

Wisconsin Part B 2009 Verification Visit Letter Enclosure

Background

The State's public education system is comprised of the Wisconsin Department of Public Instruction (WDPI), 426 local school districts, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, the Wisconsin Center for the Blind and Visually Impaired (State Schools), the Department of Health and Family Services, the Department of Corrections, and 15 independent charter schools. There are 12 Cooperative Educational Service Agencies (CESAs) and Regional Services Network (RSN) Directors in the State. In a contractual capacity, CESAs provide services to the local educational agencies (LEAs) in their regions, such as technical assistance and related services to low incidence students with disabilities.

WDPI's Special Education Office includes the State Director, two Assistant Directors, and 25 Local Performance Plan (LPP) consultants. The special education team is divided into topical workgroups that focus on improvement and compliance. Each consultant is responsible for approximately 18 LEAs, and reviews their LPPs (the annual LEA applications for funds under Part B of the Individuals with Disabilities Education Act (IDEA)). The consultants also provide technical assistance and conduct validation and verification activities in LEAs, and monitor discretionary grants associated with the indicators in the State Performance Plan (SPP)/Annual Performance Report (APR), including the Wisconsin Statewide Parent-Educator Initiative, the Wisconsin Statewide Transition Initiative, and the State's response to intervention initiatives.

I. 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

WDPI uses its general supervision system, including the Special Education Procedural Compliance Self-Assessment (self-assessment), dispute resolution processes, data submissions and local audits, to identify noncompliance.

Beginning with the 2006-2007 school year, WDPI instituted the self-assessment to collect data and identify noncompliance for SPP/APR Indicators 11 (timely initial evaluation) and 13 (post-secondary transition), as well as other topical areas. Each year, WDPI requires one-fifth of the 426 LEAs to conduct a self-assessment, and will complete this five-year monitoring cycle during the 2010-2011 school year. All LEAs will participate at least once in the cycle. WDPI requires Milwaukee Public Schools (MPS), with a student population greater than 50,000, to conduct a self-assessment annually. WDPI determined on a random basis the year during the cycle when each LEA must complete the self-assessment, but may advance an LEA in the cycle based on its complaint history or its selection for a focused monitoring review (see discussion in General Supervision Critical Element 4). Each LEA must convene an ad-hoc committee, consisting of school staff, administrators and parents, to determine the process for conducting the self-assessment within the parameters outlined by WDPI's self-assessment procedures. WDPI has designed the self-assessment to assess compliance with selected requirements of Part B related to specified topical areas. The topical areas include: evaluation; individualized education program (IEP), including IEP content, IEP team and parent participation; and secondary transition. The self-assessment also includes one question, each, related to the areas of discipline, private school consultation, and confidentiality.

LEAs collect data for the self-assessment through a random selection of student records. The student record sample size is dependent upon the number of student IEPs that are relevant to the applicable compliance area. LEAs also interview parents and staff as a means of gathering information for the IEP topical area.

WDPI sends a letter to each LEA one month after it submits its self-assessment, in which WDPI identifies any findings of noncompliance and provides instructions for correcting the noncompliance, including the requirement to correct noncompliance as soon as possible, but in no case later than one year following the written notification. In addition to using the self-assessment to collect APR data and identify noncompliance, WDPI also reviews self-assessments to identify patterns in order to design and conduct statewide technical assistance and training opportunities.

WDPI reported that each year, it selects 20% of the LEAs submitting a self-assessment for a self-assessment validation review, basing its selection of LEAs for a validation review on a range of factors, including: (1) whether parents were involved in the ad-hoc committee; (2) whether the LEA followed WDPI procedures in selecting its sample of IEPs for review; (3) extremely high or low reported levels of compliance; (4) location in the State; (5) WDPI's focused monitoring schedule; and (6) timeliness of the district's submission of data. WDPI further reported that it selects several additional LEAs for validation each year on a random basis. The validation process includes reviewing approximately ten IEPs selected from the LEA's sample (the number of IEPs reviewed by WDPI may vary according to student population) and interviews with school staff to confirm information reported by the LEA in its self-assessment. If WDPI finds that data reported in the self-assessment are "unreliable," it requires the LEA to correct the data and resubmit the unreliable portion of the self-assessment.

WDPI identifies one point in time during each SPP/APR reporting period to review Indicator 12 (early childhood transition) compliance data for all LEAs in the Program Participation System (PPS) database and identify noncompliance. WDPI reported that if an LEA immediately (before the issuance of the letter of findings) corrects the noncompliance and provides documentation of such correction, WDPI does not issue a finding of noncompliance. If the LEA has not demonstrated correction, WDPI issues a letter notifying the LEA of the noncompliance and requiring correction, as soon as possible (generally within three months), and no later than one year after notification.

