

## **Idaho Part B Continuous Improvement Visit**

### **Enclosure – Verification Component**

#### **Scope of Review**

During the verification component of the Continuous Improvement Visit (CIV), OSEP reviewed critical elements of the State's general supervision and fiscal systems.<sup>1</sup> We also reviewed the State's policies and procedures for ensuring the appropriate tracking, reporting and use of the Individuals with Disabilities Education Act (IDEA) funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA).

#### **Methods**

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

- Analyzed the components of the State's general supervision 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) 2009 State Performance Plan (SPP)/Annual Performance Report (APR)
- Reviewed the following–
  - Previous APRs
  - The State's application for funds under Part B of the IDEA
  - Previous OSEP monitoring reports
  - The State's Web site
  - Other pertinent information related to the State's systems<sup>3</sup>
- Gathered additional information through surveys, focus groups or interviews with–
  - The State Director of Special Education
  - State personnel responsible for implementing the general supervision, data and fiscal systems
  - The State Advisory Panel
  - Parents and Advocates
  - Idaho Protection and Advocacy Agency

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<sup>1</sup> As explained in the cover letter, OSEP will respond to the fiscal component of the review under separate cover.

<sup>2</sup> For a description of the State's general supervision system, including the collection of State reported data, see the State Performance Plan (SPP) on the State's Web site.

<sup>3</sup> Documents reviewed as part of the verification process were not reviewed for legal sufficiency, but rather to inform OSEP's understanding of your State's systems.

## **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 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 State must have a general supervision system that identifies noncompliance in a timely manner.

The Idaho State Department of Education (ISDE or State) utilizes a Continuous Improvement Monitoring System (CIMS) that includes four primary methods to identify noncompliance with the requirements of Part B of IDEA – Self Assessment Monitoring, Data Verification, Child Count Verification, and on-site General Supervision/Focused Monitoring.

#### Self-Assessment Monitoring and Compliance Tracking Tool

The State utilizes a five-year monitoring cycle to identify and track noncompliance. Each LEA is assigned to one of the years of the five- year cycle and must complete defined activities for each of the five years. During Year 1 of the cycle, LEAs complete the Self-Assessment, which is designed to allow the LEA to self-identify and correct noncompliance. In September of Year 1, the ISDE provides LEAs with a randomized list of students. The LEA completes a General File Review on all of the selected students, as well as the Preschool File Review and/or Secondary File Review, as appropriate. The data gathered during these file reviews is continually entered by the LEA into the State’s Compliance Tracking Tool (CTT) between September and December 15. The State reported that the LEAs have the opportunity to self correct any noncompliance identified through this process, and that the State does not begin its review of the data in the CTT for the purposes of identifying noncompliance until February. The State provided copies of notices of noncompliance as evidence that written findings are issued on May 15, some five months after the data become available, for any remaining noncompliance identified through this process.

The State reported that on June 30 of each year of the CIMS, the 60-day timeline and Discipline data are submitted by LEAs. Any noncompliance that is identified is entered by the SDE directly into the CTT. The State provided OSEP with copies of written notices of noncompliance that were issued to LEAs on November 20, some four and a half months after the data became available, for findings identified from these data collections.

#### General Supervision Monitoring

As discussed further under the Dispute Resolution section of this letter, during the description of its due process complaint process, the State reported that, although it has a process to track due process timelines, it does not have a procedure in place to identify noncompliance and issue findings of noncompliance for any LEA that fails to convene a resolution meeting within the timeline requirement.

### **OSEP Conclusion**

Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State does not have a general

supervision system that is reasonably designed to identify noncompliance in a timely manner using its different general supervision components. Specifically, in Year 1 of the CIMS, the State issues written findings of noncompliance five months after the discovery of the noncompliance. Also, when identifying noncompliance based on the 60-day timeline and Discipline data, the State issues written findings more than four months after receiving the data. In addition, the State does not have procedures in place to identify noncompliance when LEAs do not convene resolution meetings within the required timelines. To meet its general supervision responsibility, Idaho must provide written notification of findings of noncompliance as soon as possible after the State concludes that an LEA has noncompliance, which OSEP expects to be generally in less than three months from the time that the State educational agency (SEA) discovers the noncompliance. See Question 7, *Frequently Asked Questions Regarding Identification And Correction Of Noncompliance And Reporting On Correction In The State Performance Plan (SPP)/Annual Performance Report (APR)*, dated September 3, 2008.

