

Iowa 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. In addition, as explained in the final section of this Enclosure, OSEP also conducted a focused monitoring review related to the State's obligation to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities as required in 20 U.S.C. 1412(a)(1) and 34 CFR §300.101.

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)/State Performance Plan (SPP)
- Reviewed the following—
 - Previous APRs
 - The State's application for funds under Part B of the Individuals with Disabilities Education Act (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
 - Area Education Agency (AEA) and district staff
 - State Advisory Panel
 - Parents and Advocates

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.

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 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 and local 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.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that the State's systems for general supervision are reasonably designed to correct 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 correcting noncompliance in a timely manner.

Required Actions/Next Steps

No action is required.

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.

OSEP Conclusions

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 implement the dispute resolution requirements of IDEA.

Required Actions/Next Steps

No 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?

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

OSEP Conclusions

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 effectively implement selected grant assurances, i.e., making local determinations and publicly reporting on LEA performance, significant disproportionality, private schools, Coordinated Early Intervening Services (CEIS), National Instructional Materials Accessibility Standards (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 sections 613(a)(2)(C) and (f) 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 §§300.160 and 300.320(a)(6).

OSEP Conclusions

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 implement selected grant requirements, i.e., making local determinations and publicly reporting on LEA performance, significant disproportionality, private schools, CEIS, NIMAS, and assessment.

Required Actions/Next Steps

No action is required.

Other General Supervision Issues

Implementation of Response to Intervention (RTI) and Evaluation Procedures

States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy.³ The regulations in 34 CFR §300.307 require States to allow, as part of their criteria for determining whether a child has a specific learning disability (SLD), the use of a process based on the child's response to scientific, research based intervention. Although the regulations specifically address the use of RTI for determining if a child has an SLD, information obtained through RTI strategies may also be used as a component of evaluations for children suspected of having other disabilities, if appropriate. OSEP supports State and local implementation of RTI strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner. However, RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304 through 300.311, for a child suspected of having a disability.

Under 34 CFR §300.301(b), a parent or LEA may request an initial evaluation to determine if the child is a child with a disability. At any time during the RTI process, a parent may request an initial evaluation for the purpose of determining a child's eligibility for special education. If the LEA suspects the child has a disability, the LEA must conduct the evaluation within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c). If, however, the LEA does not suspect the child has a disability, and denies the request for an evaluation, the LEA must provide written notice to the parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision. 34 CFR §300.503(a) and (b). The parent can challenge this decision by requesting a due process hearing under 34 CFR §300.507 or filing a State complaint under 34 CFR §300.153 to resolve the dispute regarding the child's need for an evaluation.

³ The Department has provided guidance regarding the use of RTI in the identification of specific learning disabilities in its letters to: Zirkel - 3-6-07, 8-15-07, 4-8-08, and 12-11-08; Clarke - 5-28-08; and Copenhaver - 10-19-07. Guidance related to the use of RTI for children ages 3 through 5 was provided in the letter to Brekken - 6-2-10. These letters can be found at <http://www2.ed.gov/policy/speced/guid/idea/index.html>. See also Question C-1 of Frequently Asked Questions on Response to Intervention (RTI) and Early Intervening Services (EIS) which can be found at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C8%2C> and *Memorandum to State Directors of Special Educ.*, [111 LRP 4677](#) (OSEP Memorandum 11-07, 01/21/11).

Prior to OSEP's verification visit, OSEP received correspondence that raised concerns about the use of prereferral intervention in Iowa. Specifically, the correspondence alleged that children suspected of having a disability could not be evaluated for the existence of a disability until general education interventions were completed, consistent with the State's Special Education Eligibility Standards (July 2006), and that this practice resulted in requests for evaluation being denied or in evaluations being significantly delayed. In response to these concerns, OSEP reviewed State documents and conducted interviews with State, AEA and school district staff regarding the use of an RTI model and its impact on the timely evaluation of children suspected of having a disability.

IDE's Special Education Eligibility Standards, dated July 2006 and still in effect, state on page 1 that RTI is used to identify appropriate and effective interventions that result in improved individual performance. OSEP is concerned that this document does not clarify that use of the RTI process cannot result in requests for evaluations of children suspected of having a disability being denied or in evaluations being delayed. For example, the response to the question "What if the parents (or LEA) are requesting a full and individual evaluation before general education interventions are implemented?" states: "The RTI process is explained in a way that the parents or LEA personnel understand that the individual will be receiving interventions to help the area of concern. In addition, during this process, data will be collected to determine the education progress, the discrepancy, and the instructional need for the individual. With this information the IEP team and the parents will determine the need for ongoing special education and related services. A written consent is required when parents request a full and individual evaluation." See Appendix E on Page 25 of IDE's Special Education Eligibility Standards (July 2006). This response seems to suggest completion of the RTI process is required before a parent or the LEA can request an initial evaluation to determine if the child is a child with a disability.

