

**Vermont 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**

During the verification visit, the Vermont Department of Education (VTDOE or State) reported that it uses multiple methods to monitor the implementation of the Individuals with Disabilities Education Act (IDEA) and the improvement of results and functional outcomes for children with disabilities and their families, including compliance and focused monitoring, dispute resolution systems and fiscal audits. The two core components are the State's compliance monitoring activities and the State's focused monitoring system.

**Compliance Monitoring**

As described in its State Performance Plan (SPP) and confirmed in interviews during the verification visit, VTDOE made substantial modifications to its compliance monitoring system beginning in Federal fiscal year (FFY) 2006. In FFY 2005 and prior years, the State conducted on-site compliance monitoring visits to selected LEAs and made findings of noncompliance during the same FFY as the monitoring visit. Beginning in FFY 2006, the State changed its practice and instituted a desk review compliance monitoring system to review compliance information and to examine the compliance indicators in the SPP and Annual Performance Report (APR). For Indicators 4A, 9, 10 and 12, the State reviews data for all 60 of its local educational agencies (LEAs) on an annual basis. For Indicators 11 and 13, VTDOE conducts desk reviews on a cyclical basis. The cycle for desk reviews for Indicators 11 and 13 began in FFY 2007, and the State will monitor each LEA at least once before the end of the current SPP cycle in FFY 2010.

Data for Indicator 4A are collected through the State's Combined Incident Reporting Software (CIRS), used to collect suspension and expulsion data for all students. VTDOE uses Annual Child Count data to report on Indicators 9 and 10. For Indicator 11, each LEA on that year's cycle submits a worksheet to the State listing all initial evaluations completed in the reporting year, the timelines for each evaluation, and reasons for a delay beyond the 60 day initial evaluation timeline. The worksheets are due by July 15<sup>th</sup> following the completion of the reporting year. The Essential Early Education (EEE) office collects worksheets from each LEA for Indicator 12 annually. These data are transmitted to the general supervision team, comprised of the State monitoring and data staff responsible for special education, in the fall following the reporting year. For Indicator 13, the general supervision team reviews individualized education programs (IEPs) from the selected LEAs for all youth 16 and older with an IEP during the summer and fall following the reporting year. Once the State has completed its review and

analysis of data for all the indicators, the State issues a consolidated letter containing its findings for the compliance indicators.

Because VTDOE's current practice is to make findings on the basis of a full year of data (July 1-June 30), VTDOE's findings will always be made in the year subsequent to the reporting year. As a result of this practice and the change from on-site monitoring to desk reviews, VTDOE was unable to provide data on correction of identified noncompliance in its FFY 2007 APR. In FFY 2005, the State made findings of noncompliance during the same year as the monitoring visit. But with the change to the desk review system in FFY 2006, the State made findings in the year subsequent to the reporting year. Therefore, findings of noncompliance from the reporting year of FFY 2006 were made in FFY 2007, and the State made no findings in FFY 2006. As stated in its FFY 2007 APR and confirmed in interviews during the verification visit, the State will report on correction of findings for noncompliance that occurred in FFY 2006, which were identified in FFY 2007, in the FFY 2008 APR, due February 1, 2010.

In FFYs 2007 and 2008, the State indicated that the data from the desk reviews for all the compliance indicators were not available to the general supervision team until December following the reporting year. As a result, the State did not issue findings of noncompliance for these indicators until April and May of FFY 2007 and March of FFY 2008, respectively. If findings continue to be issued as late as March, as they were in FFY 2008, correction of noncompliance that occurred in September of 2008, for example, would not be verified until March 31, 2011. During the verification visit, VTDOE reported that it expected that FFY 2008 data from desk reviews would be available by October of 2009 and that it anticipated that findings would be made in December of 2009.

Although VTDOE has indicated, as reported above, that it anticipates shortening the time for issuing findings following the end of the reporting period from nine months (June 30, 2008- March 31, 2009), to six months (June 30, 2009-December 31, 2009), this projected timeline could still result in a finding of noncompliance being made up to 18 months after the noncompliance occurred. Even assuming correction is verified within the one-year timeline in accordance with 34 CFR §300.600(e) and the guidance in OSEP Memorandum 09-02 dated October 17, 2008 entitled "Reporting on Correction of Noncompliance in the Annual Performance Report under section 616 and 642 of the IDEA (OSEP Memo 09-02)"<sup>1</sup>, there still could be situations where correction could not occur and be verified until two and a half years after the original date of the noncompliance. For example, an LEA could have implemented an IEP for a 16 year old student without the required secondary transition goals in September of 2008. The data showing the noncompliance would be collected in July of 2009, and analyzed and provided to the State by September 30, 2009. Even though the SEA would notify the LEA of the finding of noncompliance by December 31, 2009, the LEA would not be notified of the finding until 15 months after the noncompliance had occurred. Even assuming that timely correction occurred in accordance with 34 CFR §300.600(e) and OSEP Memo 09-02, it could not be verified until December 31, 2010, 27 months after the

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<sup>1</sup> <http://www.ed.gov/policy/speced/guid/idea/letters/2008-4/correction-noncompliance101708apr4q2008.pdf>

noncompliance occurred.

In interviews during the verification visit, VTDOE explained that, based on when the data are submitted and/or available and the time it takes to analyze the data, they cannot discover the noncompliance until September at the very earliest, and that once the noncompliance is discovered, they expect findings to be issued within three months of discovery, generally in December. VTDOE believes that, if it issues findings in December, its practice will be consistent with the response to Question 7 in OSEP's Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the SPP and APR, dated September 3, 2008 (OSEP's Sept. 3, 2008 FAQs). The response to Question 7 states that "[w]ritten notification of findings needs to occur as soon as possible after the State concludes that the LEA or EIS program has noncompliance, and that generally OSEP expects that "written findings be issued less than three months from discovery." While OSEP acknowledges that VTDOE's practice, once modified, would conform to the response quoted above, OSEP's Sept. 3, 2008 FAQs did not specifically address a situation where a State makes findings of noncompliance based on analysis of a full year's worth of data.

*Focused Monitoring*

VTDOE piloted its focused monitoring (FM) process in FFY 2006 and fully implemented the process in FFY 2007. As reported by the State during the verification visit, each year its Stakeholder Group reviews the data for the results indicators in the SPP and sets priorities for the upcoming year by choosing the indicator(s) for FM. Based on the performance of the LEAs on the chosen priority area(s), the monitoring team ranks the LEAs and selects three to six LEAs for an on-site review of programs related to the chosen performance indicator during the academic year. The Stakeholder Group has chosen least restrictive environment (LRE) as the priority area for each year of FM starting with the pilot year of FFY 2006. For the FM scheduled for the spring of 2010, the Stakeholder Group added dropout rates as an additional priority area. In addition, once the State has identified the LEAs with low performance levels on the LRE and dropout indicators and eliminated LEAs that have undergone FM in previous years, it will select LEAs for FM from this list that also did not make adequate yearly progress (AYP), as defined in section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act (ESEA).

