

Pennsylvania 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. We also reviewed the State's policies and procedures for ensuring the appropriate tracking, reporting and use of IDEA funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA).

Methods

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

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

Background

The Pennsylvania Department of Education's (PDE) Bureau of Special Education (BSE) and Bureau of Early Intervention Services (BEIS) within the Office of Child Development and Early Learning (OCDEL) work collaboratively to oversee special education preschool and school age programs in the State. In 2007, the governor issued an order to bring all Early Childhood programs into one office. As a result, Head Start, special education preschool, Early Childhood certification, and IDEA Part C programs are now administered by OCDEL, which is jointly operated by PDE and the Department of Public Welfare (DPW). Although OCDEL is responsible for overseeing preschool special education programs in Pennsylvania, PDE, as the State education agency (SEA), has general supervisory responsibility for all special education programs for children aged three through 21. Through OCDEL, PDE is responsible for the provision of all special education preschool early intervention programs. Preschool early intervention programs contract with the State by entering into a Mutually Agreed Upon Written Arrangements (MAWAs).

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 and the special education preschool programs, 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.

School Age Programs

BSE reported that for LEAs the State identifies noncompliance through the following components of its general supervision system: Compliance Monitoring for Continuous Improvement (CMCI), Complaints, Hearing Officer Decisions (HODs), Focused Monitoring (Least Restrictive Environment), and Annual APR Indicator Review. During OSEP's visit, BSE acknowledged that prior to the 2010-11 school year, the State did not identify all instances of noncompliance. Rather, it used a standard 90% threshold that identified "systemic noncompliance." Additionally, BSE indicated that individual noncompliance was identified for individual students only when the issue was with one of certain specific requirements that were determined to be "FAPE [free appropriate public education] items." BSE reported that, beginning with the 2010-11 school year, it has revised its procedures by discontinuing use of the 90% threshold and identifying all noncompliance.

Preschool Programs

BEIS reported that the State identifies noncompliance in the special education preschool programs through the following components of its general supervision system: determinations, SPP/APR noncompliance issues, child record reviews, parent survey of satisfaction, on-site observations of early intervention services, county profiles, focused monitoring, verification tools, self assessments, complaint management, due process hearings, dispute resolution, data and fiscal monitoring through statewide database (Pelican), and Intermediate Unit (IU) improvement plans.

BEIS is not identifying and requiring correction of all instances of noncompliance with IDEA Part B requirements regardless of the extent of the noncompliance. BEIS conducts on-site monitoring visits on a two-year cycle. For those programs not scheduled for monitoring visits that year, BEIS collects and reviews compliance data and then ranks those programs from most to least compliant. It then identifies a “bottom cluster” of programs – those with data reflecting the lowest levels of compliance – and issues them findings of noncompliance. However, for other programs with data reflecting noncompliance, but not among those programs in the “bottom cluster,” BEIS does not issue findings of noncompliance. Therefore, the State is not ensuring that it is identifying and requiring correction of all noncompliance.

OSEP Conclusion

To effectively monitor the implementation of Part B of the IDEA by LEAs and the special education preschool programs, 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 identify all noncompliance in information available to it, regardless of the level of noncompliance, including when data in databases or other monitoring data clearly reflect noncompliance. 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.

Required Actions/Next Steps

School Age

1. Within 90 days of the date of this letter, the State must provide a written assurance that it has taken the necessary steps to enable the State to require correction whenever it identifies compliance levels less than 100%, including all child-specific instances of noncompliance.
2. With the next APR due February 1, 2012, the State must submit documentation demonstrating that the State requires correction whenever it identifies compliance levels less than 100%, including all child-specific instances of noncompliance.

Preschool

1. Within 90 days of receipt of this letter, the State must provide a written assurance that it identifies and requires correction of any noncompliance, including all noncompliance identified through its statewide database.
2. With the next APR due February 1, 2012, the State must submit documentation demonstrating that the State requires identification and timely correction of any noncompliance, including all noncompliance identified through its statewide database.

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 and the special education preschool programs, 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.