The State acknowledged that there was inconsistent understanding in the State regarding the requirement to evaluate a child suspected of having a disability prior to completing general education interventions. In October 2008, subsequent to the 2006 issuance of the State's Special Education Eligibility Standards, IDE attempted to respond to "frequent and persistent questions and concerns about the right of a parent to request an evaluation for special education services when the parent's child is participating in general education interventions" in a document titled Parent Request for Initial Evaluation that is posted on the State's Web site. That document states, in part:

Several parents have been advised that their children would not be evaluated because their children had not completed a required number of days in general education interventions or had not progressed through a requisite number of "tiers" or "levels." This is inappropriate. The only relevant question is, "Is this child suspected of having a disability?" If the answer is "yes," parental consent for an initial evaluation must be requested, regardless of the amount of time in general education interventions or the number of layers, levels, or tiers in which the child has been involved. As stated by the United States Department of Education concerning pre-referral interventions, "the LEA cannot refuse to conduct the evaluation or delay the evaluation until the alternative strategies have been tried if the LEA suspects the child has a disability." *Letter to Anonymous*, 19 IDELR 498 (OSEP 1992).

The State also provided OSEP a March 31, 2010 State complaint decision in which it found that a district, despite requests for an evaluation by a child's parent and the child's therapist, had not

conducted the evaluation and had failed to provide prior written notice to the parent explaining its reason for refusing the request to evaluate. The State required that the child, who had already been evaluated and found eligible for special education by the time the complaint decision was rendered, be provided with additional special education services as compensation for the period during which the child's evaluation and services were delayed.

In July 2010, AEA Special Education Procedures, developed in August 2009 to ensure consistent special education procedures are implemented across the State, were updated to include additional information and clarifications. The updated procedures clearly specify a parent's right to request an evaluation at any time and that pre-referral interventions cannot be used to delay or deny an evaluation when a disability is suspected. These AEA-developed procedures do not replace the July 2006 Special Education Eligibility Standards developed by the State. Rather, the AEA procedures, "...support[s] the agreed upon precepts found in the *Special Education Eligibility Standards* document (July 2006, Iowa Department of Education)."

Also in 2010, the State revised its Administrative Rules of Special Education to include a provision clarifying that an evaluation is required when a public agency suspects that the child has a disability. Subrule 41.111(5) of Iowa Administrative Rules of Special Education states: "At the point when a public agency suspects a child is a child with a disability under this chapter, the public agency must seek parental consent for an initial evaluation of that child, pursuant to subrule 41.300(1)." The State also promulgated a rule of construction defining "suspicion of disability" as follows:

As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an eligible individual under this chapter. (See Subrule 41.111(6) of the Iowa Administrative Rules of Special Education.)

However, despite the State's attempts to clarify the evaluation requirements and the use of RTI, in interviews OSEP conducted during the verification visit, some staff reported to OSEP that RTI or tiered general education interventions with varying timelines must be used prior to conducting an evaluation and determining a child's eligibility for special education. Interviews with district staff indicated that the time a student must spend completing RTI activities varied from district to district. Staff reported that they had not received any official guidance regarding what constituted a referral for special education eligibility once RTI activities were initiated or completed. Some staff did not know whether parents or a district could request an initial evaluation for special education eligibility prior to the completion of the RTI process.

During interviews with OSEP, the State reported that special education, AEA, and general education administrators are collaborating to develop trainings to address the inconsistencies in the use of tiered interventions in general education and in relation to requesting evaluations and determining eligibility for special education services. However, State staff acknowledged that even with clarification provided through technical assistance, AEA training and State developed guidance documents, RTI may be inconsistently implemented and that use of RTI may be resulting in a delay or denial of timely initial evaluations for children suspected of having a disability.

OSEP Conclusions

OSEP cannot determine if the State is ensuring that any AEA or district implementing RTI strategies is appropriately using RTI and that use of RTI is not delaying or denying timely initial evaluations for children suspected of having a disability.

