

Kansas 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. Additionally, 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 under Part B of the IDEA.

Methods

In reviewing the State's systems for general supervision, collection of State-reported data¹, 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
 - Local educational agency (LEA) staff, where appropriate
 - 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 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 Conclusions

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 Memorandum 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.

The Kansas Department of Education (KSDE) reported that prior to the SPP/APR performance period ending June 30, 2010, it only verified the correction of noncompliance identified through the use of the NSTTAC checklist for Indicator 13 and noncompliance identified through the State's IDEA file review at the individual child level. KSDE reported that procedures were not in place to verify whether the LEA was correctly implementing the regulatory requirements relative to the noncompliance identified for Indicator 13 or with the identification of noncompliance made through the State's IDEA file review. Thus, if noncompliance was identified for Indicator 13 or through the IDEA file review, the State did not review updated data to ensure that the LEA was implementing the specific regulatory requirement, consistent with OSEP Memorandum 09-02 and guidance.

KSDE informed OSEP that as of August 2010, the State revised its policies and procedures to require the review of updated data when verifying correction of noncompliance for Indicator 13 and noncompliance identified through the State's IDEA file review. During the onsite Verification Visit, KSDE provided OSEP with its revised policy and procedure regarding the process to ensure verification of correction for Indicator 13 and noncompliance identified through the State's IDEA file review. KSDE's new policy and procedure identify a mechanism for KSDE to verify that the LEA is correctly implementing the specific regulatory requirements (i.e., has achieved 100% compliance) based on a review of updated data subsequent to the finding. However, KSDE has not been able to implement these new policies/procedures as SPP/APR FFY 2010 data collection windows for Indicator 13 and the IDEA file review were still open at the time of the verification visit.

During the verification visit, KSDE staff also explained to OSEP that previously, it was KSDE's understanding that the State was only required to identify noncompliance relative to the existence and implementation of IDEA Part B regulatory requirements regarding policies, procedures, and practices for Indicators 9 and 10. KSDE reported that the State did not have written policies or procedures in place that would require the LEA to identify individual child noncompliance if the State, or the LEAs through the analysis of the Kansas Self Assessment Tool, determined that disproportionate representation was the result of inappropriate identification. The State reported and reviewed with OSEP the State's SPP/APR data since FFY 2008 that indicated no LEA was identified with disproportionate representation as a result of inappropriate identification since the issuance of the OSEP Memorandum 09-02.

To address the problems with its correction protocols for Indicators 9 and 10, prior to the conclusion of the verification visit, KSDE submitted to OSEP, revisions that include a provision requiring an LEA with disproportionate representation that is determined to be the result of inappropriate identification to determine the impact at the individual child level. KSDE's revised protocols also state that if disproportionate representation is identified as the result of inappropriate practices, the Indicator 9/10 File Review Worksheet would be used to identify the students impacted and to review each student's file to ensure the appropriate implementation of IDEA Part B regulatory requirements relative to child find, referral, evaluation, eligibility determination and parent involvement.

OSEP Conclusions

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, the State must verify that any LEA noncompliance identified through its process has been corrected, by ensuring 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. As noted above, however, the State had not verified correction consistent with OSEP Memorandum 09-02 for FFY 2008 findings for Indicator 13 and findings identified through the State's IDEA file review. In addition, the State did not have a methodology in place to identify the students impacted as the result of disproportionate representation due to inappropriate identification for Indicators 9 and 10, and to review each student's file to ensure the appropriate

implementation of IDEA Part B regulatory requirements. Therefore, OSEP concluded that, at the initiation of the verification visit, the State did not have a general supervision system that was reasonably designed to correct all noncompliance identified through the general supervision system. During the verification visit, the State informed OSEP that it had revised its monitoring and verification procedures to ensure correction of any identified noncompliance, and will implement those revised procedures in January 2011. The State also demonstrated that it had revised its procedures relative to correction of noncompliance related to Indicators 9 and 10.