WDPI reported that its procedure for identifying noncompliance with Indicators 9 and 10 (disproportionate representation of racial and ethnic groups as a result of inappropriate identification) includes examining annual child count data and requiring those LEAs with disproportionate representation to complete a checklist to determine whether there has been inappropriate identification. In its Federal fiscal year (FFY) 2006 and FFY 2007 APRs, the State reported that nine LEAs had disproportionate representation in special education and related services (Indicator 9), but that none of them had disproportionate representation that was the result of inappropriate representation. In those APRs, the State also reported that it identified 27 LEAs for FFY 2006 and 29 LEAs for FFY 2007 with disproportionate over-representation in one or more special education disability categories (Indicator 10), but that none of those LEAs had disproportionate representation that was the result of inappropriate identification. WDPI informed OSEP that it had not, therefore, made any findings of noncompliance related to these indicators.

WDPI informed OSEP that it makes student-level findings of noncompliance for Indicators 11, 12 and 13 whenever an LEA self-reports less than 100% compliance in its self-assessment (for Indicators 11 and 13) or PPS (for Indicator 12). WDPI indicated that, in addition to the student-level findings, it also makes agency-level findings of noncompliance for those indicators only if an LEA reports less than 80% compliance for those indicators. (See the discussion in Critical Element 2 regarding the differences in procedures for verifying correction of student-level versus agency-level findings.)

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes the State has a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components. OSEP cannot, however, without collecting data at the local level, determine whether the State's procedures are fully effective in identifying noncompliance in a timely manner.

Required Actions/Next Steps

No action is required.

Critical Element 2: Correction of Noncompliance

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

Verification Visit Details and Analysis

The State reported in both its FFY 2006 and FFY 2007 APRs that it timely corrected all findings of noncompliance. During the verification visit, OSEP inquired as to the criteria and procedures WDPI has used to verify that findings of noncompliance have been corrected.

Verification that an LEA is Correctly Implementing the Specific Regulatory Requirements

WDPI informed OSEP that, for noncompliance identified through the self-assessment process for Indicators 11 and 13, LPP consultants are responsible for verifying correction of noncompliance through an on-site review of documents and/or LEA submission of documents. The State further reported that if an LEA self-reported noncompliance with a particular regulatory requirement at a level at or above 80%, the LEA is required to correct student-level noncompliance as soon as possible but in no case later than one year from identification (typically, within 30 to 60 days of receiving the notification of noncompliance), but the State does not also verify that the LEA is now correctly implementing the specific regulatory requirements.

The Part B regulations in 34 CFR §300.600(e) require that, in exercising its monitoring responsibilities under 34 CFR §300.600(d), the State must ensure that when it identifies LEA noncompliance with the requirements of Part B, 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), in determining steps that an LEA must take to correct noncompliance and to document such correction, the State may consider a variety of factors, including: (1) whether the noncompliance was extensive or found in only a small percentage of files; (2) whether the noncompliance showed a denial of a basic right under the IDEA (e.g., a long delay in initial evaluation beyond applicable timelines with a corresponding delay in the child's receipt of a free appropriate public education (FAPE), or a failure to provide any services in accordance with the IEP); and (3) whether the noncompliance represents an isolated incident in the LEA, or reflects a long-standing failure to meet IDEA requirements. While a State may determine the specific nature of the required corrective action, the State must ensure that any level of noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification. As further explained in OSEP Memo 09-02, in order to demonstrate that previously identified noncompliance has been corrected, a State must verify that each LEA with noncompliance is: (1) correctly implementing the specific regulatory requirements; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA. OSEP finds that the State's practice of determining timely correction for student-level noncompliance (i.e., noncompliance where the compliance rate is at least 80%) for SPP/APR Indicators 11 and 13, based solely on whether a child subsequently received a required benefit without also determining whether the LEA 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 OSEP provided in OSEP Memo 09-02.

Verification of the Correction of Student Level Noncompliance

WDPI informed OSEP that it considers student-level noncompliance to be corrected when each individual child for which noncompliance was identified has subsequently received the evaluation, although late (Indicator 11); has an IEP, although late (Indicator 12); or has appropriate transition steps and services in place in his/her IEP (Indicator 13). In order to verify whether student-level noncompliance has been corrected, WDPI selects two files for each regulatory requirement for which noncompliance was identified, and reviews the files to determine whether the LEA corrected the noncompliance for that student.¹ If WDPI finds that noncompliance was not corrected in one of the two files, WDPI selects an additional file to determine whether the LEA has corrected the noncompliance for that student. WDPI considers the finding corrected if: (1) there is evidence of correction in either of the first two files it reviewed, or in one of the first two and in the third; and (2) the LEA submits an assurance that all student-level noncompliance has been corrected and that internal controls are in place to ensure that the noncompliance will not continue.

WDPI verifies student-level correction even when it is aware that one out of two of the files that it initially selected contains information demonstrating that the noncompliance has not been corrected. Rather than concluding that the LEA has not corrected student-level noncompliance, WDPI overlooks the one file that has not been corrected and selects a third file. The State may not verify correction of student-level noncompliance when it has knowledge that the LEA has not corrected the noncompliance with respect to a specific student or group of students. Moreover, it is unclear how the assurance that LEAs provide indicating that they have corrected all student-specific noncompliance adequately demonstrates that all student-specific noncompliance is corrected, particularly when one of the files reviewed documents that the noncompliance has not been corrected.