Required Actions/Next Steps

Within 90 days, the State must provide OSEP with documentation of the steps that the State is taking to ensure that any AEA or district implementing RTI strategies is appropriately using RTI and that use of RTI is not delaying or denying timely initial evaluations for children suspected of having a disability. The State must provide documentation of any training it conducts and any documents it develops or revises, including any monitoring procedures it develops, to ensure the implementation of RTI does not delay or deny timely initial evaluations for children suspected of having a disability.

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 of 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.

OSEP Conclusions

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 and report valid and reliable 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 of 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 Conclusions

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.

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 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?

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 Conclusions

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.

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 ensure appropriate use of IDEA funds.

Required Actions/Next Steps

No action is required.

Focused Monitoring on the Provision of FAPE

Under 20 U.S.C. §1412(a)(18)(A) and 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. In its letter dated April 29, 2010, the Department granted the State's request for a waiver, pursuant to 20 U.S.C. 1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1), in the amount of \$38,102,897. Although the State received the waiver, the State has a continuing obligation to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities as required in 20 U.S.C. 1412(a)(1) and 34 CFR §300.101.

In its July 22, 2010 letter notifying the State that it would receive a routine verification visit during the week of October 25, 2010, OSEP informed the State that during the verification visit OSEP would conduct focused monitoring activities to verify that the State continued to make FAPE available to children with disabilities.

In conducting those focused monitoring activities, OSEP worked collaboratively with the State to prepare for the focused visit. OSEP selected five school districts and their respective Area Education Agencies (AEAs) for focused visits based on the following criteria: (1) district performance against targets in the State's State Performance Plan/Annual Performance Report and the district's determination under section 616 of IDEA; (2) geographic location (representing different areas of State) and district student enrollment (representing districts of various sizes); (3) student demographic information (including race/ethnicity); (4) whether a district reduced its local-level maintenance of effort by up to 50% of the amount by which the district's allocation under IDEA exceeded the previous year's allocation, as authorized in 34 CFR §300.205(a); (5)

whether the district had been determined to have significant disproportionality under 34 CFR §300.646, and was therefore required to reserve 15% of its Part B IDEA allocation to provide coordinated early intervening services; (6) placement data (continuum of alternative placements, 34 CFR §300.115); and (7) compliance as identified through the State's monitoring system. The five AEAs and respective districts selected for a focused monitoring visit in Iowa were: Green Hills AEA (Lewis Central); Great Prairie AEA (Burlington); Heartland AEA (Johnston); Mississippi Bend AEA (Clinton); and Grant Wood AEA (Marion).

Once the districts and AEAs were selected, OSEP worked in conjunction with State and local personnel to select schools within the identified districts. As a part of the focused monitoring activities, OSEP selected and reviewed IEPs and students records from the selected schools. Based on information provided by the State, OSEP selected children who had been provided special education and related services for at least three consecutive years (2008-2009, 2009-2010, and 2010-2011). Factors considered in this selection included: (1) placement; (2) the range and intensity of special education and related services in the children's IEPs; and (3) disability category. OSEP reviewed IEPs for 12 students in each district. For each child, OSEP reviewed files for the most recent three consecutive school years to ascertain whether there was a pattern of reductions in the provision of special education and related services that was not based on the individual needs of the child, as determined by the child's IEP team. At each AEA, OSEP staff interviewed special education teachers, general education teachers, related services providers, building administrators, AEA and district special education administrative staff, and individuals who were knowledgeable about the impact, in their AEA and district, of the reduction of State-level (and in some cases local-level) support for special education and related services.

OSEP also interviewed State personnel regarding guidance the State provided to AEAs and districts regarding the reduction in State-level support and AEAs' and districts' continuing obligations to make FAPE available to all eligible students, and the impact of the State's (and in some cases the district's) reduction in financial support for special education and related services on AEAs and districts and the services they provided to children with disabilities. OSEP also reviewed documents and interviewed staff regarding the methods the State used to determine whether AEAs and districts continued to make FAPE available to children with disabilities. Also, OSEP reviewed financial data and interviewed State staff responsible for administering the State's fiscal systems.

As noted above, OSEP visited five AEAs and districts as part of the focused review component of its 2010 verification visit to the State. Based on its review of IEPs and interviews with State, AEA and district administrative, instructional and fiscal personnel, OSEP did not find evidence of: (1) a pattern of reducing the amount or types of special education and related services in the year for which the State received the waiver under 34 CFR §300.163(c) (SFY 2010, i.e., the period from July 1, 2009 through June 30, 2010); (2) AEAs or districts making service and/or placement decisions based on the availability of funds and other resources, rather than on an individualized basis based on the unique needs of the child as determined by the IEP team; (3) failure to implement children's IEPs; or (4) a denial of FAPE.