when the school division has both: (a) correctly implemented the specific regulatory requirements; and (b) corrected each individual case of student-specific noncompliance (even if late for timeline requirements); and
2. If the State finds noncompliance in an LEA, its written notification to the LEA of the noncompliance explicitly requires correction as soon as possible, and in no case later than one year from the State's identification.

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

State Complaints

In accordance with its Complaint Resolution Procedures, the State utilizes tracking systems to monitor the timeliness of complaint decisions and of correction of noncompliance identified in complaint decisions. State complaint specialists maintain tracking logs and provide the Director of Dispute Resolution and Administrative Services with quarterly reports on the status of all timelines.

The Director also maintains a log documenting when letters identifying findings have been completed.

The Part B regulations in 34 CFR §300.152(a) and (b)(1), require each State to include in its State complaint procedures a time limit of 60 calendar days after the complaint is filed under 34 CFR §300.153 to initiate and complete the activities listed in 34 CFR §300.152(a), 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. In 2007, the Director of Dispute Resolution and Administrative Services conducted a file audit of State complaints as part of a risk analysis initiative. Based on the file audit, the Director found that, in some cases where the State extended the 60-day timeline, the file did not include adequate documentation of appropriate reasons for extending the timeline. (OSEP found similar issues in its review, during the 2009 verification visit, of FFY 2007 complaint files.) In response to the file audit, the State revised its procedures for making and documenting extensions, and hired additional staff to resolve complaints. In its review of FFY 2009 complaint files during the verification visit, OSEP found appropriate documentation of extensions.

The State's written complaint procedures require that the State issue a decision on complaints within 60 days from the date on which a complaint is filed. The procedures also provide both parties the option of appealing a State complaint decision within 30 calendar days of the issuance of the decision. The State informed OSEP that, pending such an appeal, the State's practice has been to require the school division to submit a CAP for any required corrective action and provide evidence that the school division is proceeding with correcting procedural deficiencies, especially if directly related to the provision of FAPE. OSEP noted during the verification visit, however, that the procedures on the State's website required any corrective action to be held in abeyance until after any appeal is resolved. On November 10, 2009, the State provided documentation to OSEP that it had revised these written procedures to make clear that, pending an appeal, the school division must implement any required corrective actions.

Due Process Hearings

The State maintains a list of hearing officers who are certified and appointed by the Supreme Court of Virginia. Hearing officers must participate in training provided by VDOE to maintain their certification. VDOE's due process coordinator is responsible for tracking due process activities including resolution sessions, hearings and implementation of hearing decisions, using electronic tracking logs.

State regulations require school divisions to submit an Implementation Plan within 45 days of a hearing decision. In addition to maintaining a tracking log, the State communicates with both the school division and the parent to ensure that implementation has occurred.

The Part B regulations in 34 CFR §300.513(d), require the State, after deleting any personally identifiable information, to transmit the findings and decisions of due process hearings to the State advisory panel and to make the findings and decisions available to the public. The State makes due process findings and decisions available to the public by posting redacted final orders on the State's website on a quarterly basis. The State informed OSEP that, prior to the OSEP verification visit, the State's practice had been to provide an annual report to panel members that informed them of the website URL related to due process, generally, at which the advisory panel members could search for and find the link to redacted copies of the decisions. OSEP advised the State that this practice was not sufficient as a "transmittal" of the decisions, pursuant to Part B requirements. The State took immediate action to resolve this issue. On October 16, 2009 (the day after the conclusion of the OSEP verification visit) the State provided panel members a direct electronic link to due

process hearing findings and decisions. The State has confirmed to OSEP that it will continue to implement this new practice in the future.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes, with the revision of the State Complaint Resolution Procedures and procedures for transmitting hearing findings and decisions to the advisory panel described above, the State has procedures and practices that are reasonably designed to implement all of the dispute resolution requirements of IDEA. While documentation examined during the visit indicated that the State may have improperly extended State complaint timelines during FFY 2007, OSEP believes that the State is currently in compliance with the requirements of 34 CFR §300.152(a).

