

West Virginia Part B Verification Visit Letter

Enclosure

Scope of Review

During the verification visit, the Office of Special Education Programs (OSEP) reviewed critical elements of the State's general supervision, data and fiscal systems and the State's systems for improving child and family outcomes and protecting child and family rights. 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). Further, as explained in the final section of this Enclosure, OSEP also conducted a focused monitoring review related to the provision of a free appropriate public education (FAPE).

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 Director of Special Education
 - State personnel responsible for implementing the general supervision, data and fiscal systems
 - Local educational agency (LEA) staff
 - State Advisory Panel
 - Parents and Advocates

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

² Documents reviewed as part of the verification process were not reviewed for legal sufficiency, but rather to inform OSEP's understanding of your State's systems.

I. General Supervision Systems

Critical Element 1: Identification of Noncompliance

Does the State have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components?

To effectively monitor the implementation of Part B of the IDEA by LEAs, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600 and 20 U.S.C. 1232d(b)(3)(E), the State must have a general supervision system that identifies noncompliance in a timely manner.

OSEP Conclusion

Based on the review of documents, analysis of data and interviews with State personnel, OSEP concludes that the State's systems for general supervision are reasonably designed to identify noncompliance in a timely manner. However, without also collecting data at the local level, OSEP cannot determine whether the State's systems are fully effective in identifying noncompliance in a timely manner.

Required Actions/Next Steps

No action is required.

Critical Element 2: Correction of Noncompliance

Does the State have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner?

To effectively monitor the implementation of Part B of the IDEA by LEAs, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600 and 20 U.S.C. 1232d(b)(3)(E), the State must have a general supervision system that corrects noncompliance in a timely manner. In addition, as noted in OSEP Memorandum 09-02, Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act, dated October 17, 2008 (OSEP 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.

The Part B regulations in 34 CFR §300.152(a) and (b)(1), require each State to include in its State complaint procedures a time limit of 60 calendar days after the complaint is filed under 34 CFR §300.153 to initiate and complete the activities listed in 34 CFR §300.152(a), unless the time limit is extended because exceptional circumstances exist with respect to a particular complaint or the parties agree to extend the time to engage in mediation or other alternative dispute resolution, if available in the State. In reviewing the State’s complaint log for FFY 2008, FFY 2009 and FFY 2010, OSEP noted that the State had extended the timeline by five or six days for all complaints received in November and December. The State explained that it routinely extended the timeline for complaints received in November and December, because most LEAs were closed for at least a week for winter break and many were also closed for a week for Thanksgiving break. This practice is inconsistent with the requirements in 34 CFR §300.152(b)(1), which permits a State to extend the 60-day timeline only if exceptional circumstances exist with respect to a particular complaint or the parties agree to extend the time to engage in mediation or other alternative dispute resolution, if available in the State.

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 the regulations in 34 CFR §300.152(a) and (b)(1), the State must issue a decision for each State complaint within 60 days after the complaint is filed, unless the time limit is extended because exceptional circumstances exist with respect to a particular complaint or the parties agree to extend the time to engage in mediation or other alternative dispute resolution, if available in the State. Based on the review of documents, analysis of data and interviews with State, as described above, OSEP concludes that the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, except that the State has extended the 60-day timeline for complaint decision under circumstances that are not permitted in 34 CFR §300.152(b)(1).

Required Actions/Next Steps

Within 90 days from the date of this letter, the State must provide an assurance that it has revised its State complaint procedures and practices so that the State extends the 60-day timeline for complaint decisions consistent with 34 CFR §300.152(a) and (b)(1), only because exceptional circumstances exist with respect to a particular complaint or the parties agree to extend the time to engage in mediation or other alternative dispute resolution, if available in the State, and that the State does not routinely extend the timeline for complaints received in November or December. In addition, see Required Actions/Next Steps in Data Systems, Critical Element 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 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, coordinated early intervening services (CEIS), the National Instructional Materials Accessibility Standard (NIMAS) and assessment?

The State must have reasonably designed procedures and practices that address grant assurances/requirements if it is to effectively implement the following selected grant assurances: (1) making local determinations and publicly reporting on LEA performance pursuant to IDEA sections 616 and 34 CFR §300.600; (2) significant disproportionality requirements pursuant to IDEA section 618(d) and 34 CFR §300.646; (3) children in private school requirements pursuant to IDEA section 612(a)(10) and 34 CFR §300.129; (4) CEIS requirements pursuant to IDEA sections 613(a)(2)(C) and (g) and 34 CFR §§300.205 and 300.226; (5) NIMAS requirements pursuant to IDEA section 612(a)(23) and 34 CFR §300.172; and (6) assessment requirements pursuant to IDEA section 614(d)(1)(A)(i)(VI) and 34 CFR §§300.320(a)(6) and 300.160(f).

