

## Oregon Part B Verification Visit Letter

### Enclosure

#### Scope of Review

During the verification visit, 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,<sup>1</sup> 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 systems<sup>2</sup>
- 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
  - State Advisory Panel
  - Parents and advocates
  - Local educational agency (LEA) personnel

#### I. General Supervision

##### ***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.

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

<sup>2</sup> 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.

The Oregon Department of Education (ODE) monitors its LEAs' compliance with the IDEA through its Systems Performance Review and Improvement (SPR&I) monitoring system. SPR&I includes a web-based application that collects data from LEAs on compliance and performance indicators based on LEAs' annual review of individual student files. This process, referred to in Oregon as a Procedural Compliance Review (PCR), occurs during a five-month period, from September through the following February of each year. ODE requires its LEAs to "self-identify" noncompliance with IDEA requirements during this time period.

In March of each year, ODE verifies the local program data LEAs have submitted through the PCR in order to determine whether an LEA has noncompliance. Between April and July, LEAs that ODE has concluded have noncompliance may submit evidence that the noncompliance the LEA identified through the PCR that was verified by the State the previous March has been corrected. In August, ODE formally notifies LEAs by providing written findings of the noncompliance identified through the PCR, which the LEA was unable to correct by July of that year.

In Oregon, LEAs do not receive written findings of noncompliance until approximately five months after the State discovers the noncompliance. Consequently, the timeline for correcting the noncompliance as soon as possible, and in no case later than one year after the State's identification of the noncompliance, does not begin until five months after the State concludes that an LEA has noncompliance. OSEP has advised States that "[w]ritten notification of findings needs to occur as soon as possible after the State concludes that the LEA or early intervention program has noncompliance," and that OSEP would generally expect that "written findings be issued less than three months from discovery." See Question 7 of Office of Special Education Programs Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan (SPP)/Annual Performance Report (APR), dated September 3, 2008, (OSEP's September 3, 2008 FAQs). During the verification visit, ODE personnel informed OSEP that ODE will be instituting a new practice in the 2010-11 school year. ODE indicated that after the State verifies that an LEA has noncompliance in March, it will notify its LEAs of written findings of noncompliance in April 2011, which should be approximately one month after the State discovers the noncompliance.

### **OSEP Conclusion**

To effectively monitor the implementation of Part B of the IDEA by LEAs, as required by IDEA sections 612(a)(11), 616 and 642, 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 is reasonably designed to identify noncompliance in a timely manner. 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 a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components. To meet its general supervisory responsibility, Oregon must provide written notification of findings of noncompliance as soon as possible after the State concludes that an LEA has noncompliance, which OSEP expects generally to be in less than three months from the time that the SEA discovers the noncompliance. See question 7 of OSEP's September 3, 2008 FAQs. During the verification visit, ODE informed OSEP that it would be instituting a new practice of providing its LEAs written notification of findings of noncompliance in April 2011, which should be approximately one month after the State concludes that an LEA has noncompliance.

**Required Actions/Next Steps**

1. Within 90 days from the date of this letter, the State must provide a written assurance that it has taken the necessary steps to enable the State to identify noncompliance in a timely manner and provide written findings of noncompliance to LEAs as soon as possible after the State concludes that an LEA has noncompliance, generally in less than three months from discovery.
2. With the FFY 2010 APR, due February 1, 2012, the State must submit documentation demonstrating that it provided written findings of noncompliance to LEAs in a timely manner (i.e., “generally in less than three months from discovery”), consistent with question 7 of OSEP’s September 3, 2008 FAQs.

***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.

With regard to Oregon's Part B State complaint procedures, ODE reported that Model Rule 137-004-0080 of the Oregon Administrative Procedures Act provides a mechanism for a person who is subject to an order in other than a contested case to petition for reconsideration of that order within 60 calendar days of the date of the order. ODE informed OSEP that orders in special education State complaints are subject to this reconsideration process, which occurs after the 60 day complaint resolution timeline has expired. Following the verification visit, ODE informed OSEP that one petition for reconsideration of an order in a special education complaint was granted in 2008, and as a result, the State's written decision on the complaint was issued outside of the 60-day complaint resolution timeline. ODE also reported that since that time, it has received two petitions for reconsideration, but that it has refused to grant those petitions, because the reconsideration could not occur within the 60-day complaint resolution timeline.

