

Wyoming 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.

Methods

In reviewing the State's systems for general supervision, collection of State-reported data¹, 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)/State Performance Plan (SPP)
- Reviewed the following—
 - Previous APRs
 - The State's application for funds under Part B of the Individuals with Disabilities Education Act (IDEA or Part B)
 - 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, including Division of Developmental Disabilities (DDD) 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 your State's systems.

Background

There are 48 LEAs in Wyoming that provide special education and related services to eligible children with disabilities ages six through 21 and five-year-old children enrolled in kindergarten. Wyoming assigns the Division of Developmental Disabilities (DDD), within the Department of Health (DoH), responsibility for ensuring that children with disabilities ages three through four, and five-year old children not enrolled in kindergarten, are provided special education and related services. See W.S. §21-2-703. Wyoming defines the DDD as an intermediate educational unit (IEU). See W.S. §21-2-702. The DDD contracts with 14 regional child development centers (CDCs) to provide special education and related services to eligible preschool children with disabilities ages three through five.

The DDD meets the definition of an educational service agency (ESA) in 34 CFR §300.12(c) because it meets the definition of an IEU in section 602(23) as in effect prior to June 4, 1997. The term IEU in section 602(23) as in effect prior to June 4, 1997 was defined as any public authority, other than an LEA, that is under the general supervision of a State educational agency (SEA); is established by State law for the purpose of providing free public education on a regional basis; and provides special education and related services to children with disabilities within the State. The term LEA as defined in 34 CFR §300.28(b)(1) includes entities that meet the definition of ESAs in 34 CFR §300.12. In interviews during the verification visit, SEA personnel sometimes referred to the DDD as the 49th LEA.

The status of the DDD as an IEU does not alter or diminish the Wyoming Department of Education's (WDE's) responsibility to exercise general supervision over the DDD and the preschool programs for children with disabilities operated by the DDD. Under 34 CFR §300.149, the SEA is responsible for ensuring the requirements of Part B are carried out and that each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA and meets the educational standards of the SEA (including the requirements of Part B).

The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 34 CFR §§300.600 through 300.602 and §§300.606 through 300.608. Under 34 CFR §300.600, the State must monitor implementation of Part B, including monitoring all LEAs located in the State in the priority areas specified in §300.600(d); make determinations annually about the performance of each LEA; enforce Part B, consistent with 34 CFR §300.604, using appropriate enforcement mechanisms identified in 34 CFR §300.600(a)(3); and report annually on the performance of the State and of each LEA.

Therefore, it is the WDE's responsibility to ensure that preschool programs for children with disabilities operated by the DDD are monitored and that areas of noncompliance are identified and corrected in accordance with Part B requirements. It is also the WDE's responsibility to make annual determinations about the performance of the DDD, take enforcement action against the DDD if necessary, and report annually on the performance of the DDD.

OSEP has previously addressed the responsibility of the WDE to exercise general supervision over the DDD in correspondence between the WDE and the U.S. Department of Education (Department). On October 18, 2004, at the request of then Wyoming Superintendent Dr. Trent Blankenship, the Superintendent and other WDE staff met with Department staff to discuss WDE's responsibility to provide special education and related services to preschool children

with disabilities and specifically WDE's responsibility to monitor the special education preschool programs operated by the DDD. In a letter dated January 18, 2005, OSEP set out the Federal requirements related to preschool special education programs and the WDE's responsibility to exercise general supervision over the preschool programs operated by the DDD³. In its January 2005 letter, OSEP requested that the WDE submit information with its FFY 2003 APR demonstrating that the WDE was exercising its general supervisory responsibility to monitor the preschool programs operated by the DDD. Specifically, OSEP requested that the WDE provide the number of preschool programs operated by the DDD that the WDE monitored during a six-month period, a summary of any identified findings of noncompliance and correction of that noncompliance, as well as future activities, timelines and resources to demonstrate on-going monitoring of the DDD preschool programs.

The WDE provided information regarding the monitoring of the DDD in its FFY 2003 APR. However, in a letter dated October 21, 2005, issued in response to the WDE's FFY 2003 APR submission, OSEP stated that it could not determine, based on the information provided, how the WDE was exercising its general supervisory responsibility. The WDE was required to provide in its SPP, due December 2, 2005, further clarification regarding its general supervisory responsibility of the preschool special education programs operated by the DDD and the results of any on-site monitoring activities conducted.