School Age Programs

As described in GS 1, during the on-site visit, BSE explained to OSEP that prior to this year, the State did not identify systemic noncompliance unless the level of violations was below a 90% threshold and did not require correction of child-specific noncompliance unless the noncompliance involved a “FAPE item.” The State reported that, beginning with the 2010-11 school year, it has revised its procedures to ensure correction of all noncompliance.

Preschool Programs

BEIS, when it identifies noncompliance, requires the special education preschool programs to develop improvement plans that serve as corrective action plans and address all findings of noncompliance. Improvement plans are approved by BEIS and the plan’s implementation is validated within one year of issuance of the findings report. Although BEIS collects subsequent data to verify correction, BEIS does not have a mechanism to verify that the preschool providers have corrected each individual instance of noncompliance and BEIS has not ensured correction of noncompliance consistent with OSEP Memo 09-02.

OSEP Conclusion

To ensure the timely correction of noncompliance by LEAs and special education preschool programs, 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 require correction of all noncompliance regardless of the level of the noncompliance, verify correction of noncompliance by ensuring that the program is correctly implementing the specific regulatory requirements (i.e., has achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or the State’s data system and verify correction of noncompliance by ensuring that the program has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the program. 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 correct noncompliance in a timely manner using its different components.

Required Actions/Next Steps

School Age

1. Within 90 days of receipt of this letter, the State must provide a written assurance that it requires correction of all noncompliance, regardless of the level of the noncompliance.
2. With the next APR due February 1, 2012, the State must submit documentation demonstrating that the State is correcting all instances of individual noncompliance.

Preschool

1. Within 90 days of receipt of this letter, the State must provide a written assurance that it has revised its procedures to ensure that all noncompliance, including individual instances of child-specific noncompliance, is timely corrected.
2. With the next APR, due February 1, 2012, the State must submit documentation that the State is correcting all instances of individual noncompliance.

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 300.518 and 300.532.

State Complaints

Model Form: The BEIS written State complaint procedures detailed in Announcement E-08 #06 (IDEA Early Intervention Complaint Procedures) state that the “EI Complaint Registry Form (Attachment #1) is to be used by individuals, parents, or organizations to file a complaint with OCDEL against an Infant/Toddler or Preschool EI Program.” The procedures further state that the form may be obtained from OCDEL or on-line. BEIS staff reported that while the written procedures state that the form must be used, in practice, BEIS accepts and acts on complaints it receives that are written on other forms or documents. The regulations at 34 CFR §300.509 require that each SEA develop a model form to assist parents and other parties in filing a State complaint under 34 CFR §§300.151 through 300.153. However, the SEA may not require the use of the model form.

Resolving all Alleged Violations of IDEA: OSEP reviewed a selection of State complaints filed with BSE and OCDEL during FFY 2008 and FFY 2009. The purpose of this activity was to review the procedures BSE and OCDEL followed when they received the State complaints. Based on our review, supplemented with information provided through interviews with State staff, OSEP noted that in some cases, the State declined to resolve allegations of violations of IDEA and stated that the issues in the complaint were outside the State’s jurisdiction. However, OSEP found that some of the unresolved complaints alleged a violation of IDEA requirements that would appear to require resolution. In discussing this issue, State staff indicated that the determination that a complaint was not within the SEA’s jurisdiction under IDEA was made on

the basis of telephone calls or other contacts with the complainant, but the information that led to that determination was not documented in the State's letter or the State complaint files.

Timely Resolution of State Complaints: OSEP found that the State was not able to document that all complaints were resolved within 60 days of receipt, or within a properly extended timeframe.

Our review of BEIS State complaint files revealed that the State did not consistently record (such as through a date stamp) and track the date it received a complaint. As a result, OSEP was not able to determine whether BEIS issued all complaint decisions within the required 60-day timeline. We also noted an instance of a delay in BSE's transmittal of a complaint concerning a preschool student to BEIS for investigation. The State reported that since that time, the BSE and BEIS Division Chiefs took steps to ensure such delays do not recur. OSEP observed that in a subsequent complaint, the transmittal between BSE and BEIS offices occurred in a timely manner.