Under 34 CFR §300.152(a) and (a)(5), a State must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 for a written decision to be issued that addresses each allegation in the complaint, unless one of the exceptions in 34 CFR §300.152(b)(1) would apply. Although the Part B regulations are silent as to appeals of decisions in State complaints, reconsideration is not an exceptional circumstance under 34 CFR §300.152(b)(1) that would justify extension of the 60-day complaint resolution timeline.

Consistent with a State's responsibility to resolve Part B State complaints within the 60-day timeline or a properly extended timeline in accordance with 34 CFR §300.162(b)(1), OSEP has permitted States to establish procedures that would allow requests for reconsideration of Part B State complaint decisions that would result in a decision on the reconsideration within the 60-day complaint resolution timeline. Additionally, OSEP permits States to establish procedures for reconsideration of complaint decisions, even though the reconsideration would not be completed until after the 60-day timeline, but only if implementation of any corrective action(s) required in the State's final decision is not delayed pending the reconsideration process. See OSEP Memo 00-20, Complaint Resolution Procedures Under Part B of the Individuals with Disabilities Education Act, dated July 17, 2000, question 10.<sup>3</sup> Even though Oregon has informed OSEP that it has not granted petitions for reconsideration of written decisions in Part B State complaints since 2008, the State has also indicated that if directed to do so by OSEP, it would revise its special education State complaint procedures in Oregon Administrative Rule 581-015-2030 to address how reconsideration of Part B State complaints under Oregon Model Rule 137-004-0080 could occur consistent with Part B. OSEP believes that Oregon needs to revise Administrative Rule 581-015-2030 (Procedures for Complaints as Required by IDEA Regulations) to be consistent with Part B, as described above.

### **OSEP Conclusion**

Based on the review of documents and interviews with State personnel, OSEP concludes that with the exception of the need to clarify procedures governing petitions for reconsideration of written decisions in Part B State complaints under Oregon Model Rule 137-004-0080, the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA. With regard to Oregon's procedures and practices governing reconsideration of Part B State complaint decisions, as noted above, reconsideration of special education State complaints under Oregon law must occur outside of the 60-day complaint resolution timeline, and a request for reconsideration is not an exceptional circumstance under 34

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<sup>3</sup> Note that the citations in OSEP Memo 00-20 reflect prior regulations for this program.

CFR §300.151(b)(1) that would justify extension of the 60-day complaint resolution timeline. Oregon informed OSEP that its current practice is not to grant petitions for reconsideration in special education State complaints because that reconsideration must occur outside of the 60-day complaint resolution timeline, but indicated that it would revise its special education complaint procedures in Oregon Administrative Rule 581-015-2030 to be consistent with Part B, if directed to do so by OSEP.

#### **Required Actions/Next Steps**

Within 90 days of the date of this letter, the State must submit a written assurance that it has revised its special education complaint procedures in Oregon Administrative Rule 581-015-2030, to ensure that petitions for reconsideration of orders in special education State complaints under Oregon Model Rule 137-015-0080 are implemented in a manner that is consistent with Part B. In revising its State complaint procedures, Oregon may choose one of the following options, as described above:

1. Consistent with its current practice, Oregon may establish procedures that would refuse to grant petitions for reconsideration of orders in special education State complaints under Model Rule 137-015-0080 because that reconsideration cannot occur within the 60-day complaint resolution timeline in 34 CFR §300.152; or
2. Oregon may establish procedures that would permit petitions for reconsideration of orders in special education complaints under Model Rule 137-015-0080 to occur outside of the 60-day complaint resolution timeline, but only if any corrective action(s) required in the State's written decision is not delayed pending the reconsideration process. See OSEP Memo 00-20 dated July 17, 2000, question 10.

#### ***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 effectively implement selected grant assurances, i.e., making local determinations and publicly reporting on LEA performance, significant disproportionality, private schools, CEIS, 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).