In its SPP, dated December 2, 2005, the WDE outlined its general supervisory role with regard to the DDD. The State reaffirmed that the DDD was identified as an IEU under State law and that the WDE monitored the DDD to ensure that a free appropriate public education (FAPE) in the least restrictive environment (LRE) was provided to children with disabilities ages three through five in each of its 14 regional CDCs. Specifically, the WDE listed the activities it would carry out to provide supervision and oversight over the DDD. These activities included: (1) monitoring the DDD in carrying out its duties as an IEU; (2) monitoring and evaluating the DDD's monitoring of preschool special education programs and keeping copies of the monitoring reviews, findings, corrective action plans and timelines on file; (3) requesting and collecting all necessary data for State or Federal reports; and (4) reviewing and ensuring the appropriate use of IDEA Part B funds. OSEP's response letter dated February 17, 2006 stated that the information submitted in the State's SPP met the requirements of the OSEP letter issued October 2005.

I. General Supervision

Critical Element 1: Identification of Noncompliance

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

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

³ Due to the reauthorization of IDEA in 2004 and issuance of revised regulations in August 2006, the regulatory citations have changed since the issuance of the 2005 letter to Dr. Blankenship. However, the requirements remain the same.

Identification of Noncompliance in LEAs

OSEP noted during its review of the monitoring reports issued by the WDE to two of its LEAs, and confirmed with staff from the WDE, that the WDE applied a threshold of 95 percent compliance to the identification of noncompliance in its monitoring of school-age programs. During the verification visit, the State reported that it does not make findings of noncompliance if it determines, based on a file review, that an LEA has achieved above 95% compliance with a specific requirement. OSEP's September 3, 2008 document, Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan (SPP)/Annual Performance Report (APR), states that,

Regardless of the specific level of noncompliance, if a State finds noncompliance in an LEA or EIS program, it must notify the LEA or EIS program in writing of the noncompliance, and of the requirement that the noncompliance be corrected as soon as possible, and in no case more than one year after the State's identification (response to Question 3).

During OSEP's October 2010 visit, the WDE staff stated that they would modify all the tools it uses to monitor school-aged programs, including but not limited to, reporting and analysis documents and manuals, and self-assessments tools. Further, the WDE staff stated they would issue statewide guidance to clarify that thresholds cannot be used in the identification or correction of noncompliance.

Identification of Noncompliance in the DDD

As stated in the State's Memorandum of Understanding (MOU) between DoH and the WDE and explained by the WDE staff, the DDD is responsible for monitoring the preschool programs operated by the CDCs. The DDD identifies noncompliance through: 1) on-site monitoring; 2) annual desk audits; and 3) bi-annual reviews of the data. However, the DDD staff reported that it makes findings of noncompliance only when noncompliance is identified through on-site visits.

The DDD has established a three-year monitoring cycle during which every CDC receives an on-site visit. The DDD staff reported that a threshold of 90% compliance was applied to the identification of noncompliance in preschool programs. The DDD staff reported that it does not make a finding of noncompliance if it determines, based on a file review, that a CDC has achieved above 90% compliance with a specific requirement.

The DDD staff reported that, for each CDC, it also conducts an annual desk audit that identifies noncompliance with selected requirements of IDEA and bi-annual reviews of data that identify noncompliance with the 60-day timeline for conducting initial evaluations. The DDD staff explained that the review of the annual desk audit generates an informal report card that addresses APR Indicators 6, 7, 8, 11, 12, 15 and 20. The DDD staff reported that while the DDD conducts bi-annual reviews of 60-day evaluation timeline data and annual desk audits, the DDD does not make findings of noncompliance when it identifies noncompliance during these reviews. Rather, the data gathered during the desk review is used to decide what technical assistance may be needed by the Region or which files should be the focus of the on-site monitoring.

The DDD was unable to provide OSEP with final monitoring procedures. The procedures manual submitted to OSEP was in draft form and dated 2004. OSEP was able to conduct on-site

interviews with DDD staff and to review materials the State provided, including the draft DDD monitoring manual, three of the DDD monitoring reports, corresponding corrective action plans and sample monitoring tools. Based on information obtained during its interviews and document reviews, OSEP determined that the DDD does not have a system in place to effectively monitor the implementation of the IDEA requirements for eligible children ages three through five being served by the CDCs.

