

Republic of Palau Part B Verification Visit Letter

Enclosure

Scope of Review

During the verification visit, the Office of Special Education Programs (OSEP) reviewed critical elements of the Republic of Palau's (ROP's) general supervision, data and fiscal systems, and the ROP's systems for improving child and family outcomes and protecting child and family rights.

Methods

In reviewing the State's¹ systems for general supervision, collection of State-reported data,² fiscal management, and the ROP's systems for improving child and family outcomes and protecting child and family rights, OSEP:

- Analyzed the components of the ROP's general supervision, data and fiscal systems to ensure that the systems are reasonably calculated to demonstrate compliance and improved performance
- Reviewed the ROP's systems for collecting and reporting data the ROP submitted for selected indicators in the ROP's Federal fiscal year (FFY) 2008 Annual Performance Report (APR)/State Performance Plan (SPP)
- Reviewed the following—
 - Previous APRs
 - The ROP's application for funds under Part B of the Individuals with Disabilities Education Act (IDEA)
 - Previous OSEP monitoring reports
 - The ROP's Web site
 - Other pertinent information related to the ROP's systems³
- Gathered additional information through surveys, focus groups or interviews with—
 - The ROP Director of Special Education
 - The ROP personnel responsible for implementing the general supervision, data and fiscal systems
 - The ROP Advisory Panel
 - Parents and Advocates

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?

¹ The term "State" in this letter refers to the ROP.

² For a description of the State's general supervision and data systems, see the SPP on the State's Web site.

³ 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.

To effectively monitor the implementation of Part B of the IDEA by local educational agencies (LEAs) as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the ROP must have a general supervision system that identifies noncompliance in a timely manner. The ROP functions as a unitary system, meaning that it is both the State educational agency (SEA) and the LEA as those terms are defined under Part B. The ROP conducts monitoring activities in 19 schools and 13 Head Start Centers.

Through a review of the ROP's monitoring procedures, completed protocols, monitoring reports and interviews with Special Education Program officials, OSEP found that the ROP's onsite Focused Monitoring was broad in scope and included monitoring elements for IDEA requirements in eight areas including placement in the least restrictive environment (LRE). However, in implementing the monitoring procedures, OSEP found that the ROP did not identify findings of noncompliance related to LRE requirements at 34 CFR §300.114, as required by 34 CFR §300.120. OSEP interviewed teachers, administrators and Special Education Program officials and visited classrooms in the Palau High School (the only high school in Palau), and found that: (1) several high school students were placed in a separate classroom for more than 60% of the day due to the unavailability of personnel to provide support for students in the general education classroom; and (2) two students with severe disabilities were placed in a separate setting off the high school campus because the high school did not have a washroom. However, the ROP's monitoring report issued to the Palau High School (PHS) in April 2010 did not identify noncompliance with LRE requirements.

Regarding its Offsite Data Review, the ROP reported that it collects and reviews compliance data through its data system on the following requirements: timelines for initial evaluation (Indicator 11- 34 CFR §300.301(c)), reevaluation (34 CFR §300.303(b)), review and revision of individualized education programs (IEPs) (34 CFR §300.324(b)); as well as secondary transition (Indicator 13- 34 CFR §300.320(b)). Although the ROP has made findings of noncompliance based on its Offsite Data Review with respect to SPP/APR Indicators 11 and 13, OSEP found that the ROP did not document findings of noncompliance related to reevaluation (34 CFR §300.303(b)) and review and revision of IEPs (34 CFR §300.324(b)) even when the Offsite Data Review demonstrated noncompliance in those areas. Rather than make a finding of noncompliance, according to the ROP's monitoring procedures, and confirmed in interviews with Special Education Program officials, when the Offsite Data Review demonstrated noncompliance related to reevaluation or the review and revision of IEPs, the consulting resource teacher assigned to a particular school reviewed data from that school and immediately followed-up with the school to make sure that an overdue annual IEP review or reevaluation took place for the affected child. However, the ROP did not document when the noncompliance was identified, and did not require the school to provide documentation in order to verify that the school was correctly implementing the specific regulatory requirements that formed the basis of the noncompliance. The ROP indicated that it would conduct biannual reviews of data from its data system for all schools to identify noncompliance and issue written findings, as appropriate, beginning in December 2010.