During the verification visit, OSEP reviewed the State's District FFY 2009 Determination and Enforcement Matrix (Matrix) (based on 2009-2010 data). The Matrix describes the criteria ODE used in making local determinations of "meets requirements," "needs assistance," "needs intervention," and "needs substantial intervention," as required by 34 CFR §300.600(a)(2). OSEP reviewed ODE's Matrix and found that it was partially inconsistent with the provisions of 34 CFR §§300.600(a)(3) and 300.604(a) because it did not include all of the applicable appropriate enforcement mechanisms identified in those sections. During OSEP's verification visit, ODE revised the Matrix and submitted it to OSEP for review. OSEP has reviewed ODE's revised Matrix and has determined that it reflects the revisions that were necessary to make it consistent with the requirements in 34 CFR §§300.600(a)(3) and 300.604(a).

### **OSEP Conclusion**

Based on the review of documents and interviews with State personnel, OSEP concludes that with regard to monitoring and enforcement, the State did not have procedures and practices that were reasonably designed to implement all of the requirements in IDEA section 616 and 34 CFR §§300.600(a)(3) and 300.604(a). OSEP found during the verification visit that the State did not have procedures and practices that included the applicable appropriate mechanisms from 34 CFR §300.604(a), which are identified in 34 CFR §300.600(a)(3) when it makes local determinations annually on the performance of each LEA. However, subsequent to the verification visit, ODE revised its Matrix to incorporate the applicable appropriate enforcement procedures from 34 CFR §300.604(a), which are identified in 34 CFR §300.600(a)(3), when it makes local determinations annually on the performance of each LEA.

### **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?*

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 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 and 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 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 Conclusion**

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), and 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.

Prior to the verification visit, OSEP reviewed ODE's Office of Student Learning and Partnerships Special Education Finance Q and A. This document explains that ODE has established the practice of awarding grants for an 18-month period with no carryover. During

the verification visit, ODE informed OSEP that it requires LEAs to return unexpended funds to ODE at the end of 18 months so that it can reallocate these funds prior to the end of the carryover period. The SEA explained to OSEP that the purpose of this practice is to minimize the amount of funds that the State returns to the Federal government at the conclusion of the Tydings period.

#### Period of Availability of Part B of IDEA Funds

Under 34 CFR §76.709(a), which implements section 421(b) of GEPA, 20 U.S.C. 1225(b), also known as the Tydings Amendment, “[i]f a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the remaining funds during a carryover period of one additional fiscal year.” Section 76.709(b) requires the State to return any carryover funds not obligated by the State or its subgrantees to the Federal government at the conclusion of the carryover period.

Under a State-administered program such as Part B of IDEA, where States are required to distribute subgrant funds to LEAs, the Tydings Amendment allows States and subgrantees to obligate grant funds not only during the fiscal year for which those funds are appropriated, but also during the succeeding fiscal year. For a program such as Part B of the IDEA, which is forward-funded, funds must remain available to the State and its subgrantees -- in this case, LEAs -- for obligation from July 1 through September 30 of the second fiscal year (27 months) if the funds become available on July 1; or from October 1 through September 30 of the second fiscal year (24 months) if the funds become available on October 1.

Following the verification visit, ODE proposed to revise its special education fiscal question and answer document to address the requirements of the Tydings Amendment. However, the revised guidance would continue ODE’s practice of establishing an 18-month grant period for Part B funds subgranted at the LEA level with no carryover, but would permit an LEA to request an extension for an additional nine months, if the LEA needed additional time to expend the entire grant. This revision still is not sufficient to address the requirements in 20 U.S.C. 1225(b) and 34 CFR §76.709(a) of EDGAR, which require subgrant funds at the LEA level to be available for LEAs to obligate during the entire Tydings period.

Because the Tydings Amendment applies both to grants at the SEA level as well as to subgrants at the LEA level, and because the Tydings period is prescribed by law, it is inconsistent with the Tydings Amendment for ODE to impose a requirement that LEAs return unobligated funds at the conclusion of 18 months, even if it gives an LEA an opportunity to request an appropriate extension, because Part B funds subgranted to LEAs must remain available to LEAs for obligation until the end of the succeeding fiscal year after the fiscal year that Congress appropriated those funds.