Required Actions/Next Steps

No further 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

The State explained that it designs initiatives, programs, training and professional development opportunities based on the principle that improving performance on graduation, dropout and post-school outcomes for students with disabilities requires a focus that begins in early education. The State described a “systems approach” for improving outcomes for students with disabilities and supporting the education of students with disabilities with their nondisabled peers to the maximum extent appropriate, which includes collaboration with regular education staff and school improvement offices, and development of regulations to support the provision of effective special education programs. The State assists Training and Technical Assistance Center (T/TAC) teams in constructing long-term technical assistance, capacity building and specific focus projects. The State also utilizes its longitudinal data system, the Education Information Management System (EIMS), to analyze data at the State, school division and school levels, to ascertain areas for monitoring and design regional training.

The State has designated a staff member to lead initiatives with T/TAC related to early childhood transition and to oversee various preschool programs supported by Part B. One such program is the Inclusive Preschool Placement Option Project (IPOP), which assists school divisions in providing more inclusive settings for preschool children with disabilities. The IPOP manual was designed to aid school divisions in meeting Federal and State mandates that children with disabilities be educated in the LRE. The manual contains nine modules that provide information for understanding, building, supporting and sustaining inclusive placement opportunities for children with disabilities in community-based early childhood programs.

The State also conducts an annual early childhood conference, which is a collaborative effort between special and general education, to focus on the essential elements required for children to acquire foundational skills and to encourage inclusive settings. The State’s July 2009 conference, entitled “Shining Stars: Charting the Future for Today’s Children,” focused on instructional strategies that provide positive outcomes in quality inclusive settings for infants, toddlers and preschool students with and without disabilities. Participants included early childhood special educators, early childhood educators, Head Start personnel, Title I personnel, Even Start providers, early intervention providers, administrators, paraprofessionals and families.

OSEP Conclusions

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

Required Actions/Next Steps

No action is required.

Critical Element 5: Implementation of Grant Assurances

Does the State have procedures and practices that are reasonably designed to implement selected grant assurances (i.e., monitoring and enforcement, significant disproportionality, private schools, CEIS, NIMAS and assessment)?

Verification Visit Details and Analysis

Public Reporting and Determinations

As a part of its monitoring and enforcement responsibilities under section 616 of the IDEA and 34 CFR §300.600(a), 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 informed OSEP that it meets this reporting requirement by publishing a Special Education Performance Report for each school division on VDOE's website, in which the State reports the school division's performance against targets in the SPP. OSEP confirmed that the State met this reporting requirement by viewing the State's website.

The State reported that it makes local determinations based on a review of each school division's data regarding: (1) valid and reliable data; (2) performance on compliance indicators; (3) correction of identified noncompliance; and (4) other data available to the State about the school division's compliance with IDEA, including relevant audit findings. For FFYs 2005, 2006 and 2007, the State's determination for all school divisions was "meets requirements." As noted above, however, in the discussion of General Supervision Critical Elements 1 and 2, the State: (1) failed to make findings of noncompliance based on data submitted by school divisions for compliance Indicators 9, 10, 11, 12, and 13 if a school division had less than 100% compliance but exceeded State-established thresholds of 90% and 96%; and (2) applied the wrong standard in determining correction of noncompliance. Therefore, OSEP cannot determine the extent to which the State appropriately considered correction of noncompliance in its determination process.

Private Schools

The State reported that it monitors the provision of special education and related services for students that are parentally-placed in private schools through its local application for Part B funds (Annual Plan). Within the Annual Plan, school divisions sign an assurance that they "will comply with the Federal IDEA implementing regulations regarding parentally-placed private school students, at 34 CFR §§300.129 to 300.144." The State requires each school division to "maintain local records demonstrating its compliance," and the State reviews these local records during monitoring visits.

