

Michigan 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.¹ We also reviewed the State's policies and procedures for ensuring the appropriate tracking, reporting and use of IDEA Part B 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,² 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—
 - The SPP
 - 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 systems³
- 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
 - Directors of intermediate school districts (ISDs)⁴
 - The State Advisory Panel
 - Parents and Advocates
 - The State's Protection and Advocacy Center

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

² 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.

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

⁴ An intermediate school district (ISD) meets the definition of an educational service agency in 34 CFR §300.12. Michigan's 57 ISDs apply for IDEA Part B subgrants and the State establishes their eligibility for Part B funds as required under IDEA section 613.

General Supervision System

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.

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 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.

The Part B regulations in 34 CFR §300.600(e) require that, in exercising its monitoring responsibilities under 34 CFR §300.600(d), the State must ensure that when it identifies noncompliance with the requirements of Part B by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. As explained 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 each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA.

During the CIV, the State informed OSEP that when the Michigan Department of Education/Office of Special Education (MDE/OSE) conducts focused monitoring in districts, it typically reviews student records that contain individualized education programs. When MDE/OSE identifies findings of noncompliance through focused monitoring, the State requires districts to develop a corrective action plan (CAP) and submit the CAP to the State for approval. Once the State approves the CAP, the district implements the CAP, submits progress reports and, upon completion of the CAP, requests that MDE/OSE close the noncompliance.

Based on information provided in the CAPs, the State determines whether the identified noncompliance has been corrected. The State reported to OSEP that when identical noncompliance is found in multiple records, the district is required to provide information in the CAP that demonstrates that the district has corrected each individual case of noncompliance and is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of additional student records. However, the State also reported that when it identifies noncompliance in a small number of student records, such as in one or two of the records reviewed, the district is only required to provide information in a Student Level Corrective Action Plan (SLCAP). The State reported that SLCAPs only require the district to correct each individual case of noncompliance. The State reported that for those findings it does not verify that the district is correctly implementing the specific regulatory requirements based on a review of updated student records.

OSEP Conclusion

To ensure the timely correction of noncompliance by LEAs, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, 20 U.S.C. 1232d(b)(3)(E) and OSEP Memo 09-02, the State must verify that each LEA with noncompliance: (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 each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA.

Based on the review of documents, analysis of data, and interviews with State personnel, as described above, OSEP concludes that, at the time of the verification component of the CIV, when the State verified correction of noncompliance identified in a small number of student records through focused monitoring, the State did not verify that the district was correctly implementing (i.e., achieved 100% compliance) the specific regulatory requirements based on a review of updated student records. The State has, however, subsequent to the CIV, provided documentation indicating that, effective with focused monitoring visits that will occur in the spring of 2012 and thereafter: (1) it has modified its procedures and will review updated data when findings are issued and an SLCAP is generated to determine whether the district is correctly implementing the specific regulatory requirements; and (2) the modified procedures have been disseminated to monitors, ISDs and school districts.

Required Actions/Next Steps

1. During the SPP/APR clarification period for OSEP's FFY 2010 Michigan Part B SPP/APR Status Table, the State must exclude from measurement b of Indicator 15 the number of findings of noncompliance identified in FFY 2009, where the State identified noncompliance in a small number of student records through focused monitoring, for which correction was not verified consistent with the requirements of OSEP Memo 09-02. In addition, the State must specify whether any subsequent correction of noncompliance for these findings was verified consistent with OSEP Memo 09-02.
2. In its FFY 2011 APR submission, due February 1, 2013, the State must exclude from measurement b of Indicator 15 the number of findings of noncompliance identified in FFY 2010, where the State identified noncompliance in a small number of student records through focused monitoring, for which correction was not verified consistent with the requirements of

OSEP Memo 09-02. In addition, the State must specify whether any subsequent correction of noncompliance for these findings was verified consistent with 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 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 through 300.517 and 300.532.

State Due Process and State Complaint Model Forms

Under 34 CFR §300.509(a), the State must develop model forms 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) and to assist parents and other parties in filing a State complaint under 34 CFR §§300.151 through 300.153. However, the State educational agency (SEA) or LEA may not require the use of the model forms. Section 300.509(b) also provides that parents, public agencies, and other parties may use the appropriate model form described above, or another form or document, so long as the form or other document, in the case of a due process complaint, meets the content requirements in 34 CFR §300.508(b), or in the case of a State complaint, meets the content requirements in 34 CFR §300.153(b).

During the verification visit, OSEP reviewed the State’s due process complaint model form and the State complaint model form. OSEP found that the State’s due process complaint model form and the State complaint model form require information that is not required under 34 CFR §§300.508(b) and 300.153(b). In addition to the content required by IDEA, the State’s due process complaint model form and the State complaint model form required the name of the school district in which the student’s school is located. The State explained that it does not delay processing a due process complaint or State complaint to require a complainant to provide the information not required under IDEA. However, information on the State’s model forms indicated that all the information on the forms was required and that incomplete forms would be returned to the complainant.

Resolution Meetings

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 hold a resolution meeting within 15 days of receiving notice of the parent’s due process complaint. 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 CIV, the State informed OSEP that it does not have a consistent method to monitor compliance with the resolution requirements in 34 CFR §300.510(a), specifically whether a resolution meeting was held within 15 days of receiving notice of the parent’s due process complaint (unless the due process complaint was dismissed or withdrawn within 15 days from the date on which the due process complaint was received or, unless one of the circumstances in 34 CFR §300.510(a)(3) occurred). Further, the State reported to OSEP that it did not identify

noncompliance when it discovered that a district failed to offer the resolution meeting as required in 34 CFR §300.510(a).