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

Within 60 days from the date of this letter, the State must provide OSEP with: (1) a copy of ISDE's revised general supervision procedures regarding the timely identification of noncompliance when the data demonstrate noncompliance with a Part B requirement; and (2) a written assurance that ISDE will identify noncompliance and issue written findings, in a timely manner, based on the data it collects through any of its general supervision procedures.

### ***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.

The State reported that it ensures the correction of noncompliance in a timely manner through the use of its CTT. Once noncompliance is identified, the LEA must enter a corrective action plan into the CTT, and complete the required corrective action within one year of the date of the written notice of noncompliance. LEAs document and report corrective actions on a real time basis, so that the State is able to check the status of corrective actions throughout the year.

In its FFY 2009 APR, the State reported that it verified correction for all noncompliance consistent with OSEP Memo 09-02. However, when describing its process for verifying correction during the visit, the State acknowledged that, for findings of noncompliance identified through the various components of CIMS, it has not consistently verified that the LEA is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance)

based on a review of updated data. Except in two cases, the evidence of correction provided to OSEP while on site demonstrated verification of only individual cases of noncompliance.

### **OSEP Conclusion**

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 a general supervision system that is reasonably designed to correct all noncompliance in a timely manner using its different general supervision components because the State did not verify correction of all findings of noncompliance consistent with the requirements in OSEP Memo 09-02. Specifically, the State reported that, it has not been verifying correction of noncompliance identified through its Self Assessment Monitoring, Child Count Verification, and 60-day timeline, Discipline, and Early Childhood Transition data collections by ensuring that each LEA is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected, following the issuance of a written finding, through on-site monitoring or the State's data system.

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

Within 60 days of the date of this letter, the State must provide OSEP with revised policies and procedures for verifying timely correction of noncompliance, ensuring that it only verifies that a finding of noncompliance has been corrected when the LEA has both: (1) correctly implemented 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) corrected each individual case of child-specific noncompliance (even if late) unless the child is no longer in the jurisdiction.

In addition, with its FFY 2011 APR, due February 1, 2013, the State must provide OSEP with: (1) a description of the procedures that the State used to select files and review updated data to verify that the LEA correctly implemented 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) documentation of the review of updated data that was entered into the State's CTT to demonstrate that all findings that were verified as corrected from July 1, 2011 through June 30, 2012 were verified as corrected consistent with both prongs of correction as set out in OSEP Memo 09-02.

### ***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 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), (k)(3) and (4), and (o) and 34 CFR §§300.507, 300.508, 300.509 through 300.517, and 300.532.

Additionally, the IDEA Part B regulations in 34 CFR §300.600(d)(2) require a State to monitor LEAs located in the State in the area of State exercise of general supervision, including the use of resolution meetings and mediation. As part of this requirement, and consistent with the State's general supervision obligations in 34 CFR §§300.149 and 300.600(d)(2), the State must

ensure that, in accordance with 34 CFR §300.510(a), LEAs convene a resolution meeting within 15 days of receiving notice of the parent’s due process complaint. (The resolution meeting need not be held if the parent and LEA agree in writing to waive the meeting or the parent and LEA agree to mediation. 34 CFR §300.510(a)(3)). If the State finds that an LEA is not in compliance with this requirement, it must issue a finding of noncompliance and ensure correction of the noncompliance as soon as possible and in no case more than one year after the State’s identification, as required in 34 CFR §300.600(e).

During the verification visit, the State provided due process hearing summary logs to demonstrate that it has a systematic way to monitor whether the LEA has convened a resolution meeting. However, based on a review of the State’s FFY 2009 log, OSEP determined that five out of ten resolution meetings documented were held or waived beyond the 15-day period. Moreover, the State was unable to confirm that the five resolutions meetings were held or waived beyond the 15-day period due to one of the allowable exceptions in 34 CFR §300.510(a)(3), nor was the State able to provide evidence that it made findings of noncompliance in any of the LEAs in which the LEA failed to convene the resolution meeting as required in 34 CFR §300.510(a).

