

Mississippi 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 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 data², 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 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
 - The State Advisory Panel
 - Parents and Advocates

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.

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?

1. Timely Issuance of Findings of Noncompliance

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 State informed OSEP during the CIV that it reports data in its APR, and makes findings of noncompliance, using the data it collects through its database, for SPP/APR Indicators 11 (timely initial evaluation), 12 (early childhood transition), and 13 (secondary transition). The State further explained that it did not make findings of noncompliance for these indicators, based on data for FFY 2009 (July 1, 2009-June 30, 2010), until February 18, 2011. The State described the following sequence of events:

1. In September 2010, the State reviewed each LEA's data in the database for FFY 2009 (July 1, 2009-June 30, 2010).
2. If the data reported in the database for an LEA for Indicators 11, 12, and/or 13 showed a compliance level less than 100%, the State sent the LEA a memorandum in October 2010 that stated that the data appeared to show noncompliance, and gave the LEA a two-week period within which to respond with any information that showed compliance (e.g., for initial evaluations, one of the exceptions in 34 CFR §300.301(d)).
3. Based on guidance that OSEP provided during the summer of 2010, the State decided that it would choose not to make a finding of noncompliance if an LEA could demonstrate, prior to the State's issuance of a finding, that the LEA: (1) was correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on updated data subsequently collected through the State data system; and (2) had corrected each individual case of noncompliance, unless the child was no longer within the jurisdiction of the LEA. The State further decided that an LEA's data for a six-month period would be needed to demonstrate that the LEA was correctly implementing the specific regulatory requirements (i.e., that the LEA had achieved 100% compliance).
4. Because the State would not conclude that an LEA had updated data showing a 100% compliance level until six months elapsed, the State did not issue findings to those LEAs that did not demonstrate correction until February 18, 2011, which was more than seven months after the end of the FFY 2009 reporting period, and six months after the State's initial review of data in the database showing apparent noncompliance.

The time elapsed between the end of the FFY 2009 reporting period (June 30, 2010) and the February 18, 2011 issuance of findings of noncompliance related to the compliance indicators constitutes an unreasonable delay in the process of identifying noncompliance and subsequently correcting noncompliance. During the verification visit, the State indicated that it intended in the future to make findings based on the database in a more timely manner, but did not provide a timeline for making findings based on FFY 2010 data (for the period of July 1, 2010-June 30, 2011) or future years.

2. Ensuring that LEAs Comply with Part B Requirements for District-wide Assessments

Part B does not require LEAs to conduct district-wide assessments, but does require that, if an LEA conducts any district-wide assessments, the LEA must comply with the requirements in 34 CFR §§300.160 and 300.320(a)(6) as to those district-wide assessments. In response to OSEP's question as to whether any LEAs in the State conduct district-wide assessments as that term is used in 34 CFR §§300.160 and 300.320(a)(6), the State responded that: (1) it was not aware of any LEAs conducting district-wide assessments, but that it had not taken any systematic steps to determine whether any LEAs were conducting such assessments; and (2) in the event that an LEA did conduct district-wide assessments, the State had no procedures in place to determine whether the LEA complied with the requirements in 34 CFR §§300.160 and 300.320(a)(6). During and after the OSEP visit, the State informed OSEP that it was in the process of developing a systematic and reliable method for determining which, if any, LEAs were conducting district-wide assessments within the meaning of 34 CFR §§300.160 and 300.320(a)(6), and that the State would be providing further information to OSEP as it became available.

OSEP Conclusion

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: (1) have a general supervision system that identifies noncompliance with Part B requirements in a timely manner; and (2) implement general supervision procedures to ensure that any LEAs administering district-wide 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 and local personnel, as described above, OSEP concludes that the State has not implemented a general supervision system that: (1) was reasonably designed to identify noncompliance identified for Indicators 11, 12, and 13 based on its database in a timely manner; and (2) enabled the State to determine whether any LEAs were conducting district-wide assessments, and – if so – were doing so in a manner that was consistent with the requirements in 34 CFR §§300.160 and 300.320(a)(6).