Significant Disproportionality and Coordinated Early Intervening Services (CEIS)

As required by 34 CFR §300.646(b), in the case of a determination of significant disproportionality with respect to the identification of children, as children with disabilities, or the placement in particular educational settings of such children, the State must: (1) provide for the review and, if

appropriate revision of the policies, procedures, and practices used in the identification and placement to ensure that the policies, procedures and practices comply with the requirements of Part B; (2) require any LEA identified with significant disproportionality under 34 CFR 300.646(a) to reserve the maximum amount of funds under section 613(f) [15%] to provide CEIS to serve children in the local educational agency, particularly, but not exclusively, children in those groups that were significantly overidentified; and (3) require the LEA to publicly report on the revision of policies, practices and procedures described in 34 CFR §300.646(b)(1). The State provided OSEP with documentation explaining its criteria for determining significant disproportionality based on race and ethnicity pursuant to 34 CFR §300.646 for 2009-2010, based on child count data from 2007-2008. While OSEP recognizes that States have discretion in defining significant disproportionality, the following aspects of the State's analysis criteria raise concerns:

1. With respect to identification of children, as children with disabilities, identification of children with particular impairments, and placement of children in particular educational settings, the State requires that "No race category in the general population be greater than 90%." OSEP is concerned that the 90% threshold will exclude many districts from examination under 34 CFR §300.646. While the State may consider such factors as the population size and the composition of the State population, using a racial population percentage limit excludes certain LEAs from the examination and does not appear to be consistent with the intent of the statutory provision.
2. With respect to identification in special education and particular disability categories, the State reviews the "% in previously identified problem area decreased in 2008." Exactly how the State uses these data to determine whether a school division currently has significant disproportionality is unclear. OSEP is concerned that the review of a school division's data from year to year does not accurately assess whether a school division currently has significant disproportionality. It appears that, regardless of how significant the disproportionality in a school division, the State would not identify the school division as having significant disproportionality if there was any improvement from the previous year. The State must change this factor to be consistent with the statutory and regulatory provision requiring an annual determination of significant disproportionality.
3. In the identification by disability category, the State requires that "at least one race be overrepresented in five disability categories." Pursuant to 34 CFR §300.646(a)(1), States are required to collect and examine data to determine significant disproportionality with respect to the identification of children, as children with disabilities, in accordance with a particular impairment described in section 602(3) of the IDEA (34 CFR §300.8). It does not appear from the description of its analysis criteria that the State is examining children with disabilities in all disability categories as required by 34 CFR §300.646(a)(1). If the State finds that there is significant disproportionality for a single race for a single disability category, it must find that the LEA has significant disproportionality, whether or not that race is also overrepresented in other disability categories. The State must change this factor to ensure that it is examining children with disabilities in all disability categories consistent with the statutory and regulatory requirement.
4. With respect to significant disproportionality based on race and ethnicity in the incidence, duration and type of disciplinary actions, the State reviews "Severe discrepancy in suspension and expulsion (Indicator 4A)." Indicator 4A is "the percent of districts that have a significant discrepancy in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs." A State's examination under Indicator 4A must include either a comparison of the rates of suspensions and expulsions for children with IEPs among LEAs

within the State or the rates of suspension and expulsions for children with IEPs to nondisabled children within the LEAs. While §300.646(a)(3) requires that States analyze suspension and expulsion data as part of its analysis of the incidence, duration and type of discipline, data from Indicator 4A are not relevant to a determination of significant disproportionality: Indicator 4A data do not pertain to race or ethnicity. Moreover, using data only from Indicator 4A will not account for other types of disciplinary measures such as removal to an interim alternative educational setting or suspensions or expulsions for less than 10 days. The State's method for determining significant disproportionality based on race and ethnicity with respect to discipline is inconsistent with 34 CFR §300.646 and must be revised, consistent with the statutory and regulatory requirement.

Disproportionate Representation that is the Result of Inappropriate Representation

In accordance with the requirements in section 616(a)(3)(C) of the IDEA and 34 CFR §300.600(d)(3), a State's SPP and APR must address the percent of LEAs with disproportionate representation of racial and ethnic groups in special education and related services (Indicator 9) and in specific disability categories (Indicator 10) that is the result of inappropriate identification. The State's analysis must address both overrepresentation and underrepresentation of racial and ethnic groups in special education and related services and in specific disability categories. However, as detailed below, the State has failed to address underrepresentation in its analysis.

