

## **North Carolina 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 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–
  - State Performance Plan
  - 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
  - The North Carolina Protection and Advocacy office

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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 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?*

#### *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.

As stated in OSEP’s Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Report, dated September 3, 2008, a finding is a written notification from the State to an LEA that contains the State’s conclusion that the LEA is in noncompliance, and that includes the citation of the statute or regulation and a description of the quantitative and/or qualitative data supporting the State’s conclusion that there is noncompliance with that statute or regulation.

The North Carolina Department of Public Instruction (NCDPI) confirmed during the verification component of the CIV that it collected the data that it reported in its APR for SPP/APR Indicators 11 (timely initial evaluation), 12 (early childhood transition), and 13 (secondary transition) through its Comprehensive Exceptional Child Accountability System (CECAS). NCDPI further reported that it had provided extensive guidance and technical assistance to LEAs that they were required to correct any noncompliance demonstrated by the data that each LEA submitted through CECAS for these compliance indicators, and that such correction needed to meet the requirements of 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). NCDPI acknowledged that it did not issue written findings of noncompliance to LEAs based on the data collected through CECAS for Indicators 11, 12, and 13, and considered the LEAs to have “self-disclosed” the noncompliance.

After OSEP explained the requirement that the State issue written findings of noncompliance, including in situations when LEAs provided the data that showed noncompliance, NCDPI provided OSEP (prior to the end of the verification component of the CIV) with examples of letters, by Indicator (11, 12, and 13), to be sent to LEAs in which NCDPI would inform LEAs of findings of noncompliance based on the data LEAs submitted to the State in October 2011. Subsequent to the CIV, NCDPI provided OSEP with a sample of letters that it had mailed to LEAs on December 12 and 13, 2011. In the letters to LEAs, NCDPI issued written findings of noncompliance based on data collected through CECAS for Indicators 11, 12, and 13, and described the requirements for ensuring correction of the identified noncompliance.

### **OSEP Conclusion**

To ensure the identification of noncompliance, 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), when a State receives data from an LEA showing noncompliance, the State must issue a written finding of noncompliance in a timely manner, unless the State is able to verify, consistent with OSEP Memo 09-02, that the LEA has corrected the noncompliance before the State issues the finding of noncompliance. 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, the State did not have a general supervision system that was fully compliant with those requirements, because it was not issuing written findings of noncompliance when data collected from LEAs through CECAS showed noncompliance. The State has, however, subsequent to the CIV, demonstrated that it has corrected that noncompliance.

**Required Actions/Next Steps**

No further action is required.

***Critical Element 2: Correction of Noncompliance***

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

To effectively monitor the implementation of Part B of the IDEA by LEAs, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the State must have a general supervision system that corrects noncompliance in a timely manner. In addition, as noted in OSEP 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 through 300.517 and 300.532.

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 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; or (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.”

During the verification component of the CIV, the State acknowledged that it was not consistently collecting data as to when the resolution period ended and the 45-day due process complaint period began. While onsite, OSEP reviewed NCDPI’s hearing log and a number of hearing files. Although some hearing files included documentation as to when the resolution period ended, there was not consistent documentation, and it appeared from the dispute resolution log that the assumption was that the resolution period lasted 30 days. OSEP found, and NCDPI acknowledged, that the State did not have a consistent way in which to determine when the resolution period ended and the 45-day timeline for the hearing decision began, which might be at a point before or after the 30-day resolution period, if one of the circumstances in 34 CFR §300.510(c) occurred.

Subsequent to the CIV, NCDPI provided to OSEP documentation that demonstrates the State has amended its procedures to consistently collect data which indicate when the resolution period ends and the 45-day due process hearing timeline begins. LEAs provide a form to the NCDPI which documents the results of resolution meetings. Information from this form is recorded in the State’s database so that the end of the resolution period and the beginning of the due process hearing timelines are documented. In addition, NCDPI has notified each local special education director, in writing, of these changes in the data collection procedures as it relates to the end of the resolution period and the beginning of the 45-day due process hearing period.

### **OSEP Conclusion**

Based on the review of documents, analysis of data, and interviews with State personnel, as described above, OSEP concludes that the State did not have procedures, at the time of the verification component of the CIV, for ensuring that, consistent with the requirements in 34 CFR §§300.510(c) and 300.515(a), the 45-day timeline for hearing decisions began on the day after the end of the resolution period. The State has, however, subsequent to the CIV, demonstrated that it has corrected that noncompliance.

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

No further action is required.

### ***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 Conclusion**

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.

In accordance with 34 CFR §300.646, the State must collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to--

- (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;
- (2) The placement in particular educational settings of these children; and
- (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

Each State has the discretion to define what constitutes significant disproportionality for LEAs in the State and for the State in general. The State's definition of significant disproportionality must be based on numerical data, and may not include consideration of the State's or LEAs' policies, procedures or practices. Therefore, in determining significant disproportionality, a State may determine statistically significant levels of disproportionality. All children aged six through 21 served under IDEA must be included in the State's calculation of significant disproportionality.

