

Commonwealth of the Northern Mariana Islands Part B Verification Visit Letter

Enclosure

Scope of Review

During the verification visit OSEP reviewed critical elements of the Commonwealth of the Northern Mariana Islands' (CNMI) general supervision, data and fiscal systems, and CNMI's systems for improving child and family outcomes and protecting child and family rights.

Methods

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

- Analyzed the components of CNMI's general supervision, data and fiscal systems to ensure that the systems are reasonably calculated to demonstrate compliance and improved performance
- Reviewed CNMI's systems for collecting and reporting data regarding selected indicators in CNMI's Federal fiscal year (FFY) 2008 Annual Performance Report (APR)/State Performance Plan (SPP)
- Reviewed the following—
 - Previous APRs
 - CNMI's application for funds under Part B of the IDEA
 - Previous OSEP monitoring reports
 - Individualized Education Programs (IEPs)
 - CNMI's Web site
 - CNMI's General Supervision Monitoring Procedures
 - Other pertinent information related to CNMI's systems¹
- Gathered additional information through surveys, focus groups or interviews with—
 - The Director of Special Education
 - CNMI personnel responsible for implementing the general supervision, data and fiscal systems
 - CNMI's Advisory Panel

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 (Part B) 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), CNMI must have a general supervision system that identifies noncompliance in

¹ 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.

a timely manner. Because CNMI is a unitary system and does not have LEAs, CNMI Public School System (PSS) monitors schools instead of LEAs.

CNMI PSS officials reported that CNMI PSS identifies noncompliance through its four monitoring components: (1) comprehensive on-site monitoring; (2) external monitoring; (3) focused monitoring; and (4) annual database draw-down. Through a review of monitoring procedures, completed protocols, monitoring reports, and interviews with CNMI's PSS officials, OSEP found that CNMI PSS issued findings through its annual data draw-down and focused monitoring if noncompliance was identified in the area of focus. However, CNMI PSS reported that it did not issue findings of noncompliance through focused monitoring if the noncompliance was not in the area of focus. Additionally, OSEP found that CNMI PSS did not identify noncompliance through its comprehensive on-site monitoring component when the percentage of noncompliance was above 80% in any cluster area.² For example, in the April 23, 2009 report to Marianas High School, CNMI PSS addressed that schools' improvement in the FAPE cluster area of the compliance monitoring report form, but did not address the components with the FAPE cluster area that showed noncompliance, such as conducting an initial evaluation or reevaluation within 60 days from parental consent, and student participation in statewide assessments. Finally, CNMI PSS reported that it did not issue findings of noncompliance based on information revealed through its external monitoring component.

Comprehensive On-site Monitoring: CNMI PSS monitors review compliance with cluster areas in five schools every four years to determine a school's level of compliance. Each cluster area is comprised of regulatory requirements under Part B related to the cluster area. OSEP found, based on its review of CNMI's monitoring reports issued to Garapan Elementary School (April 14, 2009), Marianas High School (April 23, 2009) and Tinian Elementary School (March 19, 2009) that if the total percentage for a cluster area fell between 80 percent and 95 percent, CNMI PSS determined that the school was "moving towards compliance," and if the percentage for a cluster area was above 95 percent, CNMI PSS determined that the school was in "substantial compliance." CNMI PSS officials reported that the noncompliance is addressed informally and corrected "immediately." CNMI PSS officials confirmed in interviews with OSEP that CNMI PSS has not issued written findings of noncompliance as a result of comprehensive on-site monitoring.

External Monitoring: CNMI PSS officials reported that external monitoring is conducted in the fall by a Federal Program Monitor or a contracted consultant who reports to the Commissioner of Education. At the time of OSEP's verification visit, CNMI PSS officials reported that CNMI conducted external monitoring every two years; however, beginning in November 2011, CNMI is scheduled to conduct external monitoring every year. Through this component, the external monitor reviews documents including student files representing ten percent of the total CNMI student files, verifies the accuracy of data entered in the data system, and examines the data to determine if CNMI PSS is meeting the following timeline requirements regarding: (1) initial evaluations and re-evaluations; (2) initial and annual IEP meetings; and (3) ensuring that an IEP is in effect by the eligible child's third birthday. The external monitor submits a report with potential areas of noncompliance to CNMI PSS officials and schools. CNMI PSS officials reported that after CNMI confirms noncompliance, CNMI PSS staff corrects it "immediately."