OSEP Conclusions

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 issue written findings of noncompliance when data in the database or other monitoring data, including data from Onsite Focused Monitoring, demonstrate noncompliance

unless the LEA [school] immediately (i.e., before the State issues a finding) corrects the noncompliance and provides documentation of such correction. Based on the review of documents, analysis of data and interviews with central office and school personnel, as described above, OSEP concludes that the ROP does not have a general supervision system that is, in its entirety, reasonably designed to identify noncompliance in a timely manner using its different components.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must provide a written assurance that it will: (1) provide training to staff on the LRE requirements in 34 CFR §300.114 (which incorporates 34 CFR §§300.115 – 300.120), and IEP content requirements in 34 CFR §300.320(a)(4) and (5), that emphasizes that special classes, separate schooling and/or removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and (2) implemented its biannual reviews of data from its database for all schools to identify noncompliance and document findings of noncompliance when the data demonstrate noncompliance.

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, 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 IDEA, 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 onsite 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. Prior to the verification visit, OSEP reviewed six monitoring reports with findings, the corrective action plans submitted by the schools to correct the noncompliance, and evidence that the ROP verified the correction and closed out the noncompliance.

OSEP Conclusions

To ensure the timely correction of noncompliance as required in IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), and OSEP Memo 09-02, the ROP must have procedures in place for correcting noncompliance as soon as possible but not later than within one year of identification. However, as discussed above in Critical Element 1, the ROP did not document findings of noncompliance related to reevaluation (34 CFR §300.303(b)), and review and revision of IEPs (34 CFR §§300.324(b)) even when the Offsite Data Review demonstrated noncompliance in those areas. In addition, as noted above, when the ROP identifies noncompliance through its Offsite Data Review, it does not verify that the school 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 onsite monitoring or a State data system.

Although the ROP reported during the verification visit that it is revising its monitoring system to identify noncompliance through all of the components of its monitoring procedures, OSEP cannot determine whether the new procedures will effectively track the correction of all noncompliance. Accordingly, based on the review of documents including data verifying correction, analysis of the data, and interviews with ROP personnel, OSEP concludes that the ROP 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

Within 90 days of the date of this letter, the ROP must provide a written assurance that it has written policies and procedures that require the correction in a timely manner of all noncompliance that is identified through its Offsite Data Review, consistent with OSEP Memo 09-02.

In addition, within 90 days of the date of this letter, the ROP must submit a plan to OSEP that ensures that the student specific noncompliance identified by OSEP will be corrected as soon as possible, but in no case later than one year from the date of the finding of noncompliance. OSEP will contact the ROP separately to provide further details regarding the specific student records.

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 ROP must have reasonably designed dispute resolution procedures and practices if it is to effectively implement: (1) the State Complaint procedure requirements in IDEA sections 612(a)(11) and 615(a), 34 CFR §§300.151 through 300.153, and 20 U.S.C. 1221e-3; (2) the mediation requirements in IDEA section 615(e) and 34 CFR §300.506; and (3) the due process complaint requirements in IDEA sections 615(b)(6) – (8), 615(c)(2), 615(f) – (i) and (o) and 34 CFR §§300.507, 300.508, and 300.510 through 300.517.

OSEP Conclusions

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

Required Actions

No action is required.

Critical Element 4: Improving Educational Results

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

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

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities.

Required Actions/Next Steps

No action is required.

Critical Element 5: Implementation of Grant Assurances

Does the State have procedures and practices that are reasonably designed to effectively implement selected grant assurances, i.e., making local determination and publicly reporting on LEA performance, private schools, National Instructional Materials Accessibility Standard (NIMAS), assessment, and grant assurances for outlying areas and freely associated states?

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 [school] performance pursuant to IDEA section 616 and 34 CFR §300.600;⁴ (2) children in private school requirements pursuant to IDEA section 612(a)(10) and 34 CFR §300.129; (3) NIMAS requirements pursuant to IDEA section 612(a)(23) and 34 CFR §300.172; (3) assessment requirements pursuant to IDEA section 614(d)(1)(A)(i)(VI) and 34 CFR §300.320(a)(6); (4) interagency agreements or other mechanisms for interagency coordination between each public agency described in 34 CFR §300.154(b) and the State educational agency, in order to ensure that all services described in paragraph (b)(1)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under 34 CFR §300.154(a)(3) (such agreement or mechanism shall meet the requirements in 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154); and (5) grant assurances pursuant to 34 CFR §300.701(a) for freely associated states.