Required Actions/Next Steps

With its response, during the SPP/APR clarification period, to OSEP's FFY 2009 Kansas Part B SPP/APR Status Table, KSDE must describe the extent to which for FFY 2008 findings for which it reports timely correction in the Indicator 15 Worksheet of the FFY 2009 APR, that it verified timely or subsequent correction of the findings in a manner consistent with the guidance in OSEP Memo 09-02. Within 90 days from the date of this letter, the State must provide a written assurance that it has revised and disseminated its correction procedures relative to Indicator 13 and for noncompliance identified through the State's IDEA file review so that it only considers a finding of noncompliance to have been corrected when the LEA both: (a) has correctly implemented the specific regulatory requirements; and (b) has corrected each individual case of student-specific noncompliance (even if late for timeline requirements). In addition, the State must report data in its FFY 2010 APR due February 1, 2012 that demonstrate it has a methodology to correct all instances of noncompliance in a timely manner consistent with OSEP Memo 09-02. No further action is required relative to correction of noncompliance related to Indicators 9 and 10.

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

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), 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 sections 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 (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 300.320(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.

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, and that the data collected and reported reflects 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 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 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 valid and reliable data and information, to report the data and information to the Department and the public in a timely manner, and to ensure that the data and information collected and reported reflects actual practice and performance.

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 made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. In its October 25, 2010 letter, the Department granted Kansas's June 30, 2010 amended request for a waiver to reduce the amount of State financial support made available for special education and related services for State fiscal year (SFY) 2010 by \$53,306,253. A State receiving a waiver of the maintenance of State financial support requirement 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.

On July 26, 2010 the Department notified Kansas that it had been selected for a verification visit and that during that visit, OSEP would conduct focused monitoring activities to verify that the State continued to make FAPE available to children with disabilities.

In collaboration with the State, OSEP selected LEAs for FAPE focused visits based on the following criteria: (1) LEA performance against targets in the State's SPP/APR and the LEA's determination under Section 616 of IDEA; (2) geographic location of the LEA (to ensure representation from different regions of the State); (3) LEA student demographic information and enrollment; (4) whether the LEA reduced its local-level maintenance of effort by up to 50% of the amount by which the LEA's allocation under IDEA exceeded the previous year's allocation (34 CFR §300.205(a)); (5) whether the LEA had been determined to have significant disproportionality and was thereby required to reserve 15% of its Part B IDEA allocation to provide comprehensive coordinated early intervening services (34 CFR §300.646); (6) the amount of the reduction of State special education support to the LEA; (7) placement data (continuum of alternative placements) (34 CFR §300.115); and (8) compliance as identified through the State's monitoring system. The five LEAs chosen for a focused monitoring visit in Kansas were Wichita (USD 259), Olathe (USD 233), Flint Hills Special Education Cooperative (USD 253), Ottawa (USD 290), and Wyandotte Comprehensive Special Education Cooperative (USD 500). One of these LEAs reduced their local level maintenance of effort, for SFY 2009 -- the year prior to OSEP granting the State the waiver -- by up to 50% of the amount by which the LEA's allocation under IDEA exceeded the previous year's allocation, as authorized in 34 CFR §300.205(a).

Based on information provided by the districts, OSEP identified specific schools within the district and selected children who had been provided special education and related services for at least three consecutive school years (2008-2009, 2009-2010, 2010-2011). Factors considered in this selection included: (1) placement; (2) range and intensity of special education and related services provided; (3) representativeness (race/ethnicity, disability category, age, gender); and (4) type of special education and related services provided (i.e., specialized instruction, occupational therapy, physical therapy, speech and language, and counseling).

While on site, OSEP conducted interviews at the State level regarding guidance the State provided to LEAs regarding the reduction in State level support and LEAs' continuing obligation to make FAPE available to all eligible students, and the impact of the State (and in some cases, the LEAs') reduction in financial support for special education and related services on LEAs and the services they provided to children with disabilities. OSEP also reviewed documents and interviewed staff regarding the methods the State used to determine that LEAs 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.

At the local level, OSEP reviewed individualized education programs (IEPs) for 12 students per LEA. For each child, OSEP reviewed files for three consecutive school years (2008-2009, 2009-2010, 2010 -2011) to ascertain whether there were any 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 LEA, OSEP staff interviewed special education teachers, regular education teachers who serve children with disabilities in their classes, related services providers, building administrators, LEA special education administrative staff, and LEA business managers knowledgeable about the impact of the reduction of State-level (and in some cases local-level) support for special education and related services.

As noted above, OSEP visited five LEAs as part of the focused review component of its 2010 verification visit to the State. Based on information provided by the State, review of IEPs, interviews with State administrative, instructional and fiscal personnel and LEA's director of special education, general education administrators, special and general education teachers, and related service providers, 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) LEAs making service and/or placement decisions based on the availability of funds and other resources, rather than on a 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.