² Cluster areas include: Parent Involvement, Free Appropriate Public Education in the Least Restrictive Environment (FAPE in the LRE), and Secondary Transition.

CNMI PSS officials confirmed in interviews with OSEP that CNMI has not issued findings of noncompliance as a result of external monitoring.

Focused Monitoring: CNMI PSS selects priority areas and schools in order to examine specific Part B requirements for compliance and results. Focus areas are selected using data from file reviews, the CNMI PSS database, the dispute resolution system, on-site and off-site monitoring, and previous corrective action plans. Focused monitoring is used to help a school improve compliance and performance in the priority area or the area that put a school on the focused monitoring list. CNMI officials reported that CNMI PSS has only issued findings of noncompliance in the specific area of focus through its annual focused monitoring, regardless of whether CNMI discovered findings of noncompliance in other areas.

During the November 8, 2010 verification visit, CNMI PSS officials stated that CNMI PSS has revised its monitoring procedures for comprehensive on-site monitoring and external monitoring. Under the new monitoring procedures, CNMI will issue written findings of noncompliance through the comprehensive on-site monitoring component for any level of noncompliance, and findings from external monitoring will be issued by the CNMI Commissioner of Education to ensure that school principals responsible for correcting findings correct noncompliance in a timely manner consistent with 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). CNMI PSS officials reported that monitoring under the new procedures began in November 2010.

OSEP Conclusion

To effectively monitor the implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), CNMI must issue written findings of noncompliance when monitoring data clearly reflect noncompliance, regardless of the level of noncompliance, unless the noncompliance is corrected immediately and CNMI chooses not to issue a written finding. CNMI PSS officials stated during the November 8, 2010 verification visit that it revised its monitoring system to identify noncompliance and issue written findings through comprehensive on-site monitoring and external monitoring. Because CNMI has not fully implemented its new general supervision system, OSEP cannot determine whether the new procedures for on-site and external monitoring will be effective.

Further, CNMI is not ensuring that it identifies all noncompliance found through its focused monitoring. Based on the review of documents, analysis of data and interviews with CNMI personnel, as described above, OSEP concludes that CNMI does not have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using all of the components of its monitoring system.

Required Actions/Next Steps

Within 90 days from the date of this letter, CNMI must resubmit its revised monitoring procedures for identifying noncompliance or issuing findings of noncompliance when data reviewed through its comprehensive on-site monitoring, external monitoring, and focused monitoring outside the focus area reflect noncompliance. If CNMI corrects the noncompliance immediately and chooses not to issue a finding, CNMI's revised monitoring procedures must describe how CNMI PSS documents the correction of noncompliance to ensure that CNMI: (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 CNMI's data system; and (2) has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of CNMI.

In the February 1, 2012 APR, CNMI must include the results of its latest on-site comprehensive, focused and external monitoring under relevant SPP/APR compliance indicators and Indicator 15.

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), a State must have a general supervision system that corrects noncompliance in a timely manner. In addition, as noted in OSEP Memo 09-02, in order to verify that previously identified noncompliance has been corrected, a 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. Because CNMI is a unitary system and does not have LEAs, CNMI PSS ensures the correction of noncompliance in schools instead of LEAs.

OSEP Conclusion

CNMI PSS reported that it issues written findings of noncompliance based on an annual data draw-down from its Pacific Education Data Management System³ and through focused monitoring if noncompliance is identified in the area of focus. OSEP confirmed through its review of documents and in interviews, that CNMI PSS corrects the noncompliance identified through the annual data draw-down, and for the findings made through the focused monitoring process in a timely manner consistent with OSEP Memo 09-02. However, OSEP learned that CNMI does not track correction of noncompliance when noncompliance is identified through comprehensive on-site monitoring and external monitoring, and does not require correction of noncompliance discovered through focused monitoring when the noncompliance is outside the area of focus.

Based on the review of documents, including data verifying correction, analysis of the data, and interviews with CNMI PSS officials, OSEP concludes that CNMI's system for general supervision is not reasonably designed to correct noncompliance in a timely manner because, as described further in GS-1 above, OSEP finds that CNMI only ensures the timely correction of noncompliance consistent with OSEP Memo 09-02 for written findings of noncompliance made as a result of its annual data draw-down component and focused monitoring.