Annual Local Determinations

The Part B regulations in 34 CFR §300.600(a)(2) require the State to make annual determinations about the performance of each LEA. In addition to the State's 55 county school districts, the West Virginia Schools for the Deaf and Blind (WVSDB) and the Office of Institutional Education Programs (OIEP) are also LEAs that submit a Part B application and receive Part B section 611 and 619 subgrants each year. The State acknowledged, however, that it has not made annual determinations for these two LEAs, as required in 34 CFR §300.600(a)(2).

Districtwide Assessments

In response to OSEP's inquiry as to how the State ensures that any LEAs using districtwide assessments comply with the requirements in 34 CFR §§300.160 and 300.320(a)(6), the State reported that: (1) there are no districtwide assessments as part of the West Virginia State accountability system; (2) the State is not aware of any districtwide assessments; and (3) the State has not conducted a systematic inquiry to determine whether any LEAs are conducting districtwide assessments. Therefore, OSEP cannot determine whether the State is in compliance

with the requirements in 34 CFR §§300.160 and 300.320(a)(6) as they apply to districtwide assessments.

OSEP Conclusion

To ensure that the State has procedures and practices that are reasonably designed to implement Part B requirements regarding local determinations and districtwide assessment, the State must: (1) make annual determinations under 34 CFR §300.600(a)(2) for all LEAs in the State; and (2) ensure that any LEAs administering districtwide assessments meet the requirements of 34 CFR §§300.160 and 300.320(a)(6). Based on the review of documents, analysis of data and interviews with State personnel, as described above, OSEP concludes that the State does not have procedures and practices that are reasonably designed to implement those selected grant requirements.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must provide an assurance that it has: (1) made determinations for WVSD and OEIP, as required in 34 CFR §300.600(a)(2); and (2) determined which, if any, LEAs administer districtwide assessments and has implemented a plan for monitoring those LEAs for compliance with the requirements in 34 CFR §§300.160 and 300.320(a)(6).

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.

OSEP Conclusion

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

Required Actions/Next Steps

As noted above in the General Supervision Critical Element 3 section of this Enclosure, OSEP found that the State was extending the timeline for State complaint decisions in a manner that was inconsistent with the requirements of 34 CFR §300.152(b). The State is required to report data on the percent of signed written complaints with reports issued that were resolved within the 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State, in Indicator 16 of its FFY 2009 APR, due February 1, 2011. With its response, during the SPP/APR clarification period, to OSEP's FFY 2009 West Virginia Part B

SPP/APR Status Table, the State must provide a description of the extent to which the State's reported FFY 2009 data for Indicator 16 are consistent with the timeline requirements for complaint decisions in 34 CFR §300.152(a) and (b)(1) (i.e., the State extends the timeline only because exceptional circumstances exist with respect to a particular complaint or the parties agree to extend the time to engage in mediation or other alternative dispute resolution, if available in the State).

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), 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 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 the timely obligation and liquidation of IDEA funds.

Required Actions/Next Steps

No action is required.

Critical Element 2: Appropriate Distribution of IDEA Funds

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

The State must have procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State, consistent with IDEA sections 611(f) and 619(g) and 34 CFR §§300.705 and 300.816.

OSEP 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 distribution of IDEA funds within the State.

Required Actions/Next Steps

No action is required.

Critical Element 3: Appropriate Use of IDEA Funds

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

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

Under 34 CFR §300.203(a), except as provided in 34 CFR §§300.204 and 300.205, funds provided to an LEA under Part B 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. There are two standards that apply to the LEA regarding this maintenance of effort (MOE) requirement. The first relates to the LEA's eligibility for a Part B award. In order to determine that the LEA is eligible for an award, the State must determine that the LEA complies with 34 CFR §300.203(a). In order to make this determination, the SEA must determine that the LEA *budgets* at least the same total or per capita amount from either local, or a combination of State or local funds, as the LEA *spent* for that purpose from the same source for the most recent prior year for which information is available. 34 CFR §300.203(b). The second standard establishes whether in fact the LEA has complied with 34 CFR §300.203(a) – which requires determining whether the LEA *expended*, from year to year, either per capita or in total, from local, or State and local, funds at least as much as it *expended* in the immediate prior year.

The State informed OSEP at the time of the verification visit that the State was determining whether LEAs met their local-level MOE obligations – both eligibility and compliance – based only on a comparison of State and local funds on a total basis. The State did not, prior to

determining that an LEA had failed to meet the local-level MOE requirement in 34 CFR §300.203, also consider whether an LEA met its local-level MOE requirement based on a comparison of State and local funds on a per capita basis, or, whether it met the requirement based on a total or per capita basis for local funds only.