The DDD's inability to effectively monitor the requirements of IDEA was documented by the WDE subsequent to its on-site monitoring of Region IV. The DDD conducted an on-site monitoring visit to Region IV in October 2008. Following that visit, the DDD expressed to the WDE its concern about Region IV's ability to implement the IDEA requirements regarding the provision of FAPE in the LRE, evaluation and eligibility, and fiscal accountability. The DDD requested the WDE's involvement and, at the request of the DDD, the WDE conducted an on-site monitoring visit in October 2009. In addition to the concerns raised by the DDD, the WDE reported that it identified and issued findings that had not been identified by the DDD during DDD's on-site monitoring visit. Specifically, the WDE found that the DDD did not have a consistent mechanism for identifying noncompliance with the initial evaluation requirements at 34 CFR §§300.301 and 300.304 and the IEP team participation requirements at 34 CFR §300.321(a)(4)-(5). This concern was referenced in the WDE's January 12, 2010 letter of findings to Region IV in which it stated, "... it became clear that both the DDD and the WDE staff were concerned that the current monitoring protocol in use for the developmental preschool regions may be insufficient in identifying all substantive areas of noncompliance."

With the exception of the on-site visit of Region IV that the WDE conducted at the request of the DDD, the WDE has not monitored the DDD or the CDCs operated by the DDD. Staff from both the WDE and the DDD reported that prior to school year 2010-2011, the WDE had not scheduled the preschool programs or the DDD into its monitoring cycle. During the OSEP verification visit, the WDE and the DDD staff reported conflicting information regarding the WDE's monitoring cycle for school year 2010-2011. The WDE staff reported that they had communicated with the DDD about including the preschool CDC programs into the WDE's 2010-2011 on-site monitoring process. However, DDD staff reported that they were unaware of the WDE's plans.

In interviews during the verification visit, staff from both the WDE and the DDD reported that there is no consistent communication between the two agencies. The DDD staff reported that they are not included in monitoring meetings and/or training sessions with the WDE. The WDE staff reported that the WDE does not review monitoring reports issued by the DDD to ensure that the DDD is identifying noncompliance in a timely manner. The WDE staff acknowledged that it has no method for ensuring that the DDD collects valid and reliable data⁴ or for ensuring the appropriate use of IDEA funds by the DDD⁵.

The WDE does not monitor the DDD in carrying out its duties as an IEU as stated in its FFY 2005 SPP submission to OSEP.⁶ The WDE was not able to demonstrate that it ensures that the DDD correctly identifies and verifies the correction of noncompliance. The WDE acknowledged that, while the State had some level of participation in the DDD's monitoring activities; the

⁴ See finding in Data Systems, Critical Element 1, Collecting and Reporting Valid and Reliable Data, p. 12.

⁵ See finding in Fiscal Systems, Critical Element 3, Appropriate Use of IDEA Funds, p.15.

⁶ Wyoming Department of Education, FFY 2005 State Performance Plan (December, 2005), p.4.

involvement was minimal and had not resulted in the identification and timely correction of noncompliance in preschool programs operated by the DDD in a manner consistent with the requirements of Part B. The WDE permits the DDD to exercise discretion in making decisions about the identification and correction of noncompliance without sufficient supervision by the WDE. OSEP notes that, while the WDE may assign some of the responsibility for monitoring CDCs to the DDD, the WDE remains responsible for ensuring that noncompliance is identified and correction is verified in a manner consistent with Part B requirements.

State-level Interagency Agreement

The State must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in 34 CFR §300.154(b) and the SEA, in order to ensure that all services described in paragraph (b)(1) that are needed to ensure FAPE are provided, including the provision of such services during the pendency of any dispute under 34 CFR §300.154(a)(3). The agreement or mechanism must meet the content requirements in 34 CFR §300.154(a)(1)-(4). In its review of both the State's existing MOU and the pending draft MOU between the DoH and the WDE regarding the IDEA Part B preschool program, OSEP found that both documents fail to include all the content requirements specified at 34 CFR §300.154(a)(1)-(4). Specifically, the MOUs do not include procedures for resolving interagency disputes or policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services, as required under 34 CFR §300.154(a)(3)-(4).

The WDE staff reported that the DDD misunderstood the WDE's role and authority over the DDD, originating from the MOU that currently exists between the DoH and the WDE; the current MOU states that the WDE is responsible for monitoring the DDD and that the DDD is responsible for monitoring compliance with the requirements of IDEA. During interviews with OSEP, the DDD staff reported that they were unaware that, under IDEA, the WDE is responsible for the oversight of the preschool programs for children with disabilities operated by the DDD.