#### **OSEP Conclusion**

Based on review of documents, analysis of data, and interviews with ODE staff, OSEP concludes that ODE has procedures that ensure the timely liquidation of Part B funds at the conclusion of the period of their availability. However, OSEP also concludes that ODE’s procedures and practices for timely obligation of Part B funds subgranted at the LEA level are inconsistent with 20 U.S.C. 1225(b) and 34 CFR §76.709(a), because they do not permit subgrant funds at the LEA level to remain available for LEAs to obligate during the entire additional fiscal year following the fiscal year that Congress appropriated those funds. Following the verification visit, although ODE revised its Special Education Funding Q & A document, ODE continued its

practice of requiring its LEAs to return unobligated funds to ODE after 18 months after Congress appropriated those funds with no carryover, but permitted an LEA to request an appropriate extension of this 18-month period. It is inconsistent with the Tydings Amendment for a State to require its LEAs to return unobligated funds to the State either six months or nine months before the Tydings period expires, even if the State gives its LEAs an opportunity to request an extension of the period of availability of those funds, because the Tydings period is prescribed by law.

### **Required Actions/Next Steps**

Within 90 days of the date of this letter, ODE must provide documentation that its procedures for obligation of carryover funds under Part B of the IDEA as applied to subgrants of Part B funds at the LEA level are consistent with 20 U.S.C. 1225(b) and 34 CFR §76.709(a), and that ODE's procedures have been revised to eliminate the requirement that LEAs must return unobligated Part B funds subgranted to LEAs at the conclusion of an 18-month period with no carryover, subject to an LEA's request for an extension. Instead, ODE must revise its procedures and practices to require that Part B funds subgranted to LEAs must remain available for LEAs to obligate during the entire additional fiscal year following the fiscal year that Congress appropriated those funds, and that for a program such as Part B of IDEA, which is forward-funded, subgrant funds at the LEA level must remain available for obligation for up to 24 months (if they were made available on July 1) or 27 months (if they were made available on October 1) after Congress appropriated those funds.

### ***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 300.815-300.816.

ODE informed OSEP that ODE allocates all section 619 funds not reserved for State administration and other State-level activities pursuant to 34 CFR §300.812 to the State, because ODE provides special education and related services directly to three and four and some five-year-old children with disabilities residing in the State. The State administers ODE's Early Childhood Special Education (ECSE) Program through contractual arrangements with nine regional contractors providing early childhood special education services throughout the State. In Oregon, although children with disabilities who turn five years of age by September 1 of each school year may enroll in LEA kindergarten programs, ODE does not distribute any section 619 funds to LEAs that provide special education and related services to those eligible children with disabilities who enroll in LEA kindergarten programs.

Under Part B, "[a]n SEA must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA or State agency," under specified circumstances. One of these circumstances is if the SEA determines that the LEA "[h]as one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children." 34 CFR §300.227(a) and (a)(1)(iv) and 20 U.S.C. 1413(g); see also 34 CFR §300.175 and 20 U.S.C. 1412(b). ODE may provide special education and related services directly to three and four-year-old and some five-

year-old children with disabilities not enrolled in kindergarten, using amounts that are otherwise available to LEAs to serve those children. The SEA may provide special education and related services directly, by contract, or through other arrangements (34 CFR §300.227(a)(2)(i)) and may provide special education and related services in the manner and at the locations it considers appropriate, including through regional or State centers (34 CFR §300.227(b)). The special education and related services must be provided in accordance with 34 CFR Part 300. However, the SEA may not retain the amounts of section 619 funds that should have been distributed to LEAs that provide special education and related services to eligible five-year-old children with disabilities who are enrolled in kindergarten.