Following the FM site-visit, the State issues a report that includes four sections summarizing the monitoring team's conclusions:

- 1) Commendations for the LEA Related to the Indicators
- 2) LEA Findings Related to the Indicators
- 3) Areas of Concern Related to the Indicators
- 4) Non-compliance in Related Requirements

OSEP reviewed eight FM reports and has concerns about the criteria used for making findings of noncompliance with the IDEA. In interviews during the verification visit, the State explained that of the four areas, only items listed under "Non-compliance in Related

Requirements” result in findings of noncompliance, and these are the only findings from FM visits that are tracked in data submitted for Indicator 15 for timely correction. This explanation was corroborated by OSEP’s review of the eight sample FM reports. The reports include a statement that findings made for “Non-compliance in Related Requirements” must be corrected within one year of the issuance of the report. No similar statement is included in the other sections, including “LEA Findings Related to the Indicators.” Of the four sections listed above, the first section, “Commendations for the LEA Related to the Indicators,” involves identification of a strength rather than noncompliance. The State makes clear in the reports, as will be discussed below, that it does not believe it has sufficient evidence to sustain a finding for the issues raised in the third section “Areas of Concern Related to the Indicators.” Based on interviews with the State during the verification visit and OSEP’s review of monitoring reports, OSEP has concerns about the second section, “LEA Findings Related to the Indicators.”

VTDOE explained to the OSEP verification team that they do not consider “LEA Findings Related to the Indicators” to be findings of noncompliance, but rather areas that require improvement over time. However, in this section of the issued reports and template that VTDOE uses to generate FM reports, the State notes that “the Monitoring Team must validate a concern through three separate sources of data to issue a finding. The State indicates that it believes that these triangulations of data make certain that the information is valid and reliable.” During interviews, the State explained that the “triangulations” include verification of the information from separate data sources including interviews, files, and policies and procedures. However, the “findings” include citations of State rules, which often correspond to requirements in Federal IDEA regulations. LEAs are required to address issues identified in this section in their Focused Monitoring Improvement Plans (Improvement Plans), but are not required to correct these “findings” within one year of identification. By contrast, the third section of the report states that issues identified in “Areas of Concern Related to Indicators” “cannot be triangulated” and “do not rise to the level of a finding.” LEAs are encouraged, but not required, to address the identified issues in their Improvement Plans. The use of “findings,” the requirement for confirmation by triangulation, and the use of State citations lead OSEP to conclude that at least some of the issues identified under “LEA Findings Related to the Indicators” are findings of noncompliance with the requirements in Part B of the IDEA.

OSEP’s review of the eight FM reports corroborated these concerns. The review showed that not all the findings listed in the “LEA Findings Related to the Indicators” constitute noncompliance with the requirements of the IDEA. On the other hand, OSEP is concerned that a number of the findings included in this section of the FM reports that are not identified as noncompliance with the IDEA appear to constitute noncompliance with the IDEA. The report of the February 2008 FM visit to Rutland City contained the following finding in the section entitled “LEA Findings Related to the Indicators”:

Rutland City School District does not consistently provide special education and/or related services to students based on the unique needs of their students with disabilities. VT Rules 2360.3.2(a) and 2360.3.1 Special Education Services.

This LEA finding, which only references State rules, could also constitute a finding of noncompliance with IDEA's free appropriate public education and individualized education program requirements in 34 CFR §§300.101 and 300.112, which are made applicable to LEAs by §300.201.

The report of the March 2009 FM visit to Windham Central included the following finding:

Leland and Gray Union High School #34 does not ensure that a student eligible for special education services is educated with his or her non-disabled peers, to the maximum extent appropriate. VT State Board Rule 2364.1.

This LEA finding, which only references State rules, could also constitute a finding of noncompliance with IDEA's LRE requirements in 34 CFR §§300.114 through 300.117, which are made applicable to LEAs by §300.201.

OSEP also examined the remaining six reports of LEAs that received FM visits during 2008 and 2009, and identified items in "LEA Findings Related to the Indicators" in those reports that appeared to constitute noncompliance with the requirements of the IDEA, but were not identified as noncompliance with the IDEA. The State confirmed during the verification visit that none of these "findings" were included in the data submitted for Indicator 15 of the APR. This practice is inconsistent with OSEP's Sept. 3, 2008 FAQs and OSEP Memo 09-02, in which OSEP explained that regardless of the specific level of noncompliance, if a State finds noncompliance in an LEA, it must notify the LEA in writing of the noncompliance and require correction within the one-year timeline. Response to Question 3 in OSEP's Sept. 3, 2008 FAQs and OSEP Memo 09-02 at page 2.

#### Dispute Resolution

VTDOE reported that State complaint decisions are reviewed periodically and when noncompliance is identified, they are referred to the general supervision team to ensure correction. Both findings from complaint decisions and tracking correction of those findings are included in the data reported under Indicator 15 of the APR. If noncompliance is identified through the resolution of a State complaint, the LEA is informed of the noncompliance and of its obligation to correct the noncompliance within one year of the State's identification of the noncompliance. Although VTDOE does examine State complaint decisions to track correction of identified noncompliance, OSEP learned through interviews during the verification visit that VTDOE does not examine every due process hearing decision to determine if the decision identifies any procedural and/or substantive violations of IDEA in a specific LEA, and does not report those findings or track correction of those findings in the data reported under Indicator 15 of the APR. However, the response to Question 6 in OSEP's Sept. 3, 2008 FAQs states that "[a] State must examine every due process hearing decision to determine if the decision identifies any procedural/substantive violations of IDEA in an LEA."

Residential reviews

Under State rules, when an IEP team recommends a residential placement, the State must review the placement to determine if it is an appropriate placement and recommends an alternative placement if necessary. The review is conducted by the residential review team within VTDOE. If the team uncovers IDEA noncompliance during the course of the review, the general supervision team is informed, and issues a finding of noncompliance that requires correction within the one-year timeline. Data from residential reviews regarding the identification of noncompliance and the tracking of correction are reported under Indicator 15 of the APR.

**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 valid and reliable data reflecting noncompliance with Part B requirements and monitor all programs providing special education and related services. Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that the State monitors the improvement of educational results and functional outcomes for all children with disabilities in accordance with 34 CFR §300.600(b)(1). However, OSEP finds that the State does not have a general supervision system that monitors to identify whether public agencies are in compliance with all program requirements in a timely manner (34 CFR §§300.600(b)(2) and 300.149). The delay between the end of the reporting period (June 30, 2007) and the March 31, 2008 issuance of findings of noncompliance related to the compliance indicators constitutes an unreasonable delay in the process of identifying noncompliance and subsequently correcting noncompliance. In addition, OSEP finds that the section of focused monitoring reports, "LEA Findings Related to the Indicators," contained findings that reference noncompliance with State requirements that also appear to OSEP to constitute noncompliance with the requirements of Part B of the IDEA, but VTDOE did not identify those issues as findings of noncompliance with the IDEA in its focused monitoring reports or require its LEAs to correct the noncompliance within the one-year timeline. OSEP also finds that VTDOE did not use all available information to make findings of noncompliance, because it did not examine every due process hearing decision to determine if the decision identifies any procedural and/or substantive violations of IDEA in a specific LEA, or report in its APR every finding of noncompliance with a requirement of the IDEA identified in a due process hearing decision in a State's data for Indicator 15, as specified in OSEP's Sept. 3, 2008 FAQs.