Verification of the Correction of Agency-Level Noncompliance

WDPI informed OSEP that if it also identified agency-level noncompliance (based on less than 80% compliance for a particular regulatory requirement), the LEA must, in addition to demonstrating student-specific correction as described above, also: (1) develop and implement a corrective action plan; and (2) demonstrate agency-level correction as soon as possible but in no case later than one year from identification. WDPI instructs LEAs to demonstrate correction of agency-level noncompliance for Indicators 11 and 13, or for another regulatory requirement other than Indicator 12, by self-selecting three files (one for each educational level of elementary, middle and high) that are in compliance with the particular regulatory requirement. For agency-level noncompliance (less than 80% compliance) identified for Indicator 12, LEAs are required to report data through PPS monthly. In order to substantiate correction of noncompliance, WDPI reviews the data until those LEAs found in noncompliance can demonstrate, for two consecutive months, 100% compliance. It is not clear how the review of three LEA-selected files enables the State to verify that the LEA has corrected agency-level noncompliance; in other words, by permitting the LEAs to select the files that the State will review, the State does not have a method in place to ensure that correction has occurred.

¹ As stated in OSEP Memo 09-02, “[i]n ensuring that each individual case of noncompliance has been corrected, the State does not need to review each child’s record in the LEAs ... where the noncompliance occurred, but rather may review a reasonable sample of the previously noncompliant files to verify that the noncompliance was corrected.” Whether a sample of two files is “reasonable” will depend on a variety of circumstances, including the size of the LEA, the number of noncompliant files, etc.

WDPI provides notice to LEAs verifying correction of noncompliance in a closing letter after correction has been verified. WDPI has authority, granted through State statute, to impose sanctions to enforce compliance with IDEA Part B requirements. WDPI may advise LEAs of available technical assistance, require a corrective action plan, direct corrective action, require the revision of policies, procedures and practices, direct or conduct training, identify the LEA as a high-risk grantee, or withhold Part B funds from the LEA.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with WDPI personnel, OSEP determined WDPI does not have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner. Specifically, OSEP finds that the following practices are 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: (1) determining timely correction for student-level noncompliance for SPP/APR Indicators 11 and 13 based solely on whether a child subsequently received a required benefit, without also determining whether the LEA is currently in compliance with regard to the specific regulatory requirement; (2) verifying student-level correction even when WDPI is aware that one out of two of the files that it has selected contains information demonstrating that the noncompliance has not been corrected; and (3) verifying agency-level noncompliance by only reviewing files that the LEA has self-selected.

Required Actions/Next Steps

Within 60 days from the date of this letter, WDPI must submit to OSEP written documentation demonstrating that it has revised its policies and procedures for determining timely correction of noncompliance, so that it determines that a finding of noncompliance has been corrected only if the LEA has both: (1) correctly implemented the specific regulatory requirements; and (2) corrected each individual case of student-specific noncompliance (although late for timeline requirements) and verifies correction consistent with OSEP Memo 09-02 and this enclosure.

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

WDPI informed OSEP that six staff are responsible for investigating complaints, issuing written decisions addressing each of the complainant's allegations, and ensuring implementation of any corrective action as soon as possible but in no case later than one year following the issuance of the written decision. WDPI's model complaint form is available on its website, along with information on the complaint process. If a complaint does not include all of the required elements, it is WDPI's practice to return the complaint to the complainant with a description of the missing element and a self-addressed, stamped envelope in order for the complainant to resubmit the complaint. WDPI's initial letter to complainants and the LEA clearly outlines all allegations contained in the written complaint and allows the complainant the opportunity to respond if all allegations are not addressed. WDPI does not have a State complaint appeals process.

WDPI has developed and implemented tracking, calendar, and tickler systems to ensure timely resolution of complaints. The State's Indicator 16 data for FFY 2006 were 95%. In the FFY 2007 APR that the State submitted in February 2009, the State reported that it issued: (1) 82 complaint decisions between July 1, 2007 and June 30, 2008; (2) 77 of those decisions within Part B's 60-day timeline; and (3) the remaining five decisions with extended timelines. Thus, WDPI resolved 100% of its FFY 2007

complaints within the 60-day timeline or later with a properly documented extension of that timeline. OSEP confirmed the accuracy of the FFY 2007 data by comparing them to the tracking log that WDPI provided to OSEP prior to the verification visit. OSEP's review of complaint files confirmed that WDPI typically extends the 60-day timeline only when the parties are engaged in mediation or when the complaint is held in abeyance because a due process complaint has been filed related to the same issue, and in all of the files that OSEP reviewed for complaints with extended timelines, there was appropriate documentation of a reason for the extension that was consistent with the requirements of 34 CFR §300.152(b). WDPI's tracking log further showed that WDPI: (1) issued decisions for 83 State complaints received during FFY 2008; (2) issued the decisions within 60 calendar days for 69 of those complaints; (3) issued the decisions for 13 of the remaining 14 complaints with the properly documented extension of that timeline; and (4) for the one remaining complaint, had extended the timeline without adequate documentation of an acceptable reason for the extension. These data represent a compliance rate of 98.8%.