OSEP Conclusion

Based on the review of documents, the 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, 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 was unable to demonstrate that it: (1) makes findings of noncompliance if it determines, based on a file review, that an LEA has achieved below 100% compliance with a specific requirement; (2) has an effective general supervision system that is reasonably designed to identify noncompliance in a timely manner in the DDD and the preschool programs operated by the DDD; and (3) ensures that its interagency agreement with the DDD includes the content required in 34 CFR §300.154(a)(1)-(4).

Required Actions/Next Steps

1. Within 90 days from the date of this letter, the State must provide:
 - (a) An assurance that the State has revised all the tools it uses to monitor school-aged programs and has issued statewide guidance to clarify that it will no longer use a threshold for identification of noncompliance and will make findings of

noncompliance if it determines, based on a file review, that an LEA has achieved below 100% compliance with a specific requirement.

- (b) The procedures it develops to ensure that it has an effective general supervision system that is reasonably designed to identify noncompliance in a timely manner in the DDD and the preschool programs operated by the DDD. These procedures must include the steps the State is taking to ensure findings of noncompliance are identified in CDCs if, based on a file review, a CDC has achieved below 100% compliance with a specific requirement. The State must also ensure that findings of noncompliance are made based on a CDC's annual desk audit or bi-annual review of data, when noncompliance is identified during these reviews.
 - (c) A copy of the State's revised MOU with the DDD that includes all of the content required by 34 CFR §300.154(a)(1)-(4).⁷
2. With the FFY 2010 APR, due February 1, 2012, the State must provide documentation that it has implemented the procedures it develops to ensure that it has a general supervision system that is reasonably designed to identify noncompliance in a timely manner in the DDD and the preschool programs operated by the DDD.

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.

Correction of Noncompliance in LEAs

OSEP noted during its review of the monitoring reports issued by the WDE to two of its LEAs, and confirmed with staff from the WDE, that the WDE applied a threshold of 5% noncompliance to school-age programs when determining whether or not a finding was corrected. During the verification visit, the State reported that it verified that previously identified noncompliance was corrected by verifying that the LEA was correctly implementing the specific regulatory

⁷ In lieu of the interagency agreements outlined in the Required Actions/Next Steps, WDE 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).

requirement if it achieved 95% compliance with the requirement based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system. In order to verify correction, the State must verify that the LEA has achieved 100% compliance with the requirement based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system.

During OSEP's October 2010 visit, the WDE staff stated that, for the 2010-11 school year, they would modify all the WDE monitoring tools including, but not limited to, the reporting and analysis documents and manuals, and self-assessment tools and issue statewide guidance to clarify that thresholds would not be used in the identification or correction of noncompliance for school-aged children.

Correction of Noncompliance in the DDD

The DDD staff reported that they are not included in monitoring meetings and/or training sessions with the WDE. In a notable example, staff from the DDD reported that they were only recently made aware of the requirements of OSEP's Memo 09-02 issued on October 17, 2008. The DDD staff reported that as a result they have not been verifying that previously identified noncompliance in a CDC has been corrected by verifying that the CDC: (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 CDC.

None of the three monitoring reports submitted by the DDD and reviewed by OSEP indicated that noncompliance must be corrected as soon as possible, but no later than one year after the State's identification of the noncompliance (written issuance of the finding), as required by 34 CFR §300.600(e). The one-year timeline for correction was noted on the corrective action plan; however, it was not clear whether the one-year timeline began with identification of the noncompliance or with the development of the corrective action plan.

Enforcement

The WDE maintains enforcement authority over its 48 school-aged programs. It has the authority to order correction, require a compliance agreement and, if necessary, rescind accreditation of an LEA that fails to comply. The loss of accreditation would prevent an LEA from receiving Federal funds.

The WDE staff reported that they were uncertain of their authority to require the DDD to correct identified noncompliance. Enforcement authority of the DDD emerged as an issue during the WDE's monitoring of Region IV. The WDE issued its January 2010 report, including findings of noncompliance regarding Region IV, to the DDD and to the Region and directed the Region to develop a corrective action plan with the DDD. The WDE staff reported that they were unsure if the findings should have been issued to the DDD, instead of the Region, since the DDD is the IEU/LEA responsible for the implementation and correction of any identified noncompliance.

OSEP Conclusion

Based on the review of documents, the 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, 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) and OSEP Memo 09-02. The State was unable to demonstrate that it: (1) verifies that previously identified noncompliance has been corrected by verifying that the LEA has correctly implemented the specific regulatory requirement only if it has achieved 100% compliance with the requirement based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; (2) has an effective general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner in the DDD and the preschool programs operated by the DDD; and (3) has authority to exercise general supervision over the DDD.