**Required Actions/Next Steps**

With its FFY 2010 Grant Application, due May 10, 2010, the State must provide:

- 1) Documentation demonstrating that it has reduced the delay between the end of the reporting period and the issuance of findings of noncompliance related to the compliance indicators, including sample findings from reports issued in FFY 2009 and an assurance that future compliance monitoring will result in findings made within a reasonable time from the end of the reporting period.

- 2) Documentation demonstrating that the State makes findings of noncompliance when it identifies noncompliance with the requirements of Part B of the IDEA through focused monitoring, regardless of the level of the noncompliance, and that findings that constitute noncompliance with State requirements that also reflect noncompliance with Federal requirements are identified as findings of noncompliance with the requirements in Part B of the IDEA.
- 3) A plan describing how it uses all of its components, including data the State receives through its monitoring system, statewide database, State complaints, and due process hearings, to timely identify and notify LEAs of noncompliance.

***Critical Element 2: Correction of Noncompliance***

*Does the State have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner?*

**Verification Visit Details and Analysis**

During the verification visit, VTDOE reported that when the State issues a finding of noncompliance through its compliance monitoring procedures or a finding made as a result of a Residential Review, it directs LEAs to complete a Corrective Action Plan (CAP) using a template provided by the State and requires correction within one year of the State's identification of the noncompliance identified through monitoring in accordance with 34 CFR §300.600(e) and the guidance regarding correction of systemic noncompliance in OSEP Memo 09-02. The template includes sections for the findings and citations of the relevant statutory or regulatory requirements at issue, benchmark dates for reporting, a list of documentation required to substantiate correction, and the actions required. The LEA must submit the CAP to VTDOE for approval within one month of the date of the finding. LEAs are informed in the letter of findings that all noncompliance must be corrected within one year of the date of the finding, which corresponds to the date of the letter informing the LEA that it is not in compliance with Part B of the IDEA and the specific statutory or regulatory requirements at issue. The CAP template provided by the State to the LEAs requires quarterly updates of data for noncompliant indicators.

LEAs that receive findings of noncompliance made through FM visits are required to document correction through Focused Monitoring Improvement Plans. These are similar to the CAPS, in that the State provides a template for the LEA to fill out that must be approved by VTDOE. However, the Improvement Plans have separate sections for "LEA Findings Related to the Indicators," "Areas of Concern Related to the Indicators" and "Non-compliance in Related Requirements." For findings made in "Non-compliance in Related Requirements," the template indicates that correction must occur within one year of the State's identification of the finding, whereas the other sections of the FM reports allow the LEA to develop its own timeline. This is consistent with what the State told OSEP about findings of noncompliance through FM, as discussed in the GS1 section above.

In accordance with 34 CFR §300.600(e) and the guidance provided in OSEP Memo 09-02, in order to demonstrate that previously identified noncompliance has been corrected,

a State must account for all instances of noncompliance, including noncompliance identified through a State's monitoring system or other monitoring procedures, or through the review of data collected by the State, including compliance data collected through the State data system; identify where noncompliance occurred in LEAs, the percentage of noncompliance level in each of those sites; and the root cause of the noncompliance; whether the affected LEA has changed, or has been required to change, its policies, practices, and procedures that contributed to or resulted in the noncompliance; and whether the LEA with identified noncompliance is correctly implementing the specific regulatory requirement(s) at issue. This verification of correction must be based on a review of updated data collected through the State's data base or monitoring system.

In order to verify correction of noncompliance with the IDEA identified through either compliance monitoring or FM, the State reported that it reviews the documentation submitted as part of the CAP or Improvement Plan. During the verification visit, OSEP reviewed monitoring files and samples of documentation submitted by LEAs to verify correction of noncompliance with the requirements of the IDEA. This documentation included, as appropriate: updated data; training agendas, presentations and attendance lists; and updated or revised policies, practices, or procedures. OSEP's review confirmed that, in cases where the State or LEA identified systemic noncompliance with the IDEA through a root cause analysis, in order to verify correction, VTDOE reviewed documentation of new practices, policies and/or procedures that addressed the noncompliance. However, where findings of child-specific noncompliance with the IDEA require correction, the State has not established procedures to ensure that the LEA has corrected each individual case of noncompliance or to verify that the identified noncompliance has been corrected and in the case of timeline requirements, has completed the required action. This practice is inconsistent with 34 CFR §300.600(e) and OSEP's standard for establishing correction set forth in OSEP Memo 09-02.

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. OSEP Memo 09-02 provides that "[f]or any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, the State must ensure that the LEA has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA." Similarly, for any noncompliance concerning a child-specific timeline requirement, the State must ensure that the LEA or EIS program has completed the required action (e.g., the evaluation or initiation of services, though late), unless the child is no longer within the jurisdiction of the LEA.

In addition, as discussed above in the GS1 section, the State has not established procedures to identify and track all findings of noncompliance with the requirements of the IDEA identified in due process hearing decisions. VTDOE does not ensure correction of these findings within the one-year timeline or include them in its data for

Indicator 15 of the APR, as specified in the response to Question 6 in OSEP's Sept. 3, 2008 FAQs.

### **OSEP Conclusions**

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the State must ensure that identified noncompliance is corrected in a timely manner. Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes the State does not have a general supervision system that is effective in ensuring correction of all identified noncompliance in a timely manner, in accordance with 34 CFR 300.600(e). Specifically, OSEP finds that the State does not have procedures to ensure that the LEA has corrected each individual case of child-specific noncompliance or, in the case of timeline requirements, completed the required action, as described in OSEP Memo 09-02. In addition, the State is not ensuring the correction of all findings of noncompliance identified in due process hearing decisions, as specified in the response to Question 6 in OSEP's Sept. 3, 2008 FAQs.

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

With its FFY 2010 Grant Application, due May 10, 2010, the State must provide:

- 1) Documentation with regard to correction of child-specific noncompliance, demonstrating that the State has established procedures to ensure that the LEA has corrected each individual case of noncompliance or, in the case of timeline requirements, completed the child-specific required action although late, unless the child is no longer in the jurisdiction of the LEA, consistent with OSEP Memo 09-02.
- 2) Documentation that the State is ensuring the correction of all findings of noncompliance with the IDEA identified in due process hearing decisions within one year of the State's identification of the noncompliance and including data on the correction of these findings in its data for Indicator 15 of its APR.
- 3) Documentation that the State is tracking correction of noncompliance with the IDEA identified in its focused monitoring reports within one year of the State's identification of the noncompliance and including this data in Indicator 15 of its APR.

### ***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 Complaint System***

VTDOE has tracking systems to monitor the timeliness of complaint decisions and the correction of noncompliance identified in complaint decisions. The data reported in the State's FFY 2007 APR and Table 7 indicate that all State complaints were investigated and resolved within the required 60 day timeline, with no extensions for exceptional circumstances. In FFY 2007, 21 written complaints were filed. Fourteen resulted in written reports with findings, while the remaining seven were resolved through other

means. During the verification visit, OSEP reviewed the State complaint logs for FFY 2006 and FFY 2007 and five complaint files from both years. OSEP's review verified the accuracy of the data reported in the FFY 2007 APR and Table 7. In addition, in all the reviewed files, OSEP determined that the State investigated and reached a conclusion on each allegation in the complaint that was set forth in a written decision to the complainant, and the decision was shared with both the complainant and the LEA.