The State reported that, based on its December 1 child count data, it identifies school divisions with disproportionate representation and requires them to complete individual student record reviews and a checklist to determine if the disproportionality was the result of inappropriate identification. The State reported zero school divisions with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that was the result of inappropriate identification in FFY 2006 and FFY 2007. During the verification visit, however, the State acknowledged that, in determining whether a school division has disproportionate representation of racial and ethnic groups in special education and specific disability categories that is the result of inappropriate identification, it has addressed only overrepresentation.

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. All school divisions have designated staff responsible for ordering NIMAS produced materials through the State's central NIMAS center entitled the Accessible Instructional Materials Center of Virginia (AIM-VA). AIM-VA tracks the delivery of instructional materials to monitor timely delivery. The State has worked with the Attorney General's Office to generate policies and procedures regarding accessible instructional materials and has made efforts to use data to determine if students with access to these instructional materials benefit in terms of achievement level.

Assessment

The State reported that it monitors to ensure school divisions comply with the Part B requirements for statewide assessments in accordance with 34 CFR §300.160. The State informed OSEP that it ensures compliance with the Part B requirements for statewide assessments through requirements identified in its Elementary and Secondary Education Act (ESEA) Accountability Workbook and Regulations governing special education programs in Virginia, onsite monitoring by the Office of Federal Program Monitoring, and assessment audits conducted jointly by the Office of Assessment and Special Education and Student Services (SESS). The State's statewide assessment program is

comprised of criterion-referenced tests based on the Board of Education “Standards of Learning.” The State uses regional teams within SESS to review local school division assessment data and work with school divisions to understand and utilize their data for program improvement.

In response to OSEPs inquiry as to how the State ensures that any school divisions using districtwide assessment comply with the requirements in 34 CFR §§300.160 and 300.320(a)(6), the State reported that: (1) there are no districtwide assessments as part of the Virginia State accountability system; (2) the State is not aware of any districtwide assessments; and (3) the State has not conducted a systematic inquiry to determine whether any school divisions are conducting districtwide assessments.

OSEP Conclusions

Based on the review of documents, analysis of data and interviews with State personnel, OSEP believes the State has procedures and practices that are reasonably designed to implement grant assurances related to private schools, CEIS, NIMAS and statewide assessment (see the discussion below regarding districtwide assessments). 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 cannot determine the extent to which the State appropriately considered correction of noncompliance in its determination process for school divisions because: (1) the State failed to make findings of noncompliance and require correction for Indicators 9-13 when the data were below 100% but above the 90% and 96% thresholds; and (2) determined timely correction based solely on whether a child subsequently received a required benefit, without also determining whether the school division is currently in compliance with regard to the specific regulatory requirement.

For the reasons described above, OSEP concludes that the State’s criteria for determining significant disproportionality are not consistent with section 618(d)(2)(B) and 34 CFR §300.646.

OSEP finds that the State’s failure to consider underrepresentation when determining whether school divisions have disproportionate representation represents noncompliance with requirements in section 616(a)(3)(C) and 34 CFR §300.600(d)(3).

OSEP cannot determine whether the State is in compliance with the requirements in 34 CFR §§300.160 and 300.320(a)(6) as they apply to districtwide assessments. The State reported to OSEP that it was not aware of any districtwide assessments within the meaning of those regulations, but also reported that it had not implemented any systematic inquiry to determine whether any school divisions had such assessments.