Reconsideration: BSE's written State complaint procedures permit either party to a State complaint to request reconsideration of the State's decision within 10 days of receiving the complaint investigation report. The reconsideration process could occur after the 60-day timeline. BSE staff explained that the timelines set out for any required corrective actions in the Complaint Investigation Report remain in place during the reconsideration process. However, a BSE advisor may, based on the circumstances, extend the timelines for completing the corrective actions (but not beyond the one year date from the report), during the State's reconsideration of its decision.

Similarly, BEIS's written complaint procedures allow for reconsideration of the State's decision and state: "Families that do not agree with OCDEL's decision may pursue the matter by writing to the appropriate Secretary's [sic] of the Department of Education or Public Welfare." (see Announcement EI-08 #6, dated June 30, 2008). Further, BEIS stated in an FFY 2009 complaint investigation report that a party to the complaint "may submit a written request for reconsideration within 15 days of the date" of the State's decision. Interviews with BEIS staff confirmed these practices and that BEIS does not consistently require implementation of any corrective actions ordered in the decision, pending the outcome of the reconsideration process.

Due Process Procedures

Resolution Process and Calculating the 45-day Timeline: OSEP conducted interviews with BSE, BEIS, and the Office of Dispute Resolution (ODR) staff and reviewed a selection of the State's files for due process complaints filed in FFY 2008 and FFY 2009. ODR provided an overview and demonstration of the electronic data system the State uses to track due process complaints. Although the electronic data system includes a field to track the resolution process, the State has not consistently determined when the resolution period under 34 CFR §300.510 concluded for each due process complaint and when the 45-day timeline for issuing the hearing decision began.

Extensions to the 45-day Hearing Timeline: The due process files reviewed and entries in the ODR database reflect that hearing officers do not consistently specify the amount of time by which the 45-day hearing timeline is extended. OSEP observed that hearing officers granted extensions to a future hearing session but did not determine the date by which a final decision would be reached or the number of days by which the hearing timeline was extended in accordance with 34 CFR §300.515(c).

The Pennsylvania Special Education Dispute Resolution Manual describes the State's due process procedures as follows: "[w]hen a decision cannot be written and mailed within the required time period, it must be written and mailed within fifteen (15) calendar days of the close of the record. If the Hearing Officer permits the parties to file written closing statements, the fifteen (15) day time frame will commence after the Hearing Officer has received the final transcript, the written closing statement, or the time frame for accepting written closing statements has passed. The record is then considered to be closed. The Hearing Officer determines the date that the record is closed." (Chapter 10 – Hearing Officer Decisions, Section 1002. Timelines). Interviews with ODR and BSE staff confirmed that the final due date for a hearing decision is calculated by adding 15 days from the close of the record (either the final hearing session or the receipt of final transcripts), rather than the timeline specified in 34 CFR §300.515.

Transmittal of Findings and Decisions to State Advisory Panel: The State provided OSEP with a copy of correspondence from the Special Education Advisory Panel (SEAP) addressed to ODR, dated October 22, 2010, in which the SEAP requests that ODR establish a link for SEAP members to access hearing officer decisions electronically. The State reported that it provides SEAP members with the link to the ODR Web site where redacted hearing decisions are posted and the ODR link is placed on the SEAP's Web site. The State reported that prior to receiving the SEAP's written request for a Web site link, it provided hard copies of each hearing decision to the SEAP. The State's current practice of providing SEAP members with only a link to the ODR Web site does not meet the requirement that the public agency, after deleting any personally identifiable information, transmit the findings and decisions to the State Advisory Panel (34 CFR §300.513(d)(1)).

Appeals: The State's *Dispute Resolution Manual* states that the LEA is not obligated to implement the hearing officer's decision "until the expiration of the ninety-day time frame. After the expiration of the appeal period, if no appeal has been taken, the LEA is expected to comply with the Hearing Officer's Decision...If any appeal is taken from the Hearing Officer Decision, the LEA is not required to implement the Decision unless directed to do so by the judiciary." (Chapter 11, Section 1102). OSEP notes that application of this provision to all hearing decisions is inconsistent with the requirements at 34 CFR §300.518(d). Specifically, in a case in which the hearing officer agrees with the child's parents that a change of placement is appropriate, the child must be afforded that placement during the pendency of the appeal.