State Complaint Procedures

The IDEA Part B regulations require an SEA to adopt procedures for resolving any complaint that a public agency has violated a requirement of Part B of the IDEA in accordance with 34 CFR §§300.151 through 300.153. The State complaint procedures can be used to resolve any complaint that meets the requirements of 34 CFR §300.153, including matters concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child. The SEA cannot limit the scope of its State complaint system by refusing to resolve complaints regarding denial of appropriate services or failure to provide FAPE for a child. The SEA, in resolving a complaint challenging the appropriateness of a child's educational program or services or the provision of a FAPE, should determine not only whether the public agency has followed the required procedures to reach that determination, but also whether the public agency has reached a decision that is consistent with the requirements in Part B of the IDEA in light of the individual child's abilities and needs. See the Analysis of Comments and Changes accompanying publication of the August 14, 2006 final Part B regulations, 71 Fed. Reg. 46601 (August 14, 2006). See also question seven in OSEP Memorandum 00-20, dated July 17, 2000 (OSEP Memo 00-20) <http://www2.ed.gov/policy/speced/guid/idea/letters/2000-3/osep002071700safeguardssec.pdf>

OSEP's review of eight State complaints found that the State does not examine complaints alleging the denial of appropriate services or failure to provide FAPE for a child. State staff acknowledged that the SEA does not investigate the appropriateness of FAPE determinations made by a public agency and inserts language in its complaint investigation letters that these allegations should be resolved through a due process complaint.

OSEP Conclusion

To ensure that the State has procedures and practices that are reasonably designed to implement the State complaint requirements of IDEA, as required by 34 CFR §§300.151 through 300.153, and 20 U.S.C. 1221e-3 and the due process complaint requirements in IDEA sections 615(b)(6) – (8), 615(c)(2), 615(f) – (i), (k)(3) and (4) and (o) and 34 CFR §§300.507, through 300.517 and 300.532, the State must: (1) ensure that if the State includes information in its State due process complaint and State complaint model forms that is not required in 34 CFR §§300.508(b) and 300.153(b), the State must specify in the model forms that the additional information requested is not required by IDEA and the State will not refuse to process the due process complaint or State complaint if the parent does not provide the requested information; (2) have reasonably designed procedures and practices that enable the State to determine whether LEAs meet the requirements in 34 CFR §300.510 regarding resolution meetings, and issue findings of noncompliance when LEAs do not meet the requirements of 34 CFR §300.510; and (3) ensure that State complaints filed under 34 CFR §300.153 alleging the denial of appropriate services or failure to provide FAPE for a child are resolved. Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State does not have procedures and practices that are reasonably designed to meet those dispute resolution requirements described above.

The State has, subsequent to the CIV, provided documentation indicating that the State revised its State due process complaint and State complaint model forms to specify that the name of the school district in which the student's school is located is not required by the IDEA, and that the State will not refuse to process the due process complaint if the parent does not provide the requested information. OSEP verified these changes on the MDE/OSE's Web site. The State also documented that it is holding regular meetings with the Michigan Administrative Hearings System and will include a discussion of resolution sessions. In addition, the State reported that it has provided training to ensure that complaints alleging the denial of appropriate services or failure to provide FAPE for a child will be resolved.

Required Actions/Next Steps

1. Within 60 days of the date of this letter, the State must submit documentation that it has developed procedures that the State will implement to monitor whether LEAs hold resolution meetings in a timely manner in accordance with 34 CFR §300.510 and issue findings of noncompliance when LEAs do not meet the requirements of 34 CFR §300.510.
2. Within 90 days of the date of this letter, the State must provide documentation demonstrating that it has taken the following actions:
 - a. Reviewed all complaints received during the 12 months preceding the date of this letter where allegations regarding the appropriateness of FAPE determinations made by a public agency were dismissed and not investigated.
 - b. Identified which of those complaints above: (1) have been resolved through a due process hearing that addressed all allegations; (2) have been resolved through a court decision or settlement agreement pursuant to the IDEA or other State procedures that addressed all allegations; (3) involved children who no longer reside within the jurisdiction in which the complaint was filed; or (4) involve children who have graduated.
 - c. For all complaints not meeting the criteria in 2.b above: (1) provided a letter to all complainants and offer to reopen and resolve the complaint; (2) reviewed all files to determine which complaints should have been resolved, and provide a letter to the complainant and ask if they want the complaint resolved and, if they do, proceed to resolve it; or (3) reviewed all files to determine which complaints should have been resolved, notify the complainant and proceed to resolve the complaint.
 - d. Identified all complaints from the actions described in 2.c that will require resolution.
3. Additionally, within 90 days following submission of the documentation required in 2 above to OSEP, the State must submit documentation that it has resolved all complaints identified that should have previously been resolved.

Critical Element 4: Data System

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/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; (3) CEIS requirements pursuant to IDEA sections 613(a)(2)(C) and (f) and 34 CFR §§300.205 and 300.226.

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 implement selected grant application assurances, i.e., monitoring and enforcement related to LEA determinations and significant disproportionality/CEIS. However, 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

No action is required.