Due Process Hearings

WDPI contracts with the Wisconsin Department of Administration's Division of Hearings and Appeals (DHA) to conduct due process hearings. DHA hearing officers must be licensed attorneys and possess knowledge of, and the ability to understand, State and Federal special education laws, rules and regulations. WDPI reported that hearing officers must complete WDPI-approved initial and annual training. WDPI reported that the due process hearing coordinator reviews all hearing decisions to determine whether corrective action is required and correction of any noncompliance as soon as possible and in no case later than one year following the issuance of the due process decision.

Resolution Meetings

The IDEA Part B regulations in 34 CFR §300.600(d)(2) require a State to monitor LEAs located in the State in the area of State exercise of general supervision, including the use of resolution meetings and mediation. As part of this requirement, and consistent with the State's general supervision obligations in 34 CFR §300.149, the State must ensure that, in accordance with 34 CFR §300.510(a), LEAs hold a resolution meeting within 15 days of receiving notice of the parent's due process complaint. If the State finds that an LEA is not in compliance with this requirement, it must issue a finding of noncompliance and ensure correction of the noncompliance as soon as possible and in no case more than one year after the State's identification.

WDPI has written policies and procedures that align with the IDEA regarding resolution sessions and accompanying timelines. Due process hearing files include Due Process Resolution Session Summaries, which track resolution meeting dates and outcomes. OSEP's review of documentation and interviews with WDPI staff revealed that although Due Process Resolution Session Summaries are completed by hearing officers, often resolution timeline data are missing and WDPI does not track resolution session timeline data to ensure compliance with the 15-day timeline.

OSEP finds that although the Due Process Resolution Session Summaries that hearing officers complete include a space for recording information regarding resolution meetings, the State is not adequately monitoring for compliance with resolution meeting requirements, because: (1) often resolution timeline data are missing from the summary form and the State does not have an alternative systematic method to collect resolution meeting data; and (2) WDPI does not track resolution session timeline data, or even whether a resolution meeting has occurred unless waived.

Mediation

WDPI reported that State statute requires WDPI to maintain a program to provide mediation for special education disputes at any time. WDPI provides mediation through the Wisconsin Special Education Mediation System (WSEMS). WSEMS contracts with an intake coordinator who is not an employee of

WDPI. All new mediators must attend a one-week introductory training, and all mediators must attend an annual, one-day training. Additionally, WSEMS contracts with a technical advisor who is an attorney with extensive background and experience in special education mediation.

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 procedures and practices that are reasonably designed to implement all of the dispute resolution requirements of IDEA. Specifically, OSEP finds that the State did not monitor LEAs' compliance with the resolution meeting requirements in 34 CFR §300.510, consistent with sections 612(a)(11) and 616 of the IDEA, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E).

Required Actions/Next Steps

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

1. Documentation that the State monitors LEAs' compliance with the resolution meeting requirements in 34 CFR §300.510; and
2. A copy of the memorandum to be issued to all hearing officers, LEAs, parent advocacy groups and other interested parties advising them of the Part B regulations in 34 CFR §300.510.

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

WDPI emphasized that the work of the Special Education Team is aligned with “Every Child a Graduate,” the new educational mission of WDPI. The goals of the mission are to: (1) recruit and retain quality teachers; (2) provide innovation that works; (3) create safe and respectful schools; (4) ensure accountability for results; and (5) maintain fair and sustainable funding.

WDPI reported that its stakeholders participate in designing all aspects of monitoring and decision making in the State to improve educational results and improve outcomes for children with disabilities. WDPI further reported that it collaborates with other divisions within the agency and has established cross-agency workgroups to accomplish WDPI's goals and to improve outcomes for children with disabilities.

WDPI informed OSEP that it has a focused monitoring system for the purpose of improving performance in the areas of graduation and reading achievement to align with the State's mission. WDPI has developed Focused Review II (FRII), an expanded focused monitoring model to identify LEAs that are most in need of improvement. During the 2009-2010 school year, WDPI has begun piloting FRII in 12-15 LEAs. One year following the LEA's self-assessment, LEAs attend a data retreat to review three years of data and conduct analysis and improvement planning in the areas of math achievement, preschool outcomes, parent involvement and post-school outcomes for children with disabilities, in addition to above mentioned areas of focus. WDPI explained that, although it would make a finding if it discovered noncompliance through the focused monitoring process, the intended purpose of the system is to improve student results rather than to identify noncompliance. To date, WDPI has not identified any noncompliance through its focused monitoring system.

The Wisconsin Statewide Transition Initiative (WSTI) is a project implemented in each of the State's 12 CESAs to provide a comprehensive approach to secondary transition services for students with

disabilities. WSTI assists LEAs participating in the program in using data from Indicators 1, 2, 13 and 14 to develop local improvement plans. Networking meetings are held in each CESA to provide training related to Indicator 13 (secondary transition). Transition support services, information dissemination, and staff development to parents, education professionals and community agency professionals in the State, are provided by the CESA transition coordinators, project director and WDPI transition consultant. An annual transition conference is held each year in which participants of the WSTI initiative participate.