The State has a model State complaint form posted on its website, which is disseminated throughout the State through LEAs, professional organizations, parent groups and advocacy organizations. Organizations or individuals wishing to file a State complaint may also submit a letter, as long as it provides the information required of a signed written complaint in 34 CFR §300.153.

#### Due Process Hearings

VTDOE has tracking systems to monitor the timeliness of resolution sessions and due process hearing decisions. The State generally has few due process hearing requests that are fully adjudicated. The State's FFY 2007 APR and Table 7 documented only one fully adjudicated hearing request with the hearing decision that was issued within a properly extended timeline. During the verification visit, OSEP reviewed the due process complaint logs for FFY 2006 and FFY 2007 and five complaint files from both years. OSEP's review verified the accuracy of the data reported in the FFY 2007 APR and Table 7. The State reported that it had two fully adjudicated due process hearings in FFY 2008.

The State has model due process hearing forms, one for parents and one for LEAs, posted on its website, which are widely disseminated throughout the State. Prior to the visit, OSEP reviewed the website and the forms and discovered that parents or LEAs wishing to file a due process complaint were required to use the model form. After OSEP confirmed that this was VTDOE's practice during the verification visit, OSEP informed VTDOE that this practice is inconsistent with 34 CFR §300.509(a), which specifies that the SEA or LEA may not require the use of its model forms. Subsequent to OSEP's visit, the State has revised the information on the website to indicate that a hearing may be requested in writing by using the forms posted on the website **or** by writing a letter to the Commissioner. OSEP is satisfied that this updated information meets the requirements of 34 CFR §300.509(a) and appreciates the State's timely attention to this matter.

During the verification visit, VTDOE reported that it places due process hearing decisions on the agenda of the State advisory panel each year. When questioned during the verification visit, VTDOE indicated to OSEP that it does not transmit the findings and decisions in due process hearings, referred to in 34 CFR §300.512(a)(5), with the deletion of personally identifiable information, to the State advisory panel, as required by 34 CFR §300.513(d)(1). However, VTDOE indicated to OSEP, and OSEP confirmed, that it makes findings and decisions in due process hearings, with the deletion of personally identifiable information, available to the public by posting them on its website.

Subsequent to OSEP's verification visit, VTDOE informed OSEP that it transmitted findings and decisions of the two due process complaints that were fully adjudicated in 2008-2009 to the State advisory panel, and provided documentation of the transmittal to OSEP. OSEP appreciates the State's timely attention to this matter.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP determined that the State has demonstrated that it has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA.

### **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 described multiple procedures and practices employed to improve educational results and functional outcomes for students with disabilities throughout the State. Many of these initiatives are department-wide efforts, involving general education, as well as special education. These procedures and practices include initiatives to improve graduation and dropout rates, post-school outcomes, LRE, proficiency on State assessments and preschool outcomes.

VTDOE requires schools that are identified as in need of technical assistance to improve graduation rates to develop improvement plans, with State guidance. Local Interagency Teams receive training and support through regional trainings, online trainings, and the Interagency Matters newsletter. The State's School Quality Standards allow a school team, with the superintendent's approval, to develop a plan that sets alternative methods for individual students to meet graduation requirements. Several schools with low graduation rates are preparing to implement or are already implementing Positive Behavioral Supports (PBS) as a school-wide program. Overall, one third of the State's schools are implementing, or are planning to implement, PBS.

The State reported that it has experienced a large variation in dropout rates across high schools. To address dropout prevention, the State enacted new legislation, Act 44, Section 29(7), which calls for a zero dropout rate by the year 2020. Under the "Success for All Students" program, LEAs have been directed to take a variety of actions designed to improve dropout rates for at-risk students. For example, LEAs have implemented an expansion of alternative methods of earning credits towards graduation, designed to provide options for potential dropouts that will allow them to stay in school and graduate. In addition, the Stakeholder Group, as discussed in the section on GS1 above, has added SPP Indicator 2 on dropout rates as a priority indicator for Focused Monitoring visits,

providing further opportunities to explore root causes of high dropout rates that occur in selected locations.

The State reported that training and technical assistance targeted at improving assessment results has focused on several approaches and strategies. These included PBS, Response to Intervention (RtI), Differentiated Instruction (DI), and the Vermont Integrated Instruction Model (VIIM) initiative. In addition to the four RtI pilot schools, there are now two LEAs preparing to implement RtI at all elementary schools and, eventually, in middle and high schools as well.

The State reported that it is working to improve post-secondary outcomes through a variety of methods. The State offers online courses in secondary transition; an electronic Community of Practice; online professional development resources; and annual trainings for new special education administrators. Representatives from the State's general supervision team work in conjunction with transition consultants to provide targeted professional development and technical assistance to LEAs. A statewide annual conference was conducted to focus on community employment and post-secondary education. The Vermont Parent Training and Information Center, now called the Vermont Family Network, conducts an annual college fair which includes representatives of the State transition staff.

As indicated above, LRE has also been the consistent priority area for FM visits. This allows the general supervision team to provide intensive technical assistance aimed at improving policies and practices related to LRE. The State has also indicated that there is an increase in the number of districts engaged in co-teaching, designed to promote inclusive educational practices. Furthermore, VTDOE conducted child count trainings that included discussions of accurate reporting of LRE data. Additional technical assistance is provided on a child count phone line. LRE has been addressed in preschools through early childhood consultants who participate in focused monitoring activities. In interviews during the verification visit, the State indicated that new statewide preschool rules are expanding options to include 3-5 year old students with disabilities in their communities, thus increasing the ability to educate preschool children with disabilities with their nondisabled peers.

The State reported that it implemented a number of improvement activities to improve preschool outcomes. During FFY 2006, the Vermont legislature passed Act 62, formally establishing publicly-funded preschools for three to five year olds. A key provision of the law is that all children in publicly-funded preschool programs must be assessed using specific tools identified by the State. Foundations for Early Learning (FEL) integrates the State's two technical assistance grants focused on preschool outcomes: the Center on the Social and Emotional Foundations for Early Learning (CSEFEL) and Center for Early Literacy Learning (CELL). CSEFEL provides a conceptual framework of evidence based practices, which addresses the social emotional development and challenging behavior of young children. CELL promotes the adoption and sustained use of evidence based early literacy learning practices by early childhood intervention practitioners, parents, and

other caregivers of all young children, including those children with identified disabilities, developmental delays, and at risk for poor outcomes.

**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 and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities.

**Required Actions/Next Steps**

No further 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**

VTDOE uses its grant application process and monitoring to ensure the implementation of grant assurances.

**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) and 300.602(b)(1)(i)(A), each State must annually report to the public on the performance of each LEA and must make an annual determination for each LEA.