Under 34 CFR §300.815, each State that receives a grant under section 619 must distribute all of the grant funds not reserved under 34 CFR §300.812 for State activities (State administration and other State-level activities) to LEAs that have established their eligibility under section 613 of the IDEA. Oregon must distribute these section 619 funds to LEAs using the three-part formula established at 34 CFR §300.816. As a provider of direct services under 34 CFR §300.227(a), Oregon also must use the payments that otherwise would have been available to LEAs for providing special education and related services to three and four-year-old and some five-year-old children with disabilities not enrolled in kindergarten. Because ODE distributes no section 619 funds to those LEAs that provide special education and related services to eligible five-year-old children with disabilities enrolled in kindergarten and retains all section 619 funds to provide direct services only to three and four-year-old children with disabilities (and some five-year-old children with disabilities not enrolled in kindergarten), ODE's method for distributing section 619 funds not reserved for State activities pursuant to 34 CFR §300.812 does not comply with Part B.

In determining the amount of section 619 funds that Oregon must distribute to LEAs that provide special education and related services to eligible five-year-old children with disabilities residing in the area served by the LEA who are enrolled in kindergarten, Oregon must take the following steps. Initially, after the State set-aside under 34 CFR §300.812 is calculated, Oregon must determine the entire amount of each LEA's section 619 subgrant that would otherwise have been available to each LEA had it been serving all three through five-year-old children with disabilities residing in the area served by the LEA. Oregon must apply the three-part formula described in 34 CFR §300.816 (including the base, population and poverty payments) in making these calculations. Based on this calculation of each LEA's section 619 allocation according to the three-part formula (as if the LEA were serving all three through five-year-old children with disabilities residing in its area), ODE could then determine a per child amount based on the total number of three through five-year-old children with disabilities residing in the area served by the LEA.

Based on this per child calculation, ODE would determine the amount of section 619 funds from the LEA's total subgrant that must be distributed to each LEA to provide special education and related services to the eligible five-year-old children with disabilities residing in the LEA who are enrolled in kindergarten and the amount of section 619 funds from the LEA's total subgrant that the SEA could retain for providing direct services to the three and four and some five-year-old children with disabilities, not enrolled in kindergarten, who receive special education and related services in Oregon's ECSE Program administered by the SEA.

For the reasons described above, Oregon must allocate appropriate amounts of section 619 funds to LEAs that provided special education and related services to eligible five-year-old children with disabilities enrolled in LEA kindergarten programs to ensure those LEAs receive the amount of Federal fiscal years (FFYs) 2009 and 2010 funds they were entitled to receive under section 619(g) and 34 CFR §300.816. Oregon also must ensure that its LEAs that provide special education and related services to eligible five-year-old children with disabilities enrolled in kindergarten continue to receive subgrants of appropriate amounts of section 619 funds in FFY 2011 and in subsequent FFYs.<sup>4</sup> OSEP is available to provide Oregon with technical assistance as Oregon takes the steps necessary to distribute section 619 funds to LEAs that provide special education and related services to eligible five-year-old children with disabilities enrolled in kindergarten.

### **OSEP Conclusion**

To ensure that the State has procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State, as required by IDEA section 619(g), the State must ensure that section 619 funds are distributed, in accordance with 34 CFR §§300.815 through 300.816, to LEAs that have established their eligibility under section 613 of the IDEA and that provide special education and related services to eligible five-year-old children with disabilities who are enrolled in kindergarten. 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 ensure appropriate distribution of IDEA section 619 funds within the State. Oregon must revise its method for calculating subgrants to LEAs in the manner described above, and must distribute section 619 funds to LEAs that provide special education and related services to eligible five-year-old children with disabilities who are enrolled in kindergarten in accordance with the three-part formula (base, population and poverty payments) described in 34 CFR §300.816.

### **Required Actions/Next Steps**

1. Oregon must submit to OSEP, no later than May 2, 2011, the State's revised policies and procedures that address how the State will: (i) determine the amount of section 619 funds that otherwise would have been available to its LEAs if the SEA was not providing special education and related services directly to the three and four-year-old children with disabilities (and some five-year-old children with disabilities not enrolled in kindergarten) residing in the area served by that LEA; and (ii) allocate section 619 funds to LEAs that provide special education and related services to eligible five-year-old children with disabilities residing in the area served by the LEA who are enrolled in kindergarten.
2. Beginning with FFY 2009 funds made available for obligation on July 1, 2009, which remain available for obligation through September 30, 2011 and FFY 2010 funds made available on July 1, 2010, which remain available for obligation through September 30, 2012, ODE must determine the amount of the section 619 allocations that each LEA in