WDPI developed the Wisconsin Statewide Parent-Educator Initiative (WSPEI) to establish partnerships among schools and families of children with disabilities and to promote parent involvement in the education of children with disabilities. The goal is to help LEAs and parents identify resources that will build positive working relationships that lead to shared decision making and improved learning for children with disabilities, through collaboration, networking, meetings, conferences, and one-on-one contacts with CESAs and other community and service organizations.

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 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 Local Determinations

As a part of its monitoring and enforcement responsibilities under section 616 of the IDEA and 34 CFR §300.600(a)(2) and (4) the State must make an annual determination for each LEA and annually report to the public on the performance of each LEA against the State's SPP/APR targets. WDPI has met its public reporting responsibility by posting data on its website for each LEA for Indicators 1, 2, 3, 4A, 5, 8, 9, 10, 11, 12, 13 and 14. OSEP accessed WDPI's website and confirmed that the State included all required public reporting information, including data and State targets, by LEA and indicator.

The State reported that it makes local determinations based on a review of LEAs' data regarding: (1) validity and reliability of data; (2) performance on compliance indicators; (3) timely correction of identified noncompliance; and (4) other data available to the State about the LEA's compliance with IDEA, including relevant audit findings. The State has posted those criteria for making determinations on its website.

The State's FFY 2007 determination for all LEAs in the State was meets requirements. OSEP reviewed the LEA-level data that WDPI posted as part of its public reporting, and found low FFY 2007 levels of performance for a number of LEAs related to SPP/APR compliance indicators. WDPI explained that LEAs with low compliance levels were determined to have met requirements based on timely correction of noncompliance. The State reported in its FFY 2007 APR that all FFY 2006 findings of noncompliance were timely corrected. As noted above in General Supervision Critical Element 2, however, WDPI has used an inappropriate standard for verifying the correction of noncompliance. As demonstrated in the table below, the State determined that the five indicated LEAs met requirements for

FFY 2007, based in part on timely correction of FFY 2006 noncompliance, despite the fact that these LEAs had noncompliance for Indicator 12 in FFY 2006 (and in four of the LEAs also in FFY 2005) and continued to have noncompliance for that indicator in FFY 2007, as evidenced by their reporting less than 100% compliance (with four of the five having very low levels of compliance for Indicator 12 in FFY 2007).

INDICATOR 12 DATA FOR FIVE LEAS OVER A THREE-YEAR PERIOD			
LEA/FFY	FFY 2005	FFY 2006	FFY 2007
Ashland	“N/A”	0.00%	33.3%
Kenosha	91.53%	93.94%	60.00%
Madison	68.33%	70.34%	55.00%
Manitowoc	15.00%	53.33%	43.48%
Milwaukee	49.18%	41.23%	90.49%

Further, as explained in General Supervision Critical Element 1, MPS must complete a self-assessment every year, and thus, unlike other LEAs, reported data for Indicator 13 for FFY 2005 (1.49%), FFY 2006 (7.26%), and FFY 2007 (37.31%). Again, despite these data showing serious continuing noncompliance, the State determined that the FFY 2006 noncompliance was timely corrected and MPS met requirements for FFY 2007.

OSEP has provided guidance that, when making determinations for LEAs, States must consider: (1) performance on compliance indicators; (2) whether data submitted by LEAs/EIS programs are valid, reliable, and timely; (3) uncorrected noncompliance from other sources; and (4) any audit findings. In addition, States could also consider performance on performance indicators and other information. However, in light of the correction-related issues raised in General Supervision Critical Element 2 and in the discussion of determinations above, OSEP cannot determine the extent to which the State appropriately considered correction of noncompliance in its determination process.

Parental Placement in Private Schools

The State reported that LEAs are required to conduct timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school students with disabilities. Private school representatives are required to sign and submit an affirmation to the LEA indicating the consultation was conducted. If an LEA does not receive a signed affirmation, the LEA is required to forward documentation of the consultation process to WDPI, along with a detailed explanation of its efforts to consult with the private school representatives. WDPI monitors the receipt of the signed affirmation through its self-assessment process.

Significant Disproportionality and Coordinated, Early Intervening Services (CEIS)

As required by both Part B and State regulations, the State collects and examines data annually to determine if LEAs have significant disproportionality of racial and ethnic groups in: (1) special education; (2) specific disability categories; (3) placements; and (4) discipline. WDPI’s criteria for determining whether an LEA has significant disproportionality includes a minimum cell size, a risk ratio of 4.0, and a risk of 1.0% or greater than the State’s risk level for White students. The State has a method for calculating overrepresentation for all students, including White students. In order to be identified as an LEA with significant disproportionality, an LEA must meet these criteria for three consecutive years. WDPI reported that an internal committee examines data to identify LEAs that meet

the criteria for one year and notifies those LEAs that they have been placed on a “watch” list. The State reported that it identified two LEAs as having significant disproportionality based on data from FFY 2005, FFY 2006, and FFY 2007. The State required these LEAs to: (1) send teams of general and special educators to an annual disproportionality conference; (2) participate in the review and, if appropriate, revision of the policies, practices and procedures used in the identification or placement to ensure that the policies, practices and procedures comply with the requirements in IDEA; (3) reserve the maximum amount of funds (15%) under section 613(f) of IDEA to provide CEIS; (4) report to the public on the revision of policies, procedures and practices; and (5) complete a “Coordinated Early Intervening Services Plan” describing the LEA’s plan for implementing CEIS.

