

California Part B Verification Visit Letter

Enclosure

Scope of Review

During the verification visit, the Office of Special Education Programs (OSEP) reviewed critical elements of the State's general supervision, data and fiscal systems, and the State's systems for improving child and family outcomes and protecting child and family rights.

Methods

In reviewing the State's systems for general supervision, collection of State-reported data,¹ and fiscal management, and the State's systems for improving child and family outcomes and protecting child and family rights, OSEP:

- Analyzed the components of the State's general supervision, data and fiscal systems to ensure that the systems are reasonably calculated to demonstrate compliance and improved performance
- Reviewed the State's systems for collecting and reporting data the State submitted for selected indicators in the State's Federal fiscal year (FFY) 2008 Annual Performance Report (APR)/SPP
- Reviewed the following—
 - Previous APRs
 - The State's application for funds under Part B of the IDEA
 - Previous OSEP monitoring reports
 - The State's Web site
 - Other pertinent information related to the State's systems²
- Gathered additional information through surveys, focus groups or interviews with—
 - The State Director of Special Education
 - State personnel responsible for implementing the general supervision, data and fiscal systems
 - Special Education Local Planning Area (SELPA) Directors
 - State Advisory Panel
 - Parents and Advocates

I. General Supervision Systems

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?

To effectively monitor the implementation of Part B of the IDEA by local educational agencies (LEAs), as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and

¹ For a description of the State's general supervision and data systems, see the State Performance Plan (SPP) on the State's Web site.

² Documents reviewed as part of the verification process were not reviewed for legal sufficiency, but rather to inform OSEP's understanding of your State's systems.

20 U.S.C. 1232d(b)(3)(E), the State must have a general supervision system that identifies noncompliance in a timely manner.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State's systems for general supervision are reasonably designed to identify noncompliance in a timely manner. However, without also collecting data at the local level, OSEP cannot determine whether the State's systems 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?

To effectively monitor the implementation of Part B of the IDEA by LEAs, 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 have a general supervision system that corrects noncompliance in a timely manner. In addition, as noted in OSEP Memorandum 09-02, Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act, dated October 17, 2008 (OSEP Memo 09-02), in order to verify that previously identified noncompliance has been corrected, the State must verify that the LEA: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the LEA.

CDE informed OSEP that, based on data in its CASEMIS database, it made child-specific findings of noncompliance for Part B APR Compliance Indicators 11 (timely initial evaluation) and 12 (early childhood transition), rather than making a single finding of noncompliance for each district for each requirement. The State further indicated that, prior to receiving clarification from OSEP at the August 2010 OSEP Leadership Mega Conference, CDE verified correction of these child-specific findings of noncompliance by verifying that the district had corrected noncompliance for each child, unless the child was no longer within the jurisdiction of the district, but did not, as also required by the guidance in OSEP Memo 09-02, also verify that the district was correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data.

CDE informed OSEP during the verification visit, that it had revised its procedures for verifying correction of noncompliance, so that the State will, before determining that an LEA has corrected a finding of noncompliance made through its monitoring procedures (including findings made based upon its CASEMIS database), verify both that the district: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the district. The State indicated that it would first apply these revised verification procedures to findings made in FFY 2009 (July 1, 2009 through June 30, 2010). The

State indicated that of the approximately 23,000 findings of noncompliance that it made in FFY 2008, it had implemented verification procedures consistent with the requirements of OSEP Memo 09-02 for 13,000 findings, and verified correction for the remaining 10,000 findings in a manner that was not consistent with those requirements.

OSEP Conclusion

To ensure the timely correction of noncompliance by LEAs, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, 20 U.S.C. 1232d(b)(3)(E) and OSEP Memo 09-02, States must include a review of updated data to ensure that correction has taken place. As described above, OSEP concludes, based on the review of documents, analysis of data, and interviews with State personnel, that the State does not have a general supervision system that is reasonably designed to correct all noncompliance in a timely manner using its different components because, as described above, the State did not meet the requirements of OSEP Memo 09-02 for all findings of noncompliance.