Based on a review of the ROP's Memorandum of Understanding (MOU) with Palau Head Start, OSEP determined that the MOU does not provide for fiscal responsibility and dispute resolution procedures as required in 34 CFR §300.154(a). Also, the ROP reported that the Workforce Investment Act (WIA) Office provides transition services to students with disabilities ages 14-21 and the Ministry of Health provides behavioral supports for students with disabilities. However, the ROP does not have a MOU or other method for ensuring the services described in 34 CFR §300.43 with the WIA Office, or a MOU or other method for ensuring the services described in 34 CFR §300.34 with the Ministry of Health as required in 34 CFR §300.154(a) and (b).

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with ROP personnel, as described above, OSEP concludes that, with the exception related to having a method for ensuring services, the ROP has procedures and practices that are reasonably designed to

⁴ The requirements for making local determinations and publicly reporting on LEA performance pursuant to IDEA section 616 and 34 CFR §300.600 do not apply to the ROP because it is a unitary system and does not have LEAs. The ROP meets the requirement by publicly reporting its SPP/APR on the Ministry of Education's Web site.

implement the selected grant requirements. However, the ROP does not have in place a method for ensuring services, as required in 34 CFR §300.154(a).

Required Actions/Next Steps

Within 90 days of the date of this letter, the ROP must provide to OSEP a copy of: (1) a signed revised agreement between the ROP Ministry of Education and Palau Head Start that meets the requirements in 34 CFR §300.154(a), including the establishment of financial responsibility and the resolution of disputes; (2) a signed agreement between the ROP Ministry of Education and the Workforce Investment Act Office that meets the requirements in 34 CFR §300.154(a); and (3) a signed agreement between the ROP Ministry of Education and the Ministry of Health that meets the requirements in 34 CFR §300.154(a).⁵

II. Data Systems

Critical Element 1: Collecting and Reporting Valid and Reliable Data

Does the State have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner, and that the data collected and reported reflects actual practice and performance?

To meet the requirements of IDEA sections 616 and 618, and 34 CFR §§300.601(b) and 300.640 through 300.646, the State must have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner and ensure that the data collected and reported reflects actual practice and performance.

OSEP Conclusions

Based on the review of documents and interviews with ROP personnel, OSEP concludes that the ROP has a data system that is reasonably designed to collect valid and reliable data and information, to report the data and information to the Department and the public in a timely manner, and to ensure that the data and information collected and reported reflects actual practice and performance.

Required Actions/Next Steps

No action is required.

Critical Element 2: Data Reflect Actual Practice and Performance

Does the State have procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance?

To meet the requirements of IDEA sections 616 and 618, and 34 CFR §§300.601(b) and 300.640 through 300.646, the State must have procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance.

⁵ In lieu of the interagency agreements outlined in the Required Actions/Next Steps, the ROP may meet the requirements in 34 CFR §300.154(a) by submitting to OSEP within 90 days of the date of this letter a copy of a statute or regulation that meets the requirements in 34 CFR §300.154(a) or other appropriate written methods that meet the requirements in 34 CFR §300.154(a), as described in 34 CFR §300.154(c)(1) and (3).

OSEP Conclusions

Based on the review of documents and interviews with ROP personnel, OSEP concludes that the ROP 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 ROP personnel, OSEP concludes that the ROP compiles and integrates data across systems and uses the data to inform and focus its improvement activities.

Required Actions/Next Steps

No action is required.

III. Fiscal Systems

Critical Element 1: Timely Obligation and Liquidation of Funds

Does the State have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds?

The State must have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA Part B funds, as required by the General Education Provisions Act (GEPA), its implementing regulations in the Education Department General Administrative Regulations (EDGAR) (including 34 CFR Parts 76 and 80), and the relevant sections of Office of Management and Budget (OMB) Circulars A-87 and A-133.

OSEP confirmed through the U.S. Department of Education's Grants Administration and Payment System that the ROP had unexpended funds of \$6,270 from its FFY 2007 IDEA Part B grant award and \$39,088 from its FFY 2008 Part B grant award. At the time of OSEP's visit, the ROP's Ministry of Education and Ministry of Finance reported that the ROP had not developed written policies requiring and directing the timely obligation and liquidation of Part B funds in accordance with the requirements in 34 CFR §76.709 and §80.23(b) of the EDGAR. Additionally, a finding⁶ was made related to the ROP's timely liquidation of IDEA Part B grant funds in the entity's FY 2005 Single State audit. In a March 23, 2007 determination letter related to that audit, the Department required the ROP to "...submit documentation demonstrating that a mechanism is in place to ensure obligations are liquidated within the

⁶ Finding 2005-42 of Palau's FY 2005 single State audit, Audit Control Number 09-05-68583, covering the audit period October 1, 2004 through September 30, 2005.

required time period unless a request for an extension has been made to the Department.” To date, the ROP has not responded to the Department’s request for policies and procedures related to the timely obligation and liquidation of Part B funds.