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must provide: (1) the date(s) on which it issued findings of noncompliance to LEAs based on FFY 2010 data from its database for Indicators 11, 12, and/or 13; and (2) an assurance that in future years it will issue such findings in a timely manner.

Within 60 days of this letter, the State also must provide: (1) a description of the procedures that it has implemented to determine whether any LEAs are conducting district-wide assessments; (2) if so, the number, if any, of LEAs that are conducting such assessments; and (3) the procedures it has implemented (or will implement, with a specific timeline for implementing such procedures) to determine whether any LEAs that are conducting district-wide assessments are doing so in a manner that meets the requirements in 34 CFR §§300.160 and 300.320(a)(6).

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 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.

1. No Systematic Procedures for Determining whether LEAs Comply with Resolution Meeting Requirements

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 except when one of the circumstances in 34 CFR §300.510(a)(3) occur. 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 acknowledged that it does not have a systematic way to monitor whether LEAs hold a resolution meeting within 15 days of receiving notice of a parent's due process complaint. The State provided documentation that it informs LEAs of these requirements, but acknowledged that it does not have procedures to determine whether, for all hearing requests by parents, a resolution meeting was held (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.) The State indicated that in some cases the LEA or hearing officer informs the State as to whether and when a resolution meeting was held. The State further informed OSEP that if the State was aware of noncompliance with these requirements, it would make a finding of noncompliance.

2. Beginning of 45-Day Timeline for Due Process Hearing Decisions

The Part B regulations require, in 34 CFR §300.515(a), that the public agency must ensure that not later than 45 days after the expiration of the 30 day resolution period under 34 CFR §300.510(b), or the adjusted time periods described in 34 CFR §300.510(c): (1) a final decision is reached in the hearing; and (2) a copy of the decision is mailed to each of the parties. The regulations further specify in 34 CFR §300.510(c) that, “The 45-day timeline for the due process hearing in 34 CFR §300.515(a) starts the day after one of the following events: (1) both parties agree in writing to waive the resolution meeting; (2) after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.” The State has provided guidance that is inconsistent with those requirements. In the standard memorandum that the State sends to the LEA when a parent has requested a hearing (with copies to the parent and the appointed hearing officer), the State provides that, “Once the resolution meeting has been held and an agreement has been reached, a signed copy of the agreement must be mailed to our office [the SEA] at the above address. Day thirty (30) will be [the date 30 days after the date on which the hearing was requested], which will end the Resolution Period. The hearing must then be conducted and a decision rendered within 45 days from the date of the Resolution Period. Day 45 is [the date 45 days after 30 days after the date on which the hearing was requested]. Extensions can only be granted by the hearing officer.” This guidance is inconsistent with the requirements in 34 CFR §§300.515(a) and 300.510(c), pursuant to which the resolution period must end, and the 45-day timeline begin, at a point earlier than 30 days from the date on which the due process complaint was received if one of the circumstances in 34 CFR §300.510(c) occurs.

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 IDEA sections 34 CFR §§300.510, the State must: (1) have reasonably designed dispute resolution 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 (2) not provide guidance that is inconsistent with the requirements in 34 CFR §§300.510(c) and 300.515(a) regarding the dates on which the resolution period ends and the 45-day timeline for due process hearing decisions begins. 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 meet those requirements.

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must provide to OSEP the procedures that the State will implement to monitor whether LEAs hold a resolution meeting within 15 days of receiving notice of a parent’s due process complaint, unless one of the circumstances in 34 CFR §300.510(a)(3) occur.

Within 60 days of the date of this letter, the State also must provide to OSEP documentation that it has revised standard language for memoranda or other guidance to LEAs, parents, and due process hearing officers to make those documents consistent with the requirements in 34 CFR

§§300.510(c) and 300.515(a) and (c) regarding the dates on which the resolution period ends and the 45-day timeline for due process hearing decisions begins.

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

OSEP Conclusion

Based on the review of documents and interviews with State personnel described previously, 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 and 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.