Required Actions/Next Steps

Within 90 days of receipt of this letter, the State must provide an assurance that it has revised its procedures for verifying the correction of noncompliance for Indicators 11, 12, and 15 (timely correction) so that it verifies that noncompliance has been corrected only if the LEA is: (1) correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the LEA. With its response, during the SPP/APR clarification period, to OSEP's FFY 2009 California Part B SPP/APR Status Table, the State must describe the extent to which it verified correction of findings of noncompliance identified in FFY 2008 under Indicators 11, 12, and 15 in a manner consistent with the guidance in OSEP Memo 09-02.

Critical Element 3: Dispute Resolution

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

The State must have reasonably designed dispute resolution procedures and practices if it is to effectively implement: (1) the State complaint procedure requirements in IDEA sections 612(a)(11) and 615(a), 34 CFR §§300.151 through 300.153, and 20 U.S.C. 1221e-3; (2) the mediation requirements in IDEA section 615(e) and 34 CFR §300.506; and (3) the due process complaint requirements in IDEA sections 615(b)(6)-(8), 615(c)(2), 615(f)-(i) and (o) and 34 CFR §§300.507, 300.508, and 300.510 through 300.517.

Enforcement of Corrective Actions in Due Process Hearing Decisions

The State informed OSEP that it does not, as part of its general supervision responsibility under 34 CFR §§300.149 and 300.600 and 20 U.S.C. 1232d(b)(3)(E), take action to ensure that LEAs implement corrective actions that a due process hearing officer specifies in a due process hearing decision, unless the parent files a complaint under the State complaint procedures in 34 CFR §§300.151-300.153 alleging that the LEA has failed to implement the corrective actions.

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 and 300.600(d)(2), 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, as required in 34 CFR §300.600(e).

During the verification visit, the State informed OSEP that it had no systematic way to monitor whether LEAs meet the 15-day timeline for resolution meetings, and that it would find noncompliance with this requirement only if the State received a State complaint alleging that an LEA had failed to hold a timely resolution meeting. CDE and the chief special education hearing officer for the State Office of Administrative Hearings informed OSEP that hearing officers are directed to request that LEAs provide information regarding the resolution process, and in some cases LEAs provide that information. CDE further explained, however, that even in those cases, CDE does not have a systematic way in which to determine whether LEAs have met the 15-day timeline requirement in 34 CFR §300.510(a), and does not, absent a State complaint, make findings regarding compliance with the 15-day timeline.

OSEP Conclusion

To ensure that the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, as required by IDEA sections 34 CFR §300.510(a), the State must ensure that, within 15 days of receiving notice of the parent's due process complaint, the LEA convenes a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint. In addition, for the dispute resolution system to be effective and to ensure correction of all noncompliance, the State must have procedures and practices that ensure that all corrective actions that a due process hearing officer specifies in a due process hearing decision are implemented. Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State does not have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA.

Required Actions/Next Steps

Within 90 days from the date of this letter, the State must provide to OSEP the State's procedures for ensuring that LEAs: (1) implement corrective actions specified in due process hearing decisions; and (2) meet the requirements of §300.510(a), including its mechanism for tracking timelines for resolution meetings and for issuing findings of noncompliance when LEAs do not meet the requirements of 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?

The State must have procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities.

OSEP Conclusion

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

Required Actions/Next Steps

No action is required.

Critical Element 5: Implementation of Grant Assurances

Does the State have procedures and practices that are reasonably designed to implement selected grant assurances, i.e., making local determinations and publicly reporting on LEA performance, significant disproportionality, private schools, coordinated early intervening services (CEIS), the National Instructional Materials Accessibility Standard (NIMAS), and assessment?

The State must have reasonably designed procedures and practices that address grant assurances/requirements if it is to effectively implement the following selected grant assurances: (1) making local determinations and publicly reporting on LEA performance pursuant to IDEA section 616 and 34 CFR §300.600; (2) significant disproportionality requirements pursuant to IDEA section 618(d) and 34 CFR §300.646; (3) children in private school requirements pursuant to IDEA section 612(a)(10) and 34 CFR §300.129; (4) CEIS requirements pursuant to IDEA section 613(a)(2)(C) and (g) and 34 CFR §§300.205 and 300.226; (5) NIMAS requirements pursuant to IDEA section 612(a)(23) and 34 CFR §300.172; and (6) assessment requirements pursuant to IDEA section 614(d)(1)(A)(i)(VI) and 34 CFR §§300.320(a)(6) and 300.160.