**Public Reporting:** Under 34 CFR §300.602(b), each State must make publicly available the following three items: 1) the State's SPP; 2) the State's APR; and 3) the State's annual report on the performance of each LEA located in the State on the targets in the SPP. In addition, effective December 31, 2008, 34 CFR §300.602(b)(1)(i)(A) requires that the annual report to the public on the performance of each LEA located in the State on the targets in the SPP be made available as soon as practicable, but no later than 120 days following the State's submission of its APR to OSEP.

VTDOE posts each of the three items on its website. However, OSEP notes that the State posted its most recent local performance reports, based on the FFY 2007 APR submitted to OSEP on February 2, 2009, on June 23, 2009, three weeks beyond the 120 day timeline required in 34 CFR §300.602(b). VTDOE indicated to OSEP that issuing the reports within 120 days of the APR submission will be a priority for upcoming years and that the reports will be publicly available within the required timeline. OSEP appreciates the State's attention to this requirement.

**Annual Local Determination Criteria:** Under 34 CFR §300.600(a)(2), each State must make determinations annually about the performance of each LEA using the categories

that OSEP uses when it makes annual determinations on the performance of each State. VTDOE uses these categories in making its annual local determinations.

As described in interviews during the verification visit and confirmed through State-issued documentation, in consultation with its stakeholders, VTDOE has developed criteria for making local determinations. Local determinations are made based on a scoring rubric that considers compliance and performance indicators, timely and accurate data, timely correction of noncompliance, agreement to all State required assurances, and designation as a high spending LEA. Annual local determinations are made in the spring, with final determination letters being issued within 120 days of the State's submission of the APR. Determination letters are sent to the local superintendents and special education directors and include the rubric and criteria for making the determinations.

Consistent with sections 616(a) and (e) of IDEA, at a minimum, a State's annual local determination process must include consideration of the following factors: an LEA's performance on all SPP/APR compliance indicators, whether an LEA submitted valid and reliable data for each indicator, LEA-specific audit findings, and any uncorrected noncompliance from any source. (See Determinations FAQs dated October 19, 2006 and December 4, 2007 and OSEP Guidance on Determinations of the Status of Local Programs by State Agencies under Parts B and C of IDEA dated March 7, 2007). VTDOE's local determination criteria, described above, do not currently include consideration of audit findings, as required in the referenced OSEP guidance documents.

Local Determination Enforcement: VTDOE has developed a rubric for enforcement actions by determination level. Under 34 CFR §300.600(a)(3), States must enforce 34 CFR Part 300 consistent with 34 CFR §300.604, using appropriate enforcement mechanisms specified in that section. After review of the rubric, OSEP notes the following:

- 1) For an LEA in Needs Assistance (NA) for two or more consecutive years, a required enforcement mechanism is technical assistance. 34 CFR §§300.600(a)(3) and 300.604(a)(1). Although the State makes the LEA aware of technical assistance that is available, the State does not require the LEA to work with appropriate entities, as specified in 34 CFR §300.604(a)(1).
- 2) For an LEA in Needs Intervention (NI) for three or more consecutive years, a required enforcement mechanism is a corrective action plan (CAP) or improvement plan. 34 CFR §§300.600(a)(3) and 300.604(b)(2)(i). The State lists the implementation of a CAP as the required enforcement action. However, the State does not specify that the requirement to prepare a CAP or improvement plan would apply only if the State determines that the LEA should be able to correct the problem within one year, consistent with 34 CFR §300.604(b)(2)(i). For an LEA in NI for three or more consecutive years, 34 CFR §300.600(a)(3) also requires that withholding of Part B funds, in whole or in part, by the SEA must be an enforcement mechanism the State uses for its LEAs. 34 CFR §300.604(b)(2)(v). VTDOE needs to revise its local determinations rubric to include this enforcement mechanism. Although 34 CFR §300.604(b)(2)(vi) also

mentions referral of the matter for appropriate enforcement action, which may include referral to the Federal Department of Justice, the State may also want to consider using a referral to an agency that has authority equivalent to the Federal Department of Justice as an additional enforcement mechanism for LEAs in NI for three or more consecutive years.

3) For an LEA in Need of Substantial Intervention (NSI), a required enforcement mechanism is withholding funds, in whole or in part, by the SEA. 34 CFR §§300.600(a)(3) and 300.604(c)(2). While VTDOE includes the withholding of Part B funds, as described at 34 CFR §300.604(c)(2), as one of multiple options for enforcement for LEAs in the NSI category, it does not require that funds be withheld.

*Significant Disproportionality and CEIS*

VTDOE reported to OSEP that it collects and examines data annually, pursuant to 34 CFR §300.646, 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: 1) the identification of children as children with disabilities; 2) the identification of children as children with a specific disability; 3) the placement of children with disabilities in particular educational settings; and 4) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. In an interview with OSEP, VTDOE staff explained that VTDOE would find that significant disproportionality is occurring in an LEA if it exceeds a risk ratio of 5.0 in any of the four areas listed above, with a minimum “n” size of 11.

The State reported that it does not have formal written policies for determining whether significant disproportionality is occurring in the State or in LEAs in the State, as required by 34 CFR §300.173. The State also reported that it uses methods similar to those it uses in determining whether LEAs have disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories, except that the State uses a risk ratio of 5.0 for significant disproportionality, while it uses a risk ratio of 3.0 in determining whether LEAs should be identified with disproportionate representation. To date, the State has not determined that significant disproportionality based on race and ethnicity is occurring in any LEAs in the State.

Although VTDOE described to OSEP the method it uses to determine if significant disproportionality is occurring, the State must adopt formal written policies for determining whether significant disproportionality on the basis of race and ethnicity is occurring. The Part B regulation in 34 CFR §300.173 requires States to have in effect, consistent with the purposes of 34 CFR Part 300 and section 618(d) of the IDEA, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children with disabilities, including children with disabilities with a particular impairment described in 34 CFR §300.8. The Part B regulation in 34 CFR §300.646 implements section 618(d) of the IDEA. The State’s failure to adopt written policies for determining whether significant disproportionality on the basis of race and ethnicity is occurring in the State or in LEAs

in the State in accordance with section 618(d) of the IDEA and 34 CFR §300.646 is inconsistent with its duty under 34 CFR §300.173.

OSEP is also concerned that Vermont's use of a risk ratio of 5.0 sets the bar too high, and makes it unlikely for the State to determine that significant disproportionality is occurring in any LEA on the basis of race and ethnicity regardless of its identification, placement, or disciplinary practices. The Data Accountability Center (DAC) has issued 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 VTDOE review this guidance and/or seek DAC's assistance to ensure that it can develop statistically sound policies for identifying 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.

Because no LEAs have been identified with significant disproportionality, no LEAs have been required to reserve funds for CEIS. Two LEAs have voluntarily used IDEA funds for CEIS, and with the availability of additional funds under the American Recovery and Reinvestment Act of 2009 (ARRA), the State has received a significant increase in requests for the voluntary use of funds for CEIS. In response, VTDOE informed OSEP during the verification visit that it has been developing policies, procedures and criteria for reviewing CEIS requests, and for the tracking of those funds. The review process examines each request to ensure appropriate use of CEIS funds in accordance with 34 CFR §300.226. Through FFY 2008, the State tracked CEIS funds through the use of separate budget codes for those expenditures. For FFY 2009, the State is issuing a separate grant number for CEIS funds, which should increase its ability to track the budgeting and expenditure of the funds.