OSEP Conclusion

To ensure that the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, as required by IDEA sections 612(a)(11) and 615(a), 34 CFR §§300.151 through 300.153, and 20 U.S.C. 1221e-3 and 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 300.518 and 300.532. Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State does not have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, as follows:

1. The written State complaint procedures require the use of the SEA's model form for the filing of a State complaint, however, 34 CFR §300.509 prohibits requiring the use of a model form to file a State complaint.

2. The State does not resolve each alleged violation of IDEA in State complaints filed with the SEA consistent with the requirements at 34 CFR §300.152(a)(5); if the State determines the concerns addressed in the written complaint are not within the SEA's jurisdiction, the State must document and provide the complainant with notice of the reason the State did not resolve the allegation.
3. The State does not consistently document the date the complaint is received and issue a written decision within 60 days of the date the complaint is received (unless an extension of time is determined appropriate consistent with the requirements at 34 CFR §300.152(b)).
4. The State did not ensure that if the reconsideration process for a State complaint is completed later than 60 days after the original filing of the complaint, implementation of any corrective actions required in the SEA's final decision is not delayed pending the reconsideration process.
5. The State did not have a mechanism for tracking the resolution process required under 34 CFR §300.510 to determine when the resolution period has concluded and the 45-day hearing timeline required under 34 CFR §300.515 commences.
6. The State's procedures for due process hearings do not ensure that hearing decisions are issued within the timelines required under 34 CFR §§300.515(a) and (c) and 300.532(c).
7. The State does not transmit findings and decisions to the State Advisory Panel in a manner consistent with the requirements at 34 CFR §300.514(c).
8. The State does not ensure that if a hearing officer agrees with the child's parents that a change of placement is appropriate, the child is afforded that placement during the pendency of any administrative or judicial proceeding consistent with the requirements at 34 CFR §300.518(d).

Required Actions/Next Steps

1. Within 90 days of the date of this letter, the State must provide a written assurance that it has revised its dispute resolution procedures and practices to ensure that:
 - a. Written State complaint procedures do not require the use of the SEA's model form for the filing of a State complaint consistent with the requirements at 34 CFR §300.509.
 - b. The State issues a written decision that addresses each alleged violation of IDEA in State complaints filed with the SEA consistent with the requirements at 34 CFR §300.152(a)(5); if the State determines the concerns addressed in the written complaint are not within the SEA's jurisdiction, the State must document and provide the complainant with notice of the reason the State did not resolve the allegation.
 - c. The State consistently documents the date the complaint is received and issues a written decision within 60 days of the date the complaint is received (unless an extension of time is determined appropriate consistent with the requirements at 34 CFR §300.152(b)).

- d. If the reconsideration process is completed later than 60 days after the original filing of the complaint, implementation of any corrective actions required in the SEA's final decision is not delayed pending the reconsideration process.
 - e. The State has a mechanism for tracking the resolution process required under 34 CFR §300.510 to determine when the resolution period has concluded and the 45-day hearing timeline required under 34 CFR §300.515 commences.
 - f. Due process hearing decisions are issued within the timelines required under 34 CFR §§300.515(a) and (c) and 300.532(c).
 - g. Findings and decisions are transmitted to the State Advisory Panel in a manner consistent with the requirements at 34 CFR §300.514(c).
 - h. In a case in which the hearing officer agrees with the child's parents that a change of placement is appropriate, the child is afforded that placement during the pendency of any administrative or judicial proceeding consistent with the requirements at 34 CFR §300.518(d).
2. With the next APR due February 1, 2012, the State must submit documentation to demonstrate that the State is correctly implementing the dispute resolution requirements of IDEA, as specified immediately above in Required Action 1.

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, 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 section 616 and 34 CFR §300.600; (2) significant disproportionality requirements pursuant to IDEA section 618(d) and 34 CFR §300.646; (3) children in private school requirements pursuant to IDEA section 612(a)(10) and 34 CFR §300.129; (4) CEIS requirements pursuant to IDEA section 613(a)(2)(C) and (g) and 34 CFR §§300.205 and 300.226; (5) NIMAS requirements

pursuant to IDEA section 612(a)(23) and 34 CFR §300.172; and (6) assessment requirements pursuant to IDEA section 614(d)(1)(A)(i)(VI) and 34 CFR §§300.320(a)(6) and 300.320(a)(6).