The Part B regulations require, at 34 CFR §300.646(a), that the State must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to:

1. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in IDEA section 602(3);
2. The placement in particular educational settings of these children; and
3. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

As explained below, the State's procedures for determining whether LEAs have significant disproportionality in the identification with a particular impairment, placement in particular educational settings, and the incidence, duration, and type of disciplinary actions, do not meet the requirements in 34 CFR §300.646(a).

During OSEP's verification visit, the State informed OSEP that it used a three-step process to determine whether an LEA has significant disproportionality within the meaning of 34 CFR §300.646:

1. The State determined first whether the LEA meets the minimum “n” size of 20;
2. If so, the State then calculated the “disparity index” for the LEA, and determined whether the LEA had exceeded the State’s benchmark for the disparity index for three consecutive years. In response to OSEP’s questions regarding the “disparity index,” the State referred OSEP to the description in Indicator 10 in its FFY 2008 APR of how it determined disproportionate representation (stating that it uses the same definition of the term “disparity index” in determining significant disproportionality under 34 CFR §300.646):

For each district, California calculates a race-neutral measure labeled the Disparity Index as part of the Quality Assurance Process (QAP). Specifically, the number of students ages six through twenty-two receiving special education within each ethnic category is divided by the total number of all students ages six through twenty-two in that ethnic category (e.g., the percentage of African Americans receiving special education relative to the total number of African Americans in the district). The index is simply the range between the lowest and the highest group percentages. For example, if the percentage for African Americans is the highest at 15 percent and the percentage for Hispanics is the lowest at 8 percent, then the Disparity Index is 7 points. The underlying concept is that if the identification process is race neutral, the disparity index will be relatively low. The state has set a system of decreasing annual benchmarks leading to a maximum disparity of 5 points by 2011-12.

3. Then, if (and only if) the LEA had exceeded the disparity index benchmark for three consecutive years did the State apply its e-formula to determine whether there was significant disproportionality in racial and ethnic groups in: (a) special education and related services; (b) specific disability categories; (c) placement in particular educational settings; and (d) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

While the disparity index could be an appropriate step in determining significant disproportionality in special education and related services, it is inconsistent with the requirements in 34 CFR §300.646(a) for the State to establish procedures that provide that the State will make a determination of whether an LEA has significant disproportionality in specific disability categories, placement and discipline only if an LEA exceeded the disparity index benchmark (which addresses only the rates of racial and ethnic groups in special education (but not in specific disability categories, placement and discipline)). Thus, the State’s procedures/criteria for determining whether an LEA had significant disproportionality under 34 CFR §300.646 were inconsistent with the requirements of that regulation.

OSEP Conclusion

To ensure that the State has procedures and practices that are reasonably designed to identify significant disproportionality, as required in IDEA section 618(d) and 34 CFR §300.646, each State must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity in specific disability categories, placement and discipline is occurring. Based on the review of CDE documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State did not have procedures and practices that are consistent with the requirements of 34 CFR §300.646(a).

Required Actions/Next Steps

Within 90 days from the date of this letter, the State must provide its revised procedures for determining, consistent with the requirements of 34 CFR §300.646(a), whether LEAs have significant disproportionality based on race and ethnicity occurring in the State and the LEAs of the State with respect to: (1) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment; (2) the placement in particular educational settings of these children; and (3) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

II. Data Systems

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?

To meet the requirements in IDEA sections 616 and 618, and 34 CFR §§300.601(b) and 300.640 through 300.646, the State must 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 and ensure that the data collected and reported reflects actual practice and performance.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has a data system that is reasonably designed to collect valid and reliable data and information, to report the data and information to the Department 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?

To meet the requirements in IDEA sections 616 and 618, and 34 CFR §§300.601(b) and 300.640 through 300.646, the State must have procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance.

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance.

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?

To meet the requirements of IDEA section 616, 34 CFR §300.601(b), and OSEP Memorandum 10-03, Part B State Performance Plan (Part B – SPP) and Part B Annual Performance Report (Part B – APR), dated December 3, 2009 (OSEP Memo 10-03), the State must compile and integrate data across systems and use the data to inform and focus its improvement activities.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that 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 Systems

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?

The State must have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA Part B funds, as required by the General Education Provisions Act (GEPA), its implementing regulations in the Education Department General Administrative Regulations (EDGAR) (including 34 CFR Parts 76 and 80), and the relevant sections of Office of Management and Budget (OMB) Circulars A-87 and A-133.