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<sup>4</sup> ODE should also consider that an auditor could make a finding that ODE did not properly allocate section 619 funds to LEAs that provided special education and related services to eligible five-year-old children with disabilities who were enrolled in Kindergarten for a period prior to FFY 2009. If this were to occur, the Department is authorized to recover funds that were not properly expended, unless recovery is barred by the five year statute of limitations set out in Section 452(k) of the General Education Provisions Act (GEPA). See 20 U.S.C. 1234a(k).

## Oregon Part B 2010 Verification Letter- Enclosure

Oregon that provided special education and related services to eligible five-year-old children with disabilities enrolled in kindergarten was entitled to receive in FFY 2009 and FFY 2010. In order to ensure that each LEA receives the amount the LEA was entitled to receive in FFY 2009 and FFY 2010, ODE may use: (1) FFY 2009 and/or FFY 2010 section 611 and/or section 619 State set-aside funds; (2) any remaining FFY 2009 and/or FFY 2010 section 619 funds retained by the State to provide direct services.

3. Not later than May 2, 2011, Oregon must provide an assurance from an ODE official responsible for overseeing the distribution of funds to LEAs pursuant to section 619(g) of the IDEA specifying that: (i) The ODE official has reviewed the methodology used to make such distributions and has revised that methodology to be consistent with all statutory and regulatory requirements; and (ii) That all prior distributions, starting with FFY 2009 (funds that became available for distribution July 1, 2009), under section 619(g) of the IDEA were properly recalculated and distributed to LEAs that provided special education and related services to eligible five-year-old children with disabilities who were enrolled in kindergarten in accordance with the funding formula in 34 CFR §300.816.
4. Oregon must submit to OSEP, no later than May 2, 2011, a copy of the memorandum that ODE sends to all LEAs regarding the re-allocation of section 619 funds (beginning with FFY 2009) to LEAs that provide special education and related services to eligible five-year-old children with disabilities enrolled in kindergarten, in accordance with the requirements in 34 CFR §300.815-300.816.

### ***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.

#### LEA Maintenance of Effort

Under 34 CFR §300.203(a), with certain exceptions, funds provided to an LEA under Part B of IDEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. Section 300.203(b) sets out the standard for an LEA to demonstrate that it is complying with this requirement and states that, except as provided in §300.203(b)(2), the SEA must determine that an LEA complies with §300.203(a), for purposes of establishing the LEA's eligibility for an award for a fiscal year, if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

- (i) Local funds only.
- (ii) The combination of State and local funds.

An LEA meets the LEA maintenance of effort requirement if it meets any one of the four tests by comparing the amount of funds from appropriate sources budgeted for the grant year to the

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amount actually expended from those same sources in the most recent fiscal year for which data are available.

ODE informed OSEP that in determining whether its LEAs have maintained effort pursuant to 34 CFR §300.203(a) from year to year, it compares the total or per capita amount of a combination of State and local funds that the LEA budgeted for the education of children with disabilities in the current year with the total or per capita amount of a combination of State and local funds that the LEA spent for the education of children with disabilities in the preceding fiscal year. Oregon informed OSEP that it does not, however, permit its LEAs to establish that they have complied with 34 CFR §300.203(a) by comparing the total or per capita amount of local funds only that the LEA budgeted for the education of children with disabilities in the grant year with the total or per capita amount of local funds only that the LEA spent for the education of children with disabilities in the prior year. OSEP wishes to clarify that if ODE cannot establish that an LEA is maintaining effort in accordance with the standard in 34 CFR §300.203(b), using a combination of State and local funds, ODE must permit the LEA to demonstrate that it is complying with 34 CFR §300.203(a) by comparing the total or per capita amount of local funds only that the LEA budgeted for the education of children with disabilities in the grant year with the total or per capita amount of local funds only that the LEA spent for the education of children with disabilities in the most recent preceding fiscal year for which data are available.

### **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 use of IDEA funds.

### **Required Actions/Next Steps**

No further action is required.