During OSEP’s verification visit, the State informed OSEP that it has a separate budget code to track and monitor the use of funds reserved by LEAs for CEIS. Each LEA that either must or chooses to reserve funds for CEIS must provide a narrative as to the use of CEIS funds, which is approved by WDPI. The narrative must include proposed technical assistance and professional development. The explanation for the use of CEIS funds must align with the amount the LEA indicates it will use for that purpose.

The IDEA Part B requirements in 34 CFR §300.226(d) require that each LEA annually report to the State educational agency (SEA) on: (1) the number of children served under 34 CFR §300.226 who received early intervening services; and (2) the number of children served with CEIS funds who received early intervening services and subsequently received special education and related services during the preceding two-year period. WDPI reported that, until the 2009-2010 school year, it did not have a mechanism in place to track the number of students who receive services with CEIS funds and subsequently receive special education and related services. WDPI indicated, however, that it enhanced its Individual Student Enrollment System (ISES) in order to collect data from LEAs with significant disproportionality and those voluntarily using CEIS funds. Beginning with the 2009-2010 school year, the State has required LEAs to track students, through ISES, who received services with CEIS funds and subsequently receive special education and related services. OSEP finds that, prior to the 2009-2010 school year, the State did not have in place procedures to ensure that LEAs complied with the reporting provisions in 34 CFR §300.226(d).

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 to provide instructional materials to blind persons or other persons with print disabilities in a timely manner through Wisconsin Accessible Media Productions. WDPI’s NIMAS coordinator, RSN providers and Assistive Technology Coordinators provide technical assistance to LEAs. Each LEA must submit an assurance annually to WDPI regarding compliance with NIMAS.

Assessments

WDPI reported that LEAs review a random sample of student IEPs to determine if IEP teams followed requirements for statewide and districtwide assessments. During the November 2006 verification visit, WDPI informed OSEP that it did not have in effect a process for identifying noncompliance with the requirements in IDEA sections 612(a)(16) and 614(d)(1)(a)(i)(VI) with respect to districtwide assessments. At that time, WDPI indicated that some LEAs conducted districtwide assessments, and that it was in the process of: (1) determining which LEAs conduct such assessments; and (2) developing a process to determine whether those LEAs were in compliance with IDEA with regard to districtwide assessments. In its FFY 2006 APR, WDPI described the process it had implemented after the visit to identify districts that were implementing districtwide assessments and to identify any noncompliance with sections 612(a)(16) and 614(d)(1)(a)(i)(VI) of IDEA. WDPI confirmed during the 2009 verification visit that it has implemented monitoring procedures to ensure compliance with 34 CFR

§§300.320(a)(6) and 300.160, and IDEA sections 612(a)(16) and 614(d)(1)(a)(i)(VI) as they relate to 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 public reporting, private schools, significant disproportionality, NIMAS and assessment. OSEP cannot, however, without also collecting data at the State and local levels, determine whether these procedures and practices are sufficient to ensure that LEAs in the State effectively implement these selected grant assurances.

As noted above, OSEP cannot determine the extent to which the State appropriately considered correction of noncompliance in its determination process for LEAs because the State used an inappropriate standard in determining whether LEAs had corrected noncompliance.

As also noted above, the State did not, prior to the 2009-2010 school year, have in place procedures to ensure that LEAs complied with the data reporting provisions in 34 CFR §300.226(d), which require, in part, that LEAs report the number of students who received services with CEIS funds and subsequently receive special education and related services. The State reported to OSEP during the verification visit that, beginning in 2009-2010 school year: (1) the ISES data system has the capacity to collect these data; and (2) WDPI has required LEAs to track students, through ISES, who received services with CEIS funds and subsequently receive special education and related services.

Required Actions/Next Steps

As noted above, the State has required LEAs, beginning with the 2009-2010 school year, to track students who received services with CEIS funds and subsequently receive special education and related services. With its FFY 2009 APR, due February 1, 2011, the State must provide documentation that LEAs have complied with the data reporting provisions in 34 CFR §300.226(d) by reporting to WDPI on the number of children served with CEIS funds who received early intervening services and the number of children served with CEIS funds who received early intervening services and subsequently received special education and related services during the preceding two-year period.

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

In its FFY 2007 APR, the State reported 100% compliance for Indicator 20 (timely and accurate data). This represented progress from the FFY 2006 data of 91.7%.

WDPI has multiple systems designed to collect and report valid and reliable data to the Department in a timely manner. The Wisconsin Student Locator System (WSLS) and ISES are linked data systems that collect and report data in accordance with the requirements of the IDEA.

WSLS is an individual student record system that assigns unique student numbers to students as they are enrolled in any public school in the State or are parentally-placed in a private school within an LEA and receiving special education or related services through a services plan. This web-based system collects data for all students. ISES uses the unique student identifier assigned by WSLS to track individual student records and compile data to report in the SPP/APR for Indicators 1, 2, 4, 5, 9, 10 and 14, as well

as IDEA section 618 Tables 1, 3, 4, and 5. The State uses the Wisconsin Student Assessment System to collect assessment data during the fall of each school year.