Required Actions/Next Steps

1. Within 90 days from the date of this letter, the State must provide:
 - (a) An assurance that the State has revised all the tools it uses to monitor school-aged programs and has issued statewide guidance to clarify that it will no longer use a threshold for correction of noncompliance and will verify that the LEA is correctly implementing the specific regulatory requirement only if it has achieved 100% compliance with the requirement based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system.
 - (b) The procedures it develops to ensure that it has an effective general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner in the DDD and the preschool programs operated by the DDD. These procedures must include the steps the State is taking to ensure that: (1) it only considers a finding of noncompliance identified in a CDC to have been corrected if the CDC: (i) 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 (ii) has corrected the identified noncompliance for each child, unless the child is no longer within the jurisdiction of the CDC; and (2) monitoring reports issued to CDCs clearly state that noncompliance must be corrected as soon as possible, but no later than one year after the State's identification of the noncompliance, as required by 34 CFR §300.600(e).
 - (c) Clarification that the State has the authority to exercise general supervision over the DDD and preschool programs operated by the DDD, including authority to take enforcement action against the DDD if it does not meet the IDEA requirements.
2. With its clarification response to OSEP's FFY 2009 Wyoming Part B SPP/APR Status Table, the State must describe the extent to which it verified correction of findings of noncompliance identified in FFY 2007 (for findings not corrected in FFY 2008) and FFY 2008 under Indicators 11, 12, 13, and 15 in LEAs and in preschool programs operated by the DDD by ensuring that each LEA or CDC: (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 or CDC.

3. With its FFY 2010 APR, due February 1, 2012, the State must provide documentation that it has implemented the procedures it develops to ensure that it has a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner in the DDD and the preschool programs operated by the DDD.

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.

Due Process Hearings

The State has developed a model form to assist parents and public agencies in filing a due process complaint in accordance with 34 CFR §§300.507(a) and 300.508(a) through (c), as required by 34 CFR §300.509. The WDE has a model due process hearing form posted on its Web site. The State reported that the model form is also being disseminated throughout the State by LEAs, professional organizations, parent groups and advocacy organizations. Under 34 CFR §300.509(a), the SEA or LEA may not require the use of a model form. Parents and public agencies may use the appropriate model form, or another form or other document, so long as the form or document that is used meets the content requirements in 34 CFR §300.508(b) for filing a due process complaint. See 34 CFR §300.509(b). WDE's model form does not indicate that a complainant is not required to use the model form and may use another form or document when filing a request for a due process hearing as long as it meets content requirements in 34 CFR §300.508(b).

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 34 CFR §300.509(a), the State must ensure that model due process forms are not required when filing a request for a due process hearing. 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 model form noted above, the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA.

Required Actions/Next Steps

Within 90 days from the date of this letter, the State must submit a copy of its modified model due process request form. The State must modify its model due process hearing form to clearly state that the form is not required to file a request for a due process hearing consistent with the requirements under 34 CFR §300.509(a).

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, Coordinated Early Intervening Services (CEIS), 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 section 616 and 34 CFR §300.600; (2) significant disproportionality requirements pursuant to IDEA section 618(d) and 34 CFR §300.646; (3) children in private school requirements pursuant to IDEA section 612(a)(10) and 34 CFR §300.129; (4) CEIS requirements pursuant to IDEA sections 613(a)(2)(C) and (f) 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 §§300.160 and 300.320(a)(6).

Reporting on the Performance of Each LEA

As a part of its monitoring and enforcement responsibilities under section 616 of the IDEA and 34 CFR §300.600(a), the State must annually report to the public on the performance of each LEA against the State's SPP/APR targets. While the WDE meets this reporting requirement for 48 of its 49 LEAs by posting this information its Web site, the State acknowledged that it has not annually reported to the public on the performance of the DDD on the targets in the State's SPP/APR.

Local Determinations and Enforcement

IDEA section 616(a) and 34 CFR §300.600(a) require the State to make an annual determination for each LEA. While the WDE meets this requirement for 48 of its 49 LEAs, the State acknowledged that it has not made annual determinations for the DDD.

OSEP Conclusion

To ensure that the State has procedures and practices that are reasonably designed to implement Part B requirements regarding making local determinations and publicly reporting on LEA

performance annually, as required by IDEA section 616 and 34 CFR §300.600(a), the State must make a determination and report annually on the performance of the DDD. 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 these selected grant assurances.