However, the State provided OSEP with copies of its Notification of Appointment letter, which was revised and implemented on August 17, 2010. The letter, which is sent to the LEA as notification of the hearing officer assignment, now contains information regarding the date by which the resolution meeting must be held. Based on the review of the FFY 2010 due process hearing summary log, all seven resolution meetings that were held subsequent to the implementation of the revised letter were held within 15 days.

### **OSEP Conclusion**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that, with the exception of its procedures and practices related to resolution sessions, the State has demonstrated that it has policies and procedures that are reasonably designed to implement all of the dispute resolution requirements of IDEA.

The State has demonstrated that it has a procedure in place to ensure that, consistent with 34 CFR §300.510(a), LEAs convene a resolution meeting within 15 days of receiving notice of the parent’s due process complaint. However, it is not clear that the State has a procedure in place to issue findings of noncompliance and ensure correction of the noncompliance as soon as possible and in no case later than one year, from the date of the identification of noncompliance when an LEA fails to comply with this requirement.

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

Within 60 days of the date of this letter, the State must provide a written assurance that the State will monitor LEA compliance with IDEA resolution meeting requirements and issue findings of noncompliance when an LEA fails to comply with 34 CFR §300.510(a), and that the State ensures correction of the noncompliance as soon as possible, and in no case later than one year from the date of the identification of noncompliance.

### ***Critical Element 4: Data Systems***

*Does the State have a data system that is reasonably designed to timely collect and report data that are valid and reliable and 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 a data system that is reasonably designed to timely collect and report data that are valid and reliable and reflect actual practice and performance.

### **OSEP Conclusions**

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has a data system that is reasonably designed to timely collect and report data that are valid and reliable and reflect actual practice and performance.

### **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 implement selected grant application assurances, i.e., monitoring and enforcement related to LEA determinations and significant disproportionality and Coordinated Early Intervening Services (CEIS)?*

The State must have reasonably designed procedures and practices that address grant assurances/requirements if it is to implement the following selected grant assurances: (1) monitoring and enforcement related to LEA determinations pursuant to IDEA section 616 and 34 CFR §§300.600-300.604 and 300.608; (2) significant disproportionality requirements pursuant to IDEA section 618(d) and 34 CFR §300.646; and (3) CEIS requirements pursuant to IDEA section 613(a)(2)(C) and (f) and 34 CFR §§300.205 and 300.226.

For LEA determinations for the 2009-2010 school year, the State reported that it examined performance on compliance indicators, whether LEAs submitted valid and reliable data, and uncorrected noncompliance from other sources. However, the State also reported that it did not consider LEA-specific audit findings as part of the determination process.

### **OSEP Conclusion**

Based on the review of documents and interviews with State personnel described previously, OSEP concludes that, with the exception of LEA determinations, the State has procedures and practices that are reasonably designed to implement selected grant application assurances. When making annual determinations on the performance of their LEAs, the State does not consider the results of LEA-specific audit findings, as required in 34 CFR §300.600, section 616(b)(2)(c) of IDEA, and Question C-9 of *Questions and Answers on Monitoring, Technical Assistance and Enforcement* (revised June 2009).

OSEP currently is reviewing the State's submission of the Part B Report on Maintenance of Effort Reduction and Coordinated Early Intervening Services (Table 8) data relating to LEA maintenance of effort (MOE), LEA determinations, significant disproportionality and CEIS and may have further communication with the State about that information. OSEP makes no conclusions in this enclosure about any issues that may be raised by the Table 8 data.

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

Within 60 days from the date of this letter, the State must provide documentation to OSEP that its procedures for making future annual determinations on the performance of its LEAs include, at a minimum, consideration of the following factors: (1) performance on compliance indicators;

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(2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA's compliance with the IDEA, including relevant audit findings.