#### Private Schools

VTDOE calculates each LEA's proportionate share of Part B funds to be expended on the provision of special education and related services for parentally-placed private school children with disabilities, consistent with 34 CFR §300.133, as part of the annual budget and application process for IDEA Part B funds. LEAs are required to maintain and file a written affirmation of appropriate consultation for parentally-placed private school students, in accordance with 34 CFR §§300.134 and 300.135. The State has provided extensive training to LEAs on their responsibilities to parentally-placed private school students under 34 CFR §§300.130-300.144, including the provision of equitable services and meaningful consultation.

#### NIMAS

VTDOE has adopted the National Instructional Materials Accessibility Standard (NIMAS) and coordinates with the National Instructional Materials Accessibility Center (NIMAC). It is also a member of the Accessible Instructional Materials Consortium (AIM). The State uses Bookshare to ensure distribution of accessible instructional materials to LEAs. In addition, it coordinates with the Vermont Association for the Blind

and Visually Impaired, and State and regional consultants to provide technical assistance as needed.

Assessments

Assessment program and accommodations: VTDOE completed the State's transition to The New England Common Assessment Program (NECAP) for grades 3 - 8 and 11 for reading and math in FFY 2007 (July 1, 2007 - June 30, 2008). These tests measure students' academic knowledge and skills relative to Grade Expectations. Teams of teachers from Vermont, Rhode Island and New Hampshire developed these grade expectations, which represent the knowledge and skills that students should have achieved by the end of the previous school year (reading and math). VTDOE administers the Vermont Alternate Assessment Portfolio (VTAAP) for those students whose IEP team determines an alternate assessment is appropriate.

As part of the transition, the State adopted the NECAP Accommodation Guidelines, and Procedures. VTDOE has provided extensive cross-departmental training to LEAs on the new assessments, accommodation guidelines and IDEA-related assessment requirements. The State also conducts half-day trainings on alternate assessments, including the appropriate selection of students and the use of accommodations.

To ensure that all students with disabilities are participating in statewide assessments, the Standards and Assessments office uses its student database to confirm the participation of all students. VTDOE contacts the school of any student who did not participate without documentation of an allowable exemption (medical or family emergency). The State IEP form includes a section for accommodations and the type of assessment to be given. Although the Standards and Assessments office makes occasional site visits during assessments, there are no routine or systematic procedures for ensuring that alternate assessments and accommodations are provided in accordance with students IEPs, and OSEP encourages VTDOE to develop more formal procedures to ensure that students with disabilities are appropriately included in statewide assessments.

Public Assessment Reporting: The State's website reports NECAP results for all children at the State, district, and school levels. Section 300.160(f) of the Part B regulations requires that the State or in the case of a districtwide assessment, an LEA, must make available to the public and report to the public with the same frequency and in the same detail that it reports on the assessment of nondisabled children, information regarding the participation and performance of children with disabilities on assessments. This includes the number of children with disabilities participating in regular assessments and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments and the number of children participating in alternate assessments, as described in 34 CFR §300.160(f)(2)-(4). With respect to performance, a State or LEA that reports publicly on the performance of all children on statewide or districtwide assessments, also must report to the public on the performance of children with disabilities on regular assessments, as compared with the achievement of all children, and on alternate assessments described in 34 CFR §300.160(f)(5), if the number of children participating in those assessments is sufficient to yield statistically reliable information, and reporting that information will not yield

personally identifiable information about an individual student participating on those assessments.

State level data meeting the requirements in 34 CFR §300.160(f) are currently available through section 618 data reported on Table 6 and attached to the APR, which is publicly reported. However, district and school level data on the participation and performance of students with disabilities on statewide assessments are not made available to the public and reported to the public as required under the Part B regulations.

Assessments at the District Level: In order to comply with State School Quality Standards Requirements (Vermont State Board Rule 2120.2.2), LEAs must have a local comprehensive assessment. LEAs have flexibility in designing these assessments, but they must apply to all K-12 students and cover English Language Arts, Math, Science, Arts, Social Studies, Physical Education, and Comprehensive Health. The State rules further provide that the local assessments include performance criteria of the system that are clear and are communicated to teachers, administrators, students, parents and other community members. In addition, Vermont State Board Rules require that schools report annually on the results of the local assessments. (Vermont State Board Rule 2120.3)

In interviews during the verification visit, the State indicated that because it does not consider its local assessments to be districtwide assessments, it has no mechanism to ensure that appropriate alternate assessments and accommodations are offered for districtwide assessments, as required under 34 CFR §300.160(a); nor does it require its LEAs to develop accommodation guidelines for those assessments in accordance with 34 CFR §300.160(b). However, it appears to OSEP, based on interviews during the verification visit and review of relevant State materials, that Vermont's local assessments are districtwide assessments. Accordingly, OSEP believes that Vermont's local assessments are subject to the requirements in 34 CFR §300.160 regarding the participation of children with disabilities in those assessments, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs, the requirement for LEAs to develop accommodation guidelines, and the requirements to report on the participation and performance of children with disabilities on those district-wide assessments with the same frequency and in the same detail as it reports on the assessment of nondisabled children.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State does not have procedures and practices that are reasonably designed to implement all selected grant assurances (i.e., monitoring and enforcement, significant disproportionality, private schools, CEIS, NIMAS, and assessment). Specifically, the State's annual local determination process does not consider LEA-specific audit findings, as required by sections 616(a) and (e) of IDEA. (See Determinations FAQs dated October 19, 2006 and December 4, 2007 and OSEP Guidance on Determinations of the Status of Local Programs by State Agencies under Parts B and C of IDEA dated March 7, 2007.) In addition, the State's rubric of enforcement actions, based on its annual local determinations, does not comply with all the requirements of 34 CFR §§300.600(a)(3) and 300.604. VTDOE also has not fulfilled its duty under 34 CFR §300.173 to have in effect, consistent with the purposes of 34 CFR Part 300 and section 618(d) of the Act, policies and procedures designed to prevent the

inappropriate overidentification or disproportionate representation by race and ethnicity of children with disabilities, including children with disabilities with a particular impairment described in 34 CFR §300.8. This duty includes the requirement for the State to adopt formal written policies for determining whether significant disproportionality on the basis of race and ethnicity is occurring in the State, or in LEAs in the State, consistent with section 618(d) of the IDEA and 34 CFR §300.646. VTDOE also does not report publicly on the participation and performance of children with disabilities on statewide assessments at the district and school level with the same frequency and in the same detail as it reports on the assessments of nondisabled children, as required by 20 U.S.C. 1412(a)(16) and 34 CFR §300.160(f). OSEP is also concerned that VTDOE does not ensure that all children with disabilities are included in all local assessments, which appear to OSEP to be districtwide assessments subject to the requirements in 20 U.S.C. 1412(a)(16) and 34 CFR §300.160 of the Part B regulations. Pursuant to these requirements, VTDOE must ensure that its LEAs provide children with disabilities taking these local assessments with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs, in accordance with 34 CFR §300.160(a), and that LEAs develop guidelines for the provision of appropriate accommodations for children with disabilities participating in local assessments. VTDOE also must ensure that its LEAs report to the public on the participation and performance of students with disabilities in districtwide assessments with the same frequency and in the same detail as it reports on the assessment of nondisabled children, as required under 34 CFR §300.160(f), unless the public reporting of this information would yield personally identifiable information about individual children.