OSEP Conclusion

To ensure that the State has procedures that are reasonably designed to ensure appropriate use of IDEA funds, the State must determine whether each LEA is eligible for a Part B grant and has met the local MOE requirement in 34 CFR §300.203 in a manner consistent with that regulation, as described above. Based on an interview of State staff, OSEP concludes that the State's procedures related to local-level MOE are not consistent with the requirements in that regulation.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must provide an assurance that the State has implemented procedures that are consistent with the requirements in 34 CFR §300.203 as explained above.

Focused Monitoring on the Provision of FAPE

Under 20 U.S.C. §1412(a)(18)(A) and 34 CFR §300.163(a), a State must not reduce the amount of State financial support for special education and related services for children with disabilities, or made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. In its letter dated July 6, 2010, the Department granted the State's March 26, 2010 (amended by a May 27, 2010 memorandum) request for a waiver, pursuant to 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1) in the amount of \$491,580. Although the State received a waiver, the State has a continuing obligation to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities as required in 20 U.S.C. §1412(a)(1) and 34 CFR §300.101.

In its July 16, 2010 letter notifying the State that it would receive a verification visit during the week of November 29, 2010, OSEP informed the State that during the verification visit, OSEP would conduct focused monitoring activities to verify that the State continued to make FAPE available to children with disabilities.

In conducting those focused monitoring activities, OSEP worked collaboratively with the State to prepare for the focused visit. OSEP selected five LEAs for focused visits based on the following criteria: (1) LEA performance against targets in the State's State Performance Plan/Annual Performance Report and the LEA's determination under section 616 of IDEA; (2) geographic location (representing different areas of the State) and LEA student enrollment (representing LEAs of various sizes); (3) student demographic information (including race/ethnicity); (4) whether an LEA reduced its local-level MOE by up to 50% of the amount by which the LEA's allocation under IDEA exceeded the previous year's allocation, as authorized in 34 CFR §300.205(a); (5) whether the LEA had been determined to have significant disproportionality under 34 CFR §300.646 and was therefore required to reserve 15% of its Part B IDEA allocation to provide CEIS (34 CFR §300.646); (6) placement data (continuum of alternative placements, 34 CFR §300.115); and (7) noncompliance as identified through the State's monitoring system. The five LEAs selected for a focused monitoring visit in West Virginia were Berkeley County, Jackson County, Kanawha County, Mason County and the West Virginia Schools for the Deaf and Blind. Three of these five LEAs reduced their local level

maintenance of effort by up to 50% of the amount by which the LEA's allocation under IDEA exceeded the previous year's allocation, as authorized in 34 CFR §300.205(a).

Once the LEAs were selected, OSEP worked in conjunction with State and local personnel to select schools within the identified LEAs. As a part of the focused monitoring activities, OSEP selected and reviewed IEPs and students records from the selected schools. Based on information provided by the State, OSEP selected children who had been provided special education and related services for at least three consecutive years (2008-2009, 2009-2010 and 2010-2011). Factors considered in this selection included: (1) placement; (2) the range and intensity of special education and related services in the children's IEPs; and (3) disability category. OSEP reviewed IEPs for 12 students in each LEA. For each child, OSEP reviewed files for the most recent three consecutive school years to ascertain whether there was a pattern of reductions in the provision of special education and related services that was not based on the individual needs of the child, as determined by the child's IEP team. At each LEA, OSEP staff interviewed special education teachers, related services providers, building administrators, LEA special education administrative staff and individuals who were knowledgeable about the impact, in their LEA, of the reduction of State-level (and in some cases local-level) support for special education and related services. In the four county school districts that OSEP visited, it also interviewed general education teachers who served children with disabilities in their classes.

OSEP also interviewed State personnel regarding guidance the State provided to LEAs regarding the reduction in State-level support and LEAs' continuing obligations to make FAPE available to all eligible students and the impact of the State (and in some cases, the LEAs') reduction in financial support for special education and related services on LEAs and the services they provided to children with disabilities. OSEP also reviewed documents and interviewed staff regarding the methods the State used to determine whether LEAs continued to make FAPE available to children with disabilities. Also, OSEP reviewed financial data and interviewed State staff responsible for administering the State's fiscal systems.

As noted above, OSEP visited five LEAs as part of the focused review component of its 2010 verification visit to the State. Based on its review of IEPs and interviews with State and LEA administrative, instructional and fiscal personnel, OSEP did not find evidence of: (1) a pattern of reducing the amount or types of special education and related services in the year for which the State received the waiver under 34 CFR §300.163(c) (SFY 2010, i.e., the period from July 1, 2009 through June 30, 2010); (2) LEAs making service and/or placement decisions based on the availability of funds and other resources, rather than on an individualized basis based on the unique needs of the child as determined by the IEP team; (3) failure to implement children's IEPs; or (4) a denial of FAPE.