Required Actions/Next Steps

Within 60 days of the date of this letter, the State must:

1. Provide an assurance that its analysis for Indicators 9 and 10 are based on a review of data for both underrepresentation and overrepresentation;
2. With respect to significant disproportionality, provide: (a) an explanation for the statistical basis of the factor described in #1 above, i.e., requiring that “No race category in the general population be greater than 90%,” or if the State cannot provide a statistical basis for this factor, then provide its revised definition of significant disproportionality removing that factor; and (b) a copy of its revised definition of significant disproportionality demonstrating that it does not rely on the items described in #2-4 above, i.e., percent in previously identified problem area

decreased in 2008, at least one race is overrepresented in five disability categories, and severe discrepancy in suspension and expulsion (Indicator 4A data); and

3. Provide a description of the steps it will take to determine whether any school divisions are conducting districtwide assessments, and if so, whether those school divisions are complying with Part B requirements.

II. Data System

Critical Element 1: Collecting and Reporting Valid and Reliable Data

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

Verification Visit Details and Analysis

The State reported that it has separate mechanisms for collecting data for child count, discipline, assessment, dispute resolution and monitoring. The State provides instructions to school divisions for each specific data collection process. The State has built validation rules into the data submission process to help ensure valid data are reported. Edit checks are built into the data upload process which also helps to ensure the validity of data. The State relies on the signature of each school division's superintendent to certify that data submitted are valid and reliable. Additionally, the State conducts year-to-year comparisons to identify any potential data anomalies.

The State provides ongoing data training at the regional and school division levels. Specifically, the State conducts two trainings per year for each of the eight regions, disseminates information regarding data collection and entry at monthly regional meetings, and offers technical assistance through State-level regional teams at monthly special education director's meetings. The State also reviews data to determine areas for topical training and provides ongoing technical assistance through phone calls, electronic mail, and memos. Finally, the State's series of meetings for new special education directors includes training on data procedures.

As noted above, data for APR Indicators 9 and 10 are collected through a checklist. The State identifies which divisions have disproportionate representation based on the December 1 child count data, and requires those districts identified to complete individual student record reviews and a checklist to determine if the disproportionality was the result of inappropriate identification.

The State collects child count data, educational environments data, preschool environments data and exiting data are collected through the electronic, web-based, SpedSys application. As explained above in General Supervision Critical Element 1, the State collects school division self-review data for APR Indicators 11, 12, and 13 through electronic data bases. To provide the State with data for Indicators 9 and 10, divisions with disproportionate representation submit to the State a summary of their review to determine whether there was inappropriate identification.

The State sends school divisions memoranda to remind them of submission dates. The State-imposed deadline is earlier than the Federal submission deadline in order to afford time for the State to verify data before its submission to OSEP.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes the State has a data system that is reasonably designed to collect and report valid and reliable data and information to OSEP and the public in a timely manner. OSEP cannot, however, without also conducting a review of data collection and reporting practices at the local level,

determine whether all public agencies in the State implement the State’s data collection and reporting procedures 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 ensures that data it collects and reports reflect actual practice by using a variety of checks and balances and training personnel at all levels. See discussion under Data System Critical Element 1. The State reported that it relies on the superintendent certification process to ensure that data reflect actual practice for data included in 618 data collections. The State reported that, for APR Indicators 9, 10, 11, 12 and 13, the State conducts a record review that includes inspecting individual student files in a sample of school divisions. The State typically selects fifteen school divisions per year for on-site data verification based on school divisions that have shown dramatic improvement. The State reported that it also uses school division data profiles to do a “spot check” to verify data and conducts internal reviews to examine data.

OSEP Conclusions

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

Required Actions/Next Steps

No action is required.

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

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

Verification Visit Details and Analysis

The primary way the State uses its data systems to improve program and systems operation is through the development of special education data profiles for each school division. The special education profiles are based on APR data and are used to generate APR improvement activities and to identify “priority projects” for training needs at the regional and school division levels. The T/TACs also use data from the special education data profiles, as well as other sources, to develop and enhance improvement initiatives. Further, as explained above in the discussion of General Supervision Critical Element 1, the State uses data in school divisions’ data profiles to select school divisions for focused monitoring and to focus its on-site reviews on specific issues.

State-level program and instructional staff review data to determine training needs. The State develops conference sessions based on data from indicators that display areas for improvement. The State also encourages regional staff to review data to identify regional-level training needs.