The State collects child outcomes data for Indicator 7 for one-fifth of the LEAs each year using the Early Childhood Outcomes Center's Child Outcomes Summary Form. The State collects family outcome data for Indicator 8 from one-fifth of the LEAs each year. For both of these indicators, the State collects data annually from MPS. Parents complete the Indicator 8 survey using a web-based application developed by the North Central Regional Resource Center (NCRRC). NCRRC monitors the completion of the survey and follows-up with WDPI, which, in turn, follows-up with individual LEAs to ensure parent completion of the survey. NCRRC analyzes the data from the parent surveys and provides the results to WDPI. The State collects data for Indicators 11 and 13 through the self-assessment as described in General Supervision Critical Element 1, above.

PPS, a shared web-based data application recently developed by WDPI and the Part C Lead Agency, the Wisconsin Department of Public Health, collects data specifically related to Part B Indicator 12 and Part C Indicator 8 to ensure a timely transition of students from Part C to Part B. PPS also acts as an on-line notification and referral system for early childhood transitioning students.

The State reported that the web-based data systems include defined values for collected elements, automatic validations and edit checks at the local and State levels that provide error messages, and warnings when data may be inaccurate. WSLs and ISES have built-in business rules that alert users of potential errors and invalid information. WDPI also compares data from year to year to identify significant changes and potential anomalies in the data. WDPI notifies LEAs of errors in their data through error reports, and requires LEAs to correct and resubmit the data within a specified time frame. LEAs are unable to make final submissions of data until all errors are corrected and approved by local special education directors. WDPI staff conduct extensive internal testing to ensure the fidelity of data input. WDPI also conducts in-person trainings as well as training via webcasts, data conferences and weekly conference calls with LEAs. A number of online manuals and media presentations are also provided to LEAs from WDPI. In addition, LEAs are provided technical support by the ISES Help Desk that is staffed by WDPI personnel.

OSEP Conclusions

Based on the review of documents, analysis of data and interviews with the WDPI personnel, OSEP determined that the State has demonstrated that it has procedures and practices that are reasonably designed to collect and report valid and reliable data to OSEP and the public in a timely manner.

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

WDPI reported that it does not verify 618 data submitted by LEAs by reviewing files, but requires LEAs to submit an assurance confirming that data are accurate, valid and reliable. WDPI's web-based data systems include defined values for collected elements, automatic validations and edit checks at the local and State levels that provide error messages and warnings when data may be inaccurate. WDPI conducts a year to year comparison in order to identify significant changes and potential anomalies in the data. Data reports are sent to LEA special education directors to ensure that data collected and reported reflect actual practice and performance in the LEA. ISES administrators and special education

directors work collaboratively to correct any reporting impediments. Mentoring programs have been developed throughout the State to assist and provide training to new special education directors. As described above in General Supervision Critical Element 1, WDPI conducts self-assessment validation reviews in selected LEAs to ensure the accuracy of the data that they submit as part of their self-assessments.

OSEP Conclusions

Based on the review of documents, analysis of data and interviews with the WDPI 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 collecting data at the local level, determine whether the State's procedures are fully effective in collecting and reporting data that reflect 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

WDPI reported that it consistently uses data to inform decision making and to promote continuous improvement. WDPI uses monthly internal and external data user reports as one method to determine progress and develop improvement activities. As described previously in General Supervision Critical Element 4, WDPI's WSTI program uses data from Indicators 1, 2, 13 and 14 to develop local improvement plans and plan networking meetings for each CESA. WDPI also analyzes identified errors from the prior year's data submissions to develop training and best practices at the local level.

OSEP Conclusions

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

Required Actions/Next Steps

No action is required.

III. Fiscal System

Critical Element 1: Timely Obligation and Liquidation of Funds

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

Verification Visit Details and Analysis

OSEP's review of the U.S. Department of Education's Grants Administration and Payment System (GAPS) displayed that WDPI expended all of its FFY 2005, FFY 2006, and FFY 2007 Part B funds in a timely manner.

WDPI reported that it contacts LEAs on a regular basis to ensure that they submit their Part B applications by the July 1 deadline. LEAs submit quarterly claims based on approved budget applications. The claim process is web-based within WDPI's budget software. WDPI processes claims within 30 days of receipt. Using a first in, first out methodology, WDPI's IDEA accountant ensures that

the State uses any carryover funds to pay LEA claims before using current year funds. WDPI also provides ongoing training and technical assistance to local staff regarding the timely obligation and liquidation of Part B funds.

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 the timely obligation and liquidation of IDEA funds. OSEP cannot, however, without collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures that ensure the timely obligation and liquidation of IDEA funds.

Required Actions/Next Steps

No action is required.