Required Actions/Next Steps

See Critical Element 1 above.

³ CNMI identifies a point in time to identify noncompliance (July 1 through June 30) and then issues a written finding of noncompliance. Some of these data are used in CNMI's Part B SPP/APR.

Critical Element 3: Dispute Resolution

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

CNMI must have reasonably designed dispute resolution procedures and practices if it is to effectively implement: (1) the State-level 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

During the November 2010 verification visit, OSEP directed CNMI to make technical revisions to its procedural safeguards notice to ensure compliance with 34 CFR §300.504, and CNMI submitted that document to OSEP with the required revisions.

Based on the review of documents and interviews with CNMI personnel, OSEP concludes that CNMI has procedures and practices that are reasonably designed to implement the dispute resolution requirements of Part B of the IDEA. However, because CNMI had not received any recent complaints/due process hearing requests, OSEP could not determine the effectiveness of those procedures and practices.

Required Actions

No further action is required.

Critical Element 4: Improving Educational Results

Does the State have procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities?

CNMI 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 CNMI personnel, OSEP concludes that CNMI 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, CEIS, NIMAS and assessment?

A 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 (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).

The requirement for making local determinations and publicly reporting on LEA performance pursuant to IDEA section 616 and 34 CFR §300.600 do not apply to CNMI because it is a unitary system and does not have LEAs. CNMI meets the requirement by publicly reporting its SPP/APR and is not required to make annual determinations.

OSEP Conclusions

Based on the review of documents and interviews with CNMI personnel, OSEP concludes that CNMI has procedures and practices that are reasonably designed to implement selected grant requirements, i.e., private schools, CEIS, NIMAS and assessment requirements.

Required Actions/Next Steps

No action is required.

Other General Supervision Issues

The requirements of Part B of IDEA are applicable to each State agency that receives payments under Part B of IDEA, and the provisions of Part B apply to all political subdivisions of the State that are involved in the education of children with disabilities, including State and local juvenile and adult correctional facilities. (34 CFR §300.2(b)(1)(iv)) In general, the SEA is responsible for ensuring that the requirements of Part B are carried out, regardless of the agency responsible under State law for providing education to children with disabilities. (34 CFR §300.149(a))

Under CNMI Public Law 16-47, CNMI's Department of Community and Cultural Affairs (DCCA) is responsible for providing educational services for children with disabilities in juvenile facilities. As part of its monitoring and enforcement responsibilities, CNMI PSS must ensure that special educational programs at the DCCA meets the program requirements of Part B, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities (34 CFR §300.600(b)(2)).

During the pre-site preparation for the verification visit, OSEP learned that a juvenile who is classified as a student with a disability and received special education services in a public high school was detained in the fall of 2010 at the Kagman Juvenile Detention (KJD) and Correction Facility (CF). KJD and CF is under the jurisdiction of the DCCA. A DCCA official reported that when KJD and CF contacted CNMI PSS regarding special education services for this juvenile, CNMI PSS legal counsel stated that in order for the detainee at KJD and CF to be provided special education services by CNMI PSS, a Memorandum of Understanding (MOU) must be in place between PSS and DCCA. Since there is no MOU in place between CNMI PSS and DCCA, and DCCA does not have a qualified special education teacher, no special education services are being provided for that juvenile. In addition, DCCA recently informed OSEP that a juvenile who was detained in November 2008 at KJD and CF is currently not receiving special education services, although he was in special education at the time of his arrest.

OSEP Conclusions

Under 34 CFR §300.149(a), CNMI PSS is responsible for ensuring that the requirements of Part B are carried out, including that a FAPE is available to children with disabilities in juvenile correctional facilities. Based on the review of documents and interviews, as described above, OSEP concludes that CNMI PSS does not have a general supervision system that is ensuring that a FAPE is made available to children with disabilities in juvenile correctional facilities in CNMI.

Required Actions/Next Steps

Within 90 days from the date of this letter, CNMI must update OSEP about the status of the juveniles who are children with disabilities under the IDEA detained in KJD and CF juvenile correctional facility and any other juvenile correctional facilities within CNMI, including: (1) the number of juveniles who are eligible for services under Part B; and (2) the types and frequency of services those juveniles need; or CNMI must provide OSEP with a plan for providing that information to OSEP, including timelines.