Prior to the CIV, OSEP reviewed NCDPI's multistep procedures for determining whether LEAs have significant disproportionality, as required in 34 CFR §300.646(a). OSEP identified issues with those procedures, and during the verification component of the CIV, NCDPI provided proposed revisions to the procedures, which resolved all but one of the issues identified earlier by OSEP. In both the existing and the proposed revised procedures, as part of the fifth and sixth steps of its six-step process, NCDPI determines an LEA to have significant disproportionality in the identification of children as children with disabilities, including identification as children with particular impairments, only if: (1) the LEA's current year kindergarten-grade six (K-6) disproportionate representation is 3.0 or greater; and (2) the LEA's current year K-6 disproportionate representation is greater than its current ages six-21 disproportionate representation; or (3) the LEA's current year K-6 disproportionate representation is less than its current year 6-21 disproportionate representation "and has a risk ratio greater than 5.0." NCDPI does not find an LEA to have significant disproportionality if: (1) the LEA's current year K-6 disproportionate representation is less than 3.0; or (2) the LEA's current year K-6

disproportionate representation is 3.0 or greater and the LEA's current K-6 disproportionate representation is less than the age six-21 disproportionate representation and "has a risk ratio of 5.0 or less." The results of making a determination of significant disproportionality based only on K-6 data is that, even if the LEA has a high level of disproportionate representation in the LEA's 7-12 level, the State does not identify that LEA as having significant disproportionality. This is inconsistent with the requirements in 34 CFR §300.646(a), which do not permit a State to determine that an LEA has significant disproportionality based only on disproportionality data for students in grades K-6. A State must examine data for all children aged six through 21 served under IDEA when calculating significant disproportionality.

### **OSEP Conclusion**

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 implement selected grant application assurances related to significant disproportionality, as required in 34 CFR §300.646(a), because the State does not include all children aged six through 21 served under IDEA when calculating significant disproportionality. OSEP concludes that the State has procedures and practices that are reasonably designed to implement other selected grant assurances, i.e., monitoring and enforcement related to LEA determinations and CEIS requirements pursuant to IDEA. 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**

Within 60 days of the date of this letter, the State must submit to OSEP revised procedures and practices, which are consistent with the requirements in 34 CFR §300.646, for determining whether LEAs have significant disproportionality in the identification of children with disabilities and the identification of children as children with disabilities with a particular impairment.

### **Additional General Supervision Issue**

#### *State-level Interagency Agreement*

As required by IDEA section 612(a)(12) and 34 CFR §300.154(a), the State educational agency (SEA) must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between the SEA and each non-educational public agency that is otherwise obligated under Federal or State law, or assigned responsibility under State policy, to provide or pay for any special education and related services necessary for ensuring the provision of a free appropriate public education (FAPE) to children with disabilities within the State. The purpose of the agreement is to ensure that all services described in 34 CFR §300.154(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). Prior to the expenditure of funds reserved for State administration, a State must certify to the Secretary that interagency agreements or other mechanisms to establish responsibility for services for children for whom

some other State agency is obligated under Federal or State law to provide or pay for services that are required by Part B are current. (20 USC 1411(e)(1)(C); 34 CFR §300.704(a)(3)).

During the verification component of the CIV, NCDPI confirmed that there are occasions in which the North Carolina State Department of Health and Human Services (NCDHHS) places students with disabilities in out-of-State residential mental health facilities. NCDPI also informed OSEP that NCDHHS is a non-educational public agency that is obligated under State law, in certain circumstances, to provide or pay for special education and related services that are necessary for ensuring FAPE to children with disabilities that NCDHHS places in private residential treatment facilities. NCDPI further informed OSEP that although a current interagency agreement with NCDHHS was not in effect, NCDPI was working with NCDHHS to develop one. Subsequent to the CIV, NCDPI provided to OSEP a signed copy of “A Cooperative Agreement Between the [NCDPI] and the [NCDHHS] Regarding Students with Disabilities,” dated December 21, 2011. The agreement meets the content requirements in 34 CFR §300.154(a)(1)-(4), including having procedures for ensuring the provision of services during the pendency of any interagency disputes.

### **OSEP Conclusion**

Based on the review of documents and interviews with State personnel, OSEP concludes that, at the time of the verification component of the CIV, the State did not, as required by 34 CFR §300.154, have in effect an interagency agreement between NCDPI and NCDHHS. Subsequent to the CIV, as described above, NCDPI provided documentation that it now has in effect an interagency agreement between NCDPI and NCDHHS, that meets the requirements in 34 CFR §300.154.

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

No further action is required.