Under Part B of the IDEA, EDGAR, and the Tydings Amendment to GEPA, 20 U.S.C. section 1225(b), LEAs that submit timely, substantially approvable applications have a 27-month period in which they may obligate Part B funds (from July 1 of the year in which the LEA receives the subgrant under Part B through September 30 two years later). During the verification visit, CDE informed OSEP that, rather than informing LEAs that submit timely, substantially approvable applications that they have a 27-month period in which to obligate Part B funds, CDE informs them that they have only 15 months within which to obligate funds. (The State further reported that it would permit an LEA to carry over funds to the next fiscal year (consistent with Part B, EDGAR and the Tydings Amendment), if the LEA was not able to obligate all of its Part B funds within the initial 15-month period.)

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that California LEAs that submit timely, substantially approvable applications are not notified that they have a 27-month period in which they may obligate Part B funds, as provided by Part B of the IDEA, EDGAR, and the Tydings Amendment to GEPA, 20 U.S.C. section 1225(b).

Required Actions/Next Steps

Within 90 days from the date of this letter, the State must submit evidence that it has revised policies and practices for ensuring, and provided LEAs with notice that, Part B funds are available for a 27-month period for obligation to LEAs that submit timely, substantially approvable applications, as required by Part B of the IDEA, EDGAR, and the Tydings Amendment to GEPA, 20 U.S.C. section 1225(b).

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?

The State must have procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State, consistent with IDEA sections 611(f) and 619(g) and 34 CFR §§300.705 and 300.816.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State.

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?

The State must have procedures that are reasonably designed to ensure appropriate use of IDEA Part B funds, as required by GEPA, EDGAR, OMB Circulars A-87 and A-133, and applicable provisions in Part B of the IDEA.

Under 34 CFR §300.163(a), “a 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.” The reference to “State financial support” is not limited to only the financial support provided to or through the State educational agency (SEA), but encompasses the financial support of all State agencies that provide or pay for special education and related services, as those terms are defined under the IDEA, to children with disabilities.

Accordingly, when calculating the amount of financial support that the State made available for special education and related services, the State must include in its calculation of financial support any financial support for special education and related services provided by other State agencies in California. See Memorandum 10-05, dated December 2, 2009, entitled Maintenance of State Financial Support under the Individuals with Disabilities Education Act (OSEP Memo 10-05) for detailed guidance on how to calculate State financial support under Part B of the IDEA. <http://www2.ed.gov/policy/speced/guid/idea/letters/2009-4/directors120209finsupport4q2009.pdf>. This memorandum outlines the sources of State financial support that must be included when calculating State-level financial support, and provides that a State must include in its calculation of financial support any financial support for

special education and related services provided by any State agency.

In response to OSEP's questions regarding the sources of funds that the State includes in its calculation of the State's maintenance of State financial support, the State acknowledged that, as shown in the CASEMIS system, there are situations where California Children's Services (CCS), another State agency, is apparently paying for services (occupational and/or physical therapy) included in some students' individualized education programs (IEPs), but that the State has not been including such funds in its calculation of maintenance of State financial support.

OSEP Conclusion

To ensure that the State has procedures that are reasonably designed to ensure appropriate use of IDEA funds, as required by IDEA section §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.

Based on the review of documents, analysis of data, and interviews with CDE, as described above, OSEP concludes that the State, with the exception of the State maintenance of financial support requirement in section 612(a)(18)(A) of the IDEA and 34 CFR §300.163(a), has procedures and practices that are reasonably designed to ensure appropriate use of IDEA funds. However, the State does not have procedures that are reasonably designed to properly calculate California's financial support for special education and related services. As required in IDEA section 612(a)(18)(A) and 34 CFR §300.163(a), CDE must include the financial support made available by CDE and all other State agencies for special education and related services for children with disabilities. Based on the review of documents, analysis of data and interviews with State personnel, as described above, OSEP concludes that the State is not including all sources of State financial support in calculating State-level funds made available for special education and related services for children with disabilities. Specifically, there are situations where CCS is apparently paying for services included in some students' IEPs, but that the State has not been including such funds in its calculation of maintenance of State financial support.

Required Actions/Next Steps

OSEP will address the required actions and next steps regarding this noncompliance under separate cover.