In addition, CNMI must provide OSEP with a description of how juveniles in juvenile correctional facilities are identified as children with disabilities, and updated information about the services that are being provided for the juveniles who were detained in November 2008 and the fall of 2010 at KJD and CF.

With the next Part B application package due May 20, 2011, CNMI must provide OSEP with a copy of the final MOU that is in effect between CNMI PSS and the DCCA, or provide OSEP with the status of the MOU. The MOU must describe how juveniles detained in juvenile correctional facilities are identified, and how special education and related services are provided provided.⁴

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, CNMI 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 CNMI personnel, OSEP concludes that CNMI 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.

⁴ Prior to the expenditure of funds reserved for State administration, a State must certify to the Secretary that interagency agreements or other mechanisms to establish responsibility for services for children from whom some other State agency is obligated under Federal or State law to provide or pay for services that are required by Part B are current. (20 USC 1411(e)(1)(C); 34 CFR §300.704(a)(3))

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, CNMI 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 CNMI personnel, OSEP concludes that CNMI 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), CNMI 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 CNMI personnel, OSEP concludes that CNMI 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?

CNMI 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 CNMI personnel, OSEP concludes that CNMI 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?

A 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

CNMI is a unitary system and is not required to develop a funding mechanism to distribute funds within CNMI.

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?

CNMI 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 section 612(a)(18)(A) of the IDEA and 34 CFR §300.163(a), the State must not “reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.” As defined in section 602(32) of the IDEA and 34 CFR §300.40, “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas, and is not limited to the State educational agency (SEA).

Accordingly, when calculating the amount of financial support that CNMI makes available for special education and related services, CNMI must have a method for calculating maintenance of financial support by CNMI. 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 interviews during the verification process and on a December 16, 2010 teleconference, program and fiscal officials could not describe CNMI's methodology for calculating State financial support for special education and related services consistent with the requirements in 34 CFR §300.163(a). However, CNMI staff did report that the special education program is funded by a combination of IDEA funds and State general funds allocated to CNMI PSS, and that there are currently no contributions from other State agencies designated for the provision of special education and related services. OSEP reminds CNMI that, in the event that funds are made available from other State agencies for the provision of special education and related services, those contributions must be reflected in CNMI's calculation of State financial support consistent with the guidance below.

Although States may have different statutory and regulatory processes for making funds available for special education and related services, "made available" generally means appropriated. However, there are some limited circumstances when CNMI may include funds that agencies other than CNMI PSS directly pay to staff or contractors for the delivery of special education and related services pursuant to an IEP in its calculation of State financial support that is made available. For example, if an agency within CNMI provides mental health services to children with disabilities pursuant to their IEPs, the cost of such services would be included in CNMI's calculation of the amount of its financial support for special education and related services. Under these circumstances, to account for financial support for special education and related services provided by agencies other than CNMI PSS, when calculating its level of financial support made available, CNMI must include amounts that other agencies directly pay to staff or contractors for the delivery of special education and related services pursuant to an IEP.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with CNMI, as described above, OSEP concludes that CNMI, 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 the allowable use of IDEA funds. However, OSEP found that CNMI does not have procedures that are reasonably designed to calculate properly CNMI's financial support for special education and related services. As required in section 612(a)(18)(A) of the IDEA and 34 CFR §300.163(a), CNMI must include the financial support made available by CNMI PSS for special education and related services for children with disabilities in its calculation of State financial support.

On January 6, 2011, CNMI provided information regarding employee salaries and retirement benefits. This information does not constitute policies and procedures for calculating maintenance of financial support for special education and related services.

Required Actions/Next Steps

Within 90 days from the date of this letter, CNMI must submit to OSEP:

- (1) The procedures that CNMI uses to calculate maintenance of financial support for special education and related services, including how CNMI ensures that it will not reduce the amount of State-level financial support for special education and related services for children with disabilities, or otherwise made available because of the excess cost of educating those children, below the amount of that support for the preceding year;

- (2) A copy of the correspondence in which CNMI has informed its audit office of the need to review CNMI's compliance with the State financial support requirements in section 612(a)(18)(A) of the IDEA and 34 CFR §300.163(a) as part of any audit conducted under the Single Audit Act and OMB Circular A-133; and
- (3) A written assurance that CNMI has utilized the methodology developed in accordance with item 1 above to calculate State financial support for the provision of special education and related services for fiscal year 2010 consistent with the requirements in 34 CFR §300.163(a).