Required Actions/Next Steps

1. Within 90 days from the date of this letter, the State must submit documentation demonstrating that it has publicly reported on the FFY 2008 performance of the DDD on the targets in the State's SPP/APR and has made an annual determination for the DDD based on its FFY 2008 data.
2. Within 90 days from the date of this letter, the State must submit an assurance that it will publicly report on the FFY 2009 performance of the DDD on the targets in the State's SPP/APR no later than 120 days following the State's submission of its FFY 2009 APR and will make an annual determination for the DDD based on its FFY 2009 data.

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.

The WDE staff reported that the DDD collects the data for all 14 regions and CDCs. The data are compiled into an Excel file and submitted to the WDE. The WDE staff then uploads the data file into the Wyoming Integrated Statewide System (WISE). The WDE staff reported that the data they receive from the DDD are aggregated, and that they are unable to review the data by region or by CDC. While the DDD is currently providing its data through an Excel file, the WDE staff reported that the DDD anticipates its data system will evolve to allow for data to be directly uploaded to the WISE system; however no projected date was provided. This projected plan is notable as it would require the DoH to adopt the WDE's assignment of unique student identifiers known as Wyoming Integrated Statewide Education Record Identifier (WISER). These identification numbers are used to track students' services comprehensively - achievement, eligibility for Federal programs, and the supports and/or services received. While the WDE staff reported that the DDD was moving toward the implementation of the WISER identification number, the DDD's concerns about information sharing and confidentiality have delayed the completion of this process.

The WDE staff provided conflicting information regarding the data quality of the DDD submission. State staff reported that while they have confidence in the data accuracy of the DDD data submission, the DDD does not currently review or clean its data with the same rigor that WDE applies to its data collection for its 48 LEA school-age program data collections. As referenced in the General Supervision, Critical Element 1, Identification of Noncompliance, the WDE acknowledged that it does not have policies and procedures for ensuring that the data compiled into an Excel file by the DDD and provided to the WDE are valid and reliable. For

example, the DDD contracts with a third party to collect parent involvement data. While the DDD provides information and analysis of data collected for Indicator 8 on the percent of parents who report that schools facilitate parent involvement, the DDD does not provide the raw data to the WDE and the WDE has no method for ensuring the accuracy of the submitted data.

OSEP Conclusion

The State must have a data system that is reasonably designed to collect valid and reliable data and information and to report the data and information to the Department and the public in a timely manner, as required by IDEA sections 616 and 618, and 34 CFR §§300.601(b) and 300.640 through 300.646. 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 collect valid and reliable data and information from the DDD.

Required Actions/Next Steps

1. Within 90 days from the date of this letter, the State must provide a description of the procedures it develops to ensure that the data and information collected from the DDD are valid and reliable.
2. With its FFY 2010 APR, due February 1, 2012, the State must provide documentation that it has implemented the procedures it developed to ensure that data and information collected from the DDD are valid and reliable.

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, the analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State has procedures and practices 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.

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 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 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 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.

The DDD administers and distributes funds to the CDCs based on budgets submitted to and reviewed by the DDD. The CDCs' requests to draw down funds for program operations must reflect the correct codes that correspond to the submitted budget. While the DDD monitors that the draw downs comply with the submitted budget, it has no mechanism to ensure that such funds are used for budgeted purposes. As referenced in the General Supervision, Critical Element 1, Identification of Noncompliance, the State acknowledged that it has no method for ensuring the appropriate use of IDEA funds by the DDD.

OSEP Conclusion

Based on the review of documents, analysis of data and interviews with State and local personnel OSEP concludes that the State does not have procedures that are reasonably designed to ensure appropriate use of IDEA funds by the DDD. The State must ensure that it has procedures that are reasonably designed to ensure appropriate use of IDEA funds, as required by GEPA, EDGAR, OMB Circulars A-87 and A-133, and applicable provisions in Part B of the IDEA.

Required Actions/Next Steps

1. Within 90 days from the date of this letter, the State must provide a description of the procedures it develops to ensure that the DDD appropriately uses IDEA funds, as required by GEPA, EDGAR, OMB Circulars A-87 and A-133, and applicable provisions in Part B of the IDEA.
2. With its FFY 2010 APR, due February 1, 2012, the State must provide documentation that it has implemented the procedures it develops to ensure that the DDD appropriately uses IDEA funds.