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

With its FFY 2010 Grant Application, due May 10, 2010, the State must provide:

- 1) An assurance that the State has adopted and implemented procedures demonstrating that the State considers audit findings against LEAs in making annual local determinations on the performance of each LEA.
- 2) An assurance that, in accordance 34 CFR §300.149(b), the State has developed a revised Local Educational Agency (LEA) Determinations Enforcement Actions Rubric that conforms to the requirements in 34 CFR §§300.600(a)(3) and 300.604.
- 3) An assurance that, in accordance with 34 CFR §300.173, the State has developed written policies and procedures consistent with section 618(d) of the Act and 34 CFR §300.646 for determining whether significant disproportionality on the basis of race and ethnicity is occurring in the State or in LEAs in the State.
- 4) For students with disabilities participating in the New England Common Assessment Program, documentation that the State has made available to the public and has reported to the public on these Statewide assessments of children with disabilities at the district and school level with the same frequency and in the same detail as it reports on the assessment of nondisabled children the following:
  - a) the number of children with disabilities participating in regular assessments, and the number of those who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments;

- b) the number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards;
  - c) the number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards;
  - d) the number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.
  - e) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards and alternate assessments based on alternate academic achievement standards.
- 5) A plan describing how the State will ensure that its LEAs comply with the requirements in 34 CFR §300.160 for local assessments, including ensuring that all children with disabilities are included in local assessments, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs, as required in 34 CFR §300.160(a); procedures for LEAs to develop accommodation guidelines for districtwide assessments; and procedures for reporting to the public on the participation and performance of children with disabilities in local assessments with the same frequency and in the same detail that it reports on the assessment of nondisabled children on those assessments, unless the reporting of this information would yield personally identifiable information about individual children. In addition, the plan must address:
- a) how the State is going to establish what districtwide assessments are being administered and guidance the State will provide to its LEAs on the extent to which appropriate accommodations and alternate assessments are made available if necessary, in accordance with students' IEPs; and
  - b) a timeline for accomplishing these steps.

## II. Data

### ***Critical Element 1: Collecting and Reporting Valid and Reliable Data***

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

### **Verification Visit Details and Analysis**

During the verification visit, the State described its use of multiple data systems to collect and report valid and reliable data and information to the Department and the public in a timely manner. VTDOE uses a variety of collection methods for Section 618 and 616 (SPP/APR) data.

To facilitate its child count and educational environments collections, the State provides an Access application that allows LEAs to export and report their data. However, most LEAs use commercial applications made available through vendors, largely SpEdDoc, Case-e, or GoalView. VTDOE provides the required specifications to the vendors to allow for the smooth transmittal of data. The LEAs submit their data to the State and it is then entered into the web-based Education Data Warehouse (EDW). The data are reviewed during two rounds of edit checks, which consist of hard edit checks on the front

end and soft edit checks on the back end. Hard edit checks prevent submission of the data to the State without correction or clarification. Soft edit checks allow the data to be submitted to the State, but mark the issue for review by VTDOE. The State must manually clear the soft edit checks. Once the edit checks are complete, the State sends the data submission back to the LEA for certification.

Separate data collections are used for discipline and personnel. VTDOE collects discipline data through the Combined Incident Reporting Software (CIRS), used to collect suspension and expulsion data for all students. The State gathers personnel data in the form of a paper spreadsheet application, which is due October 15 each year. On these forms special education directors provide a plan for funding the upcoming school year. These plans include tables on personnel, teachers, and paraprofessionals. All submissions are reviewed by finance staff and various consultants.

The State reported that it uses data dictionaries, technical assistance and training, edit checks, investigation of anomalies, a comparison of data from one year to next to help identify anomalies, and individual follow up and correction, to ensure valid and reliable data.

The State provides a number of opportunities for training and technical assistance. VTDOE staff conduct regional field training every fall to address changes, common errors and concerns. "SPED 101" is offered annually as one-day training to all new special education administrators. Finally, trainings and technical assistance occur on a case-by-case basis to address individual, small, or large group needs to ensure valid, reliable, and timely data. In an interview conducted during the verification visit, local special education directors reported that periodic regional trainings conducted by VTDOE staff were particularly helpful.

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

Apart from OSEP's verification visit, VTDOE initiated discussions with the Department concerning VTDOE's practice of reporting suppressed data for cell sizes below 11 for required data collections by the Department. By letter dated October 23, 2009, OSEP informed Commissioner Vilaseca that OSEP will no longer accept suppressed data as part of the section 618 data collection and will not consider suppressed data as valid and reliable for the purposes of Indicator 20 in Vermont's FFY 2008 APR, due February 1, 2010. Subsequent to VTDOE's receipt of the referenced letter, VTDOE expressed concern to the Department on how unsuppressed data reported to the Department can be secured, and has requested documentation from the Department on its security procedures for unsuppressed data. The Department is providing further clarification to VTDOE on the protections for its data system, and we anticipate a mutually agreeable resolution of this matter will be reached.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has a data system that is reasonably designed to collect valid and reliable data and information to the Department and the public in a timely manner. OSEP cannot, however, without also conducting a review of data collection practices at the local level, determine whether all public agencies in the State implement the State's data collection procedures in a manner that is consistent with Part B. In addition, because of Vermont's current practice of reporting suppressed data to the Department for section 618 data, OSEP cannot determine that Vermont has a data system that is reasonably designed to report valid and reliable data to the Department.

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

OSEP is not requiring VTDOE to take any actions as a result of OSEP's verification visit. However, if a satisfactory resolution to the data reporting issue cannot be achieved, VTDOE's continued practice of reporting suppressed data for section 618 data collections could affect Vermont's determination under section 616 of the IDEA and future grant awards.

### ***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 ensures that the data it collects and reports reflect actual practice by using a system of statewide, regional and individualized training of all personnel involved in data collection and reporting. The business rules embedded in the data collection processes and EDW help prevent data errors and discrepancies. Hard edits prevent the submission of inaccurate data, and the soft edits allow VTDOE staff to review questionable data to ensure it meets standards of validity and accuracy. By providing LEAs access to their data and the ability to provide corrections before finalization, the State helps ensure both accuracy and the reflection of actual practice and performance.

The State further ensures that the data it collects and reports reflect actual practice through focused monitoring and public reporting of LEA performance against the State's SPP/APR targets. Focused monitoring visits have closely examined the data for the LRE priority, and in many cases uncovered inaccuracies in the reported data. Public reporting of LEA performance has encouraged LEAs to closely monitor their data by reviewing information and correction of 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 further action is required.

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

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

**Verification Visit Details and Analysis**

The State uses its data collected across systems for continuous improvement, as reflected in monitoring, determinations, technical assistance and training.