Public Assessment Reporting

Part B requires, in IDEA section 612(a)(16)(D) and 34 CFR §300.160(f), that the State make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the number of children with disabilities participating in regular assessments, the number of those children who were provided accommodations in order to participate in those assessments, and the number of children with disabilities participating in alternate assessments, as well as data on the performance of children with disabilities on regular and alternate assessments, consistent with section 612(a)(16)(D) and 34 CFR §300.160(f). During the verification visit, OSEP reviewed the State's Web site to determine whether the State was complying with the requirements in section 612(a)(16)(D) and 34 CFR §300.160(f). State level data meeting the requirements in 34 CFR §300.160(f) are currently available through the APR, which is publicly reported. However, district and school level data on the participation and performance of students with disabilities on statewide assessments are not made available to the public and reported to the public as required under the Part B regulations.

OSEP Conclusion

To ensure that the State has procedures and practices that are reasonably designed to implement requirements for public reporting on participation in statewide assessments, the State must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the number of children with disabilities participating in regular assessments, the number of those children who were provided accommodations in order to participate in those assessments, and the number of children with disabilities participating in alternate assessments, as well as data on the performance of children with disabilities on regular and alternate assessments, consistent with section 612(a)(16)(D) and 34 CFR §300.160(f). Based on the review of documents, analysis of data, and interviews with State personnel, as described above, OSEP concludes that at the time of the verification visit the State was not meeting the requirements for public reporting on participation and performance in statewide assessments.

Required Actions/Next Steps

1. Within 90 days of the date of this letter, the State must submit a written assurance that it has revised its procedures and practices for public reporting on participation in statewide assessments to ensure that it is meeting the requirements of IDEA.
2. With the next APR due February 1, 2012, the State must provide documentation that it has publicly reported on each of the elements in 34 CFR §300.160(f) at the district and school levels with the same frequency as it reports on the assessment data of nondisabled children.

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 and ensure that the data collected and reported reflects actual practice and performance.

As reported above under GS Critical Element 3, the State: (1) did not consistently calculate the 60-day timeline based on the date it received a State complaint, but rather, in some cases used a date some days later to begin the 60-day timeline; and (2) did not consistently record the date that it receives a written complaint. As a result, some of the decisions the State reported as issued timely under Indicator 16 were issued beyond the 60-day timeline. However, the State's reported data for SPP/APR Indicator 16 in the FFY 2008 APR reflect that 100% of State complaints with reports issued were completed within the required timeline.

In addition, as described above, the State's procedures and mechanisms for tracking due process complaints do not ensure that a final decision is reached in due process hearings within required timelines consistent with 34 CFR §300.515(a)-(b). As a result, some of the decisions reported as timely under Indicator 17 in the FFY 2008 APR were issued beyond the required timeline. However, the State's reported data for SPP/APR Indicator 17 reflect that 100% of due process complaints were adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing officer or in the case of an expedited hearing, within the required timelines.

OSEP Conclusion

To ensure 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, as required by IDEA sections 616 and 618, and 34 CFR §300.601(b), the State must ensure that the data it collects and reports on the timely resolution of State complaints and due process hearings are based on adherence to timelines that are calculated in accordance with the requirements. Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that with the exception of the State complaint and due process hearing data, the State has procedures and practices that are 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

1. Within 90 days of the date of this letter, the State must submit a written assurance that it has ensured that, for purposes of reporting on Indicator 16 and Indicator 17 in the FFY 2010 APR, 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.
2. With the next APR due February 1, 2012, the State must submit documentation to demonstrate that for Indicators 16 and Indicators 17 of the IDEA Part B APR, the State is collecting and reporting valid and reliable data that meet the requirements of IDEA.

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.