OSEP Conclusions

To ensure that the ROP has procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds, as required in 34 CFR §76.709 and §80.23(b) of the EDGAR, the ROP must develop written policies and procedures to ensure that the ROP timely obligates and liquidates IDEA Part B funds. Based on the review of documents, analysis of data, and interviews with the Ministry of Education and Ministry of Finance personnel, as described above, OSEP concludes that the ROP does not have policies, procedures and practices that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds.

Required Actions/Next Steps

Within 90 days of the date of this letter, the ROP must provide written policies and procedures that address the timely obligation and liquidation of funds under Part B of the IDEA consistent with 34 CFR §76.709 and §80.23(b) of the EDGAR.

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?

Because the ROP is a unitary State, this section of the IDEA is not applicable.

Required Actions/Next Steps

No action is required.

Critical Element 3: Appropriate Use of IDEA Funds

Does the State have procedures that are reasonably designed to ensure appropriate use of IDEA funds?

The State must have procedures that are reasonably designed to ensure appropriate use of IDEA Part B funds, as required by GEPA, EDGAR, OMB Circulars A-87 and A-133, and applicable provisions in Part B of the IDEA.

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). The ROP is a freely associated State and as such, must meet the conditions for eligibility for a Part B grant that all States must meet. 34 CFR §300.701(a)(2).

Accordingly, when calculating the amount of State financial support that the ROP made available for special education and related services, the ROP must include in its calculation of financial support any financial support for special education and related services provided by any ministry in the ROP, and not just financial support for special education and related services provided by the Ministry of Education. 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.

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 the ROP may include funds that ministries other than the Ministry of Education 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 a ministry within the ROP provides mental health services to children with disabilities pursuant to their IEPs, the cost of such services would be included in the ROP’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 ministries other than the Ministry of Education, when calculating its level of financial support made available, the ROP must include amounts that other ministries directly pay to staff or contractors for the delivery of special education and related services pursuant to an IEP.

Ministry of Education staff reported that, in addition to the Ministry of Education, other ministries within the ROP provide financial support for special education and related services. However, the ROP reported that it does not include financial support for special education and related services from ministries other than the Ministry of Education when calculating its State level of financial support for special education and related services. Further, the ROP reported that its single State auditor has made a preliminary fiscal year 2009 finding with regard to State-level maintenance of financial support.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with the ROP, as described above, OSEP concludes that the ROP, with the exception of the State-level 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 appropriate use of IDEA funds. However, the ROP does not have procedures that are reasonably designed to calculate properly the ROP’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), the ROP must include the financial support made available by the Ministry of Education and all ministries within the ROP for special education and related services for children with disabilities.

Required Actions/Next Steps

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

1. A copy of correspondence from the ROP to all ministries within the ROP that may make available financial support for special education and related services provided pursuant to a child’s IEP, which includes: (1) an explanation of the requirement that the ROP include in its calculation of State financial support the amount of financial support provided by all ministries within the ROP, as required in section 612(a)(18)(A) of the IDEA and

34 CFR §300.163(a); (2) the name and contact information of an office within the ROP that is available to provide technical assistance to ministries within the ROP regarding this requirement; (3) the name and contact information of the office within the ROP to which ministries should provide information on the amount of financial support made available for special education and related services for children with IEPs; and (4) a copy of OSEP Memorandum 10-05;

2. A list of the names and addresses of the Ministries to which this correspondence was sent and the dates of distribution;
3. The procedures that the ROP uses to calculate maintenance of State financial support for special education and related services, including how the ROP ensures that it will not reduce the amount of State financial support for special education and related services for children with disabilities, below the amount of that support for the preceding fiscal year;
4. A written assurance that the ROP has utilized the methodology developed in accordance with item 1 above to calculate State financial support for special education and related services for fiscal year 2010 that is consistent with the requirements in 34 CFR §300.163(a); and
5. A copy of the correspondence in which the ROP has informed its audit office of the need to review the ROP'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.

In addition, the ROP must address the fiscal year 2009 finding related to the ROP's maintenance of State financial support through the Department's audit resolution process. A summary of the audit finding, information related to corrective actions taken by the ROP to address the issues identified in the report, and the Department's determination of the sufficiency of those actions in resolving the finding will be provided under cover of a separate program determination letter to the ROP.