The focused monitoring process requires the formation of local planning teams in LEAs receiving visits that assist in the collection of data, the response to State inquiries and the development of the Improvement Plan. This process helps to inform local staff about their local data and involved in the development of plans to foster improvement and better outcomes. As a result of findings of noncompliance generated by compliance monitoring desk reviews, LEAs are required to provide quarterly updates on noncompliant indicators until the findings are closed out. VTDOE is encouraging LEAs to continue monitoring the data on a voluntary basis after the noncompliance is corrected. This fosters continued improvement in compliance areas that may also lead to improved performance and outcomes.

Data from the SPP and APR are also used to foster improvement. State criteria for local determinations include both compliance and performance indicators. This makes LEAs and the public aware of the concrete implications of poor performance. Local special education directors indicated in interviews with OSEP staff that the inclusion of the graduation and dropout indicators in the SPP and local determinations was encouraging local initiatives and improving outcomes in both areas.

The State uses the analysis of data to identify trends, define statewide needs, and to develop improvement activities. Initiatives on C to B transition, secondary transition, postschool outcomes and LRE all emerged from collecting data across systems and undertaking root cause analyses. The State also conducts regional training and presentations that share data with LEAs. The Leadership Academy trains special education directors on how to analyze and use data. Additionally, the State engages in statewide initiatives on how to use data in the field.

Finally, EDW's current reporting capacity allows the State and LEAs to generate reports that can be used to analyze trends and for root cause analysis. The State has indicated that it intends to make its Report Viewer publicly available. Report Viewer is driven from the data in the EDW and provides standardized and customized reports statewide

and by LEA. Currently, 50% of LEAs are members of a consortium that allows them to access and generate local reports.

**OSEP Conclusions**

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

***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 functions on a reimbursement system and reports that it does not draw funds from the Grants Administration and Payment System (GAPS) until they have been expended. Most of the obligations are in the form of grants. Grant reports are provided once every quarter. The source of funds ledger tracks the available balance of funds, and is reviewed monthly. LEAs receive a reconciliation letter each year as part of the budget and application process for IDEA Part B funds, which includes their new allocation and carry over funds. LEAs track their expenditures in quarterly reports. OSEP confirmed through the GAPS reports that the State expended all of its FFY 2005 and FFY 2006 Part B funds in a timely manner, and appears to be expending FFY 2007 funds in a timely manner.

**OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures that are reasonably designed to ensure the timely obligation 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 further 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 Special Education Finance Office administers the distribution of the State's IDEA Part B funds. During interviews with OSEP and on its website, the State reports that it uses a reimbursement system to distribute all Federal and State funds to LEAs. As part of the annual application for IDEA Part B funds, LEAs submit a service (budget) plan projecting the cost of special education for the upcoming year. During the year, LEAs periodically submit expenditure reports that document the actual costs incurred. State staff review expenditure reports submitted by LEAs and calculate the amount of State assistance, perform audits of the special education expenditure reports to ensure that the information reported is accurate and properly documented, and oversee the distribution of IDEA Part B funds to LEAs. The State calculates each LEA's proportionate share for parentally placed private school children as part of the budget/application process. The State has not established an LEA Risk Pool, has no charter schools and does not have any State-operated schools.

### **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 and practices that are reasonably designed to ensure appropriate distribution of IDEA funds within the State. OSEP cannot, however, without collecting data at the local levels, determine whether all public agencies in the State implement fiscal procedures that ensure appropriate use of IDEA funds.

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

No further 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**

As discussed above, the Special Education Finance Office has responsibility for administering the distribution of IDEA Part B funds and overseeing the appropriate use of these funds. However, to ensure compliance with IDEA program requirements, the Special Education Finance Office works closely with the Student Support Services (SSS) office, which oversees special education programs. The two offices communicate regularly at the Director's level and coordinate the review of all expenditures.

Separate grant numbers and accounting codes are used to delineate sources of funds. Separate chart fields are used to identify different federal sources of funds when they are used together for school-wide projects at the LEA level.

The Special Education Finance Office is also responsible for fiscal monitoring of LEAs in accordance with IDEA Part B requirements. A Single State Audit (OMB Circular A-133) of VTDOE in FFY 2007 found that VTDOE was unable to provide adequate documentation to demonstrate that subrecipient monitoring procedures were consistently

implemented. In response, the State has implemented both new interim and permanent procedures to ensure consistent subrecipient monitoring and appropriate documentation. In a letter issued September 14, 2009, OSEP stated that the Department had determined that the State had adequately addressed all the issues identified in the audit and that the Department considers the matter resolved and closed.

LEAs that expend \$500,000 of Federal funds are required to conduct a single audit in accordance with the Single Audit Act (31 U.S.C. 7501 et seq. as amended). All LEAs in the State receive an A-133 audit annually. A separate office within VTDOE is responsible for resolving these audits in a timely fashion. If the audits include findings related to IDEA Part B, the Special Education Finance Office is generally notified of the findings.

The State ensures that LEAs use Part B funds to supplement and not supplant State, local, and other Federal funds through review of the required LEA application assurances and budgets monitoring, and State audits. Similarly, the State ensures LEAs comply with the fiscal requirements of IDEA by requiring assurances in the annual application and the review of the budgets. In accordance with the Maintenance of Effort (MOE) requirements contained in 34 CFR §§300.203-205, LEAs must demonstrate in their annual applications that they are not reducing the level of expenditures made by the LEA from local funds for the education of children with disabilities below the level of expenditures for the preceding year. If they cannot do so, they must document in writing an allowable exception under 34 CFR §300.204. The exception request is reviewed by both the Special Education Finance office and SSS, to determine if it meets the regulatory requirement. The LEA is then notified of the decision. No LEAs have requested to reduce their MOE based on an increase in their IDEA Part B allocations, as permitted under 34 CFR §300.205.

The State is responsible for calculating proportionate share allocations for LEAs under 34 CFR §300.133 for equitable services for parentally-placed private school children with disabilities. In accordance with 34 CFR §300.226, the State would determine the amount an LEA is required to spend on CEIS if the State determines that significant disproportionality is occurring in that LEA in accordance with §300.646, or the amount it may spend voluntarily for CEIS.

VTDOE reported to OSEP that the State meets the State MOE requirement in 34 CFR §300.163(a) by ensuring that amounts appropriated for special education programs remain the same or increase from year to year. Under 34 CFR §300.163(a), the State must not reduce the amount of "State financial support for special education and related services for children with disabilities," or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. 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 financial support that may be provided by State agencies other than the SEA, VTDOE is not currently collecting complete information of State expenditures for special

education and related services, and, therefore, the State cannot ascertain its proper level of financial support from the prior fiscal year to determine whether it is complying with 34 CFR §300.163 for the current fiscal year.

**OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes that, with the exception of the State MOE requirement in 34 CFR §300.163(a), the State has procedures that are reasonably designed to ensure appropriate use of IDEA funds within the State. However, because VTDOE does not include expenditures from other State agencies for special education and related services in its calculation of MOE, OSEP finds that the State is not complying with 34 CFR §300.163.

**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 VTDOE 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.