Critical Element 2: Appropriate Distribution of IDEA Funds

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

Verification Visit Details and Analysis

WDPI described how it complies with Federal requirements in calculating subgrant allocations to LEAs, including charter schools operating as LEAs and other State agencies. All agencies that receive funds must provide assurances in their Part B application that they meet Part B requirements regarding maintenance of effort (MOE), supplement not supplant, and other applicable fiscal requirements. LEAs also provide an assurance that they will expend the required proportionate share for students parentally-placed in private schools. WDPI has designed a calculator that automatically calculates the required proportionate share. LEAs are required to maintain documentation of proportionate share expenditures. WDPI reported that its funding formula is placement neutral, thereby ensuring that funding mechanisms do not result in placements that violate the LRE requirements of Part B. State auditors also review WDPI and LEA financial systems to ensure the appropriate expenditure of Part B funds.

The State has established an LEA Risk Pool, known as “Keeping the Promise.” Keeping the Promise has its own account code within the State’s accounting system to aid in ensuring that all funds are expended for services provided to high need students. Although under 34 CFR §300.704(c)(7), WDPI is not required to establish a State Plan for the LEA Risk Pool, WDPI reported that it has developed a State Plan and ensures that disbursements from Keeping the Promise are made in accordance with the plan.

WDPI reported that it distinguishes between State-level activities that are designated as “internal” projects (work carried out by WDPI staff such as monitoring and complaints) or “external” projects in the form of discretionary grants. The majority of discretionary grants are awarded to CESAs who, in partnership with WDPI, implement statewide initiatives, such as transition services and culturally responsive education that support students with disabilities.

OSEP Conclusions

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

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

During the verification visit, effective and frequent communication between WDPI's special education team and finance office personnel regarding financial matters was evident. Personnel from both of these offices emphasized that fiscal issues are a shared responsibility. There is a staff member in the accounting office that is designated as the special education specialist. All funds within WDPI receive a specific grant award number that WDPI uses to track Part B and other funds. WDPI's IDEA budget software tracks local budgets and expenditures including use of IDEA funds. LPP consultants work closely with LEAs regarding budget expenditures and use of funds.

WDPI ensures that LEAs use Part B funds to supplement and not supplant State, local, and other Federal funds through individual, annual LEA budget and expenditure reviews. WDPI also utilizes LPP assurances and the local audit process to ensure LEA compliance with IDEA fiscal requirements.

The Part B regulations in 34 CFR §300.203 provide that, except as provided in 34 CFR §§300.204 and 300.205, funds provided to an LEA under Part B must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. Because WDPI is required to ensure that each LEA meets these local MOE requirements, if an LEA violates those requirements, the Department will seek a recovery of funds directly from the State. The level of recovery will depend on the degree to which the LEA failed to meet the MOE requirement. An SEA may not use IDEA funds to pay this liability. Instead, it must use non-Federal funds or Federal funds for which accountability to the Federal government is not required. WDPI acknowledged that its procedure to recover funds from an LEA that did not meet the MOE requirement, had been to reduce the LEA's IDEA subgrant for the following year by the degree to which the LEA failed to meet the MOE requirement. The use of Federal funds to pay the LEA liability represents noncompliance with the regulatory provisions in 34 CFR §300.203.

Prior to the verification visit, however, WDPI recognized this noncompliance and revised its procedures for seeking a recovery of funds from LEAs. After the verification visit, WDPI sent these revised procedures to OSEP. The revised procedures require the LEA to send funds to the SEA equal to the amount by which the LEA did not meet its MOE level. The LEA must use non-Federal funds or Federal funds for which accountability to the Federal government is not required for this purpose. The procedures further require WDPI to return these funds to the Department. WDPI has informed LEAs of this change and will implement its revised procedures in the current Federal fiscal year.

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. A State must include in its calculation of "State financial support for special education and related services" funds other agencies provide to the SEA for such services, funds other agencies provide directly to LEAs for the services, and funds other agencies directly pay to staff or contractors for the delivery of the services pursuant to an IEP. See OSEP Memorandum 10-5, dated December 2, 2009.

WDPI acknowledged that in calculating State-level MOE, like a number of other States, it considers only State appropriations to WDPI for special education, and does not consider in-kind services from other State agencies. For example, the Department of Corrections and the Department of Health Services provide teachers who provide IEP services to students with disabilities who receive services from these programs, but WDPI acknowledged that it does not include the costs of these services in its

calculation of State-level MOE. WDPI'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).

WDPI is in the process of developing an expanded fiscal monitoring system which will be implemented as a component of the LEA self-assessment process. Areas to be assessed include equitable services, excess cost requirement, use of "freed up" funds from MOE reduction, use of funds in school-wide programs, charter school funding, CEIS, obligation and use of funds, property management and time and effort reporting. The expanded fiscal monitoring process will be piloted during the 2010-2011 school year with a subgroup of the cohort of LEAs conducting the self-assessment.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined that WDPI has not demonstrated that it has procedures that are reasonably designed to ensure appropriate use of IDEA funds. Specifically, OSEP finds that WDPI's procedure of using the reduction of the current year's subgrant where an LEA has failed to meet MOE requirements in a prior year is inconsistent with the requirements in 34 CFR §300.203. As noted above, WDPI has informed OSEP that it has revised its procedures. Further, OSEP finds WDPI'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 WDPI 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 section 612(a)(18) and 34 CFR §300.163.