Under 34 CFR §76.709, which implements section 421(b) of GEPA and 20 U.S.C. 1225(b), LEAs that submit timely, substantially approvable applications have a 27-month period in which they may obligate Part B funds (from July 1 of the year in which the LEA receives the subgrant under Part B through September 30 two years later). During the verification visit, PDE informed OSEP that Pennsylvania LEA Funding Applications must be submitted electronically to PDE via

the eGrant system not later than close of business June 30th. LEA Final Expenditure Reports must be submitted not later than close of business August 30th, or 60 days after the end of the usual rider/project period. The State requires the LEA to send a refund for all unexpended funds within 60 calendar days of the ending date of the rider/project period. As a result, LEAs are not provided the full 27 month period for the obligation of funds, pursuant to 34 CFR §76.709. During interviews, PDE did identify two exceptions. Unexpended funds for equitable services must be carried over into the next school year and be obligated for special education and related services (including direct services) to parentally-place private school children with disabilities. LEAs are being given the full amount of time for obligation of IDEA funds provided under the American Recovery and Reinvestment Act of 2009 (ARRA).

OSEP Conclusion

To ensure that the State has procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds, as required by 34 CFR §76.709, the State must permit subgrant funds at the LEA level to remain available for LEAs to obligate for one additional fiscal year following the fiscal year in which Congress appropriated those funds. Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that PDE's procedures or practices for timely obligation of Part B funds are inconsistent with 34 CFR §76.709, because they do not permit subgrant funds at the LEA level to remain available for LEAs to obligate for one additional fiscal year following the fiscal year in which Congress appropriated those funds.

Required Actions/Next Steps

Within 90 days from the date of this letter, PDE must provide a written assurance 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 34 CFR §76.709.

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.

IDEA provides a State the authority to provide direct services to preschool children with disabilities using section 619 funds. Under 34 CFR §§300.175 and 300.227, the SEA may provide FAPE or direct services to children with disabilities using amounts that are otherwise available to LEAs to serve those children. 34 CFR §300.227(a)(iv) describes the circumstance under which this may occur, including where the SEA determines that the LEA has 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. 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 direct services through regional or State centers as it considers appropriate (34 CFR §300.227(b)).

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 to LEAs that have established their

eligibility under section 613. These funds must be distributed to LEAs using the formula established at 34 CFR §300.816.

During the visit, PDE informed OSEP that PDE 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 PDE 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 PDE's preschool early intervention program by entering into contractual arrangements or MAWAs. In Pennsylvania, although children with disabilities who turn five years of age by September 1 of each school year may enroll in LEA kindergarten programs, PDE 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 and who are five years old. PDE's method for distributing section 619 funds is inconsistent with IDEA because it does not provide any 619 funds to LEAs that provide special education and related services to five year old children with disabilities enrolled in kindergarten.

In determining the amount of section 619 funds that would be distributed to LEAs for serving five year old children with disabilities residing in the LEA who are enrolled in kindergarten, PDE would need to determine the amount of section 619 funds that would otherwise have been available to each LEA after the State set-aside amount under 34 CFR §300.812 is determined. This means that PDE would need to calculate the amount of a subgrant each LEA would have received if it were responsible for serving all three through five year old children with disabilities residing in the LEA, using the base, population and poverty formula set forth at 34 CFR §300.816. Then, PDE would need to calculate, using that subgrant amount and the most recent child count for all three through five year old children with disabilities residing in the LEA, the per child amount. From the per child amount, PDE would then calculate the amount that must be distributed to each LEA for the five year old children with disabilities residing in the LEA who are enrolled in kindergarten and the amount that the SEA could retain for providing direct services to all of the other three through five year old children with disabilities residing in that LEA.

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 consistently with the requirements at 34 CFR §§300.815 – 300.816. 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 funds within the State.

Required Actions/Next Steps

1. Within 90 days of the date of this letter, Pennsylvania must submit to OSEP, 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 each of 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, PDE must determine the amount of the section 619 allocations that each LEA in Pennsylvania 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, PDE 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. Within 90 days of the date of this letter, Pennsylvania must provide a written assurance from a PDE official responsible for overseeing the distribution of funds to LEAs pursuant to section 619(g) of the IDEA specifying that: (i) The PDE 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. Within 90 days of the date of this letter, Pennsylvania must submit to OSEP, a copy of the memorandum that PDE 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.

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. The State has pending audit findings that OSEP did not review during the verification visit. OSEP will respond separately regarding any pending audits, the resolution of which may identify specific concerns with the State's fiscal system.

Required Actions/Next Steps

No action is required.