The Federal program monitoring staff reviews the data from various data sources to identify focused monitoring areas.

OSEP Conclusions

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

Required Actions/Next Steps

No action is required.

III. Fiscal System

Critical Element 1: Timely Obligation and Liquidation of Funds

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

Verification Visit Details and Analysis

The State utilizes its Online Management of Education Grant Awards (OMEGA) system to address the need to ensure the timely obligation and liquidation of IDEA funds. The OMEGA system includes reminders and alerts to users regarding grant timelines. The State is in the process of creating a code within the OMEGA system that will automatically generate electronic notification to school divisions regarding obligation and liquidation of funds. In addition to the OMEGA system, the State's special education budget specialist monitors the ongoing obligation and liquidation of funds and the Director for Data and Financial Services notifies other directors about approaching deadlines to ensure obligations are made. The State also provides ongoing training and technical assistance to local directors regarding obligating and liquidating Part B funds.

OSEP's review of the U.S. Department of Education's Grants Administration and Payment System (GAPS) showed that while the State did not expend all of its FFY 2005 and FFY 2006 Part B funds in a timely manner¹, it did expend all of its FFY 2007 funds in a timely manner.

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 reasonably designed to 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 described how it complies with Federal requirements in calculating subgrant allocations to school divisions and other State agencies. All systems that receive funds must provide assurances in their Annual Plans (Part B applications) regarding maintenance of effort (MOE),

¹ For FFY 2005, the State did not liquidate \$37,695 of 611 funds and \$684 of 619 funds; for FFY 2006, the State did not liquidate \$13,615 of 611 funds and \$5,080 of 619 funds.

supplement not supplant, and other appropriate accounting procedures. School divisions also provide an assurance in their Annual Plans that they will expend the required proportionate share for students parentally-placed in private schools; school divisions must report annually on expenditures of services for these children from the prior year. Documentation and calculation of proportionate share is maintained within the school division.

The State reported that its funding formula is placement neutral. This ensures that funding mechanisms do not result in placements that violate the LRE requirements of Part B.

State auditors also review State and school division financial systems to ensure the appropriate expenditure of Part B funds. The State has not established an LEA Risk Pool.

OSEP Conclusions

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

The State encourages regular communication between special education program and finance office staff regarding financial matters. There is a staff member in the accounting office that is designated as the special education specialist. All funds within the State receive a specific grant award number that the State uses to track both Part B and other funds. The OMEGA system tracks all grant awards based upon the award number.

The State ensures that school divisions use Part B funds to supplement and not supplant State, local, and other Federal funds through review of the Annual Plan assurances and State audits. The State follows up on any concerns identified in a local audit. The Annual Plan assurances and the State audit process are also used to ensure school division compliance with MOE and excess costs requirements.

The Part B regulations in 34 CFR §300.163(a) require that a State 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. In calculating its compliance with the State-level MOE requirement, the State must include 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. See OSEP Memorandum 10-5, dated December 2, 2009. The State acknowledged that, in calculating State-level MOE, it considers only State appropriations to the SEA for special education, and does not consider in-kind services from other State agencies. For example, the Department for the Blind and Visually Impaired (DBVI) provides itinerant teachers for IEP services for students with visual impairments, but the State acknowledged

that it does not include the costs of these services in the State's calculation of State-level MOE. The State's practice of calculating State-level MOE based solely on SEA financial support for special education and related services for children with disabilities represents noncompliance with the regulatory provisions in 34 CFR §300.163(a).

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined that the State has procedures that are reasonably designed to ensure appropriate use of IDEA funds with the exception of the State-level MOE requirements. Specifically, OSEP finds that the State's practice of calculating State-level MOE based solely upon SEA expenditures is in violation of 34 CFR §300.163(a).

Required Actions/Next Steps

With the State's Part B FFY 2010 Application, 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 VDOE 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 amount of State financial support provided (made available) to meet the IDEA MOE requirements in IDEA section 612(a)(18) and 34 CFR §300.163.