

## **Nebraska 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–
  - 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
  - Local educational agency (LEA) staff, where appropriate
  - The State Advisory Panel
  - Parents and Advocates
  - Nebraska Advocacy and Protection 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 systems, 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.

## **I. 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 lead 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. 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; (3) the due process complaint requirements in IDEA sections 615(b)(6) – (8), 615(c)(2), 615(f) – (i), (k)(3)-(4) and (o) and 34 CFR §§300.507, 300.508, 300.509, 300.510 through 300.517 and 300.532; and (4) the procedural safeguards notice content requirements in IDEA section 615(d)(2) and 34 CFR §300.504(c).

OSEP identified three areas of concern regarding Nebraska’s dispute resolution procedures: (1) the State’s due process complaint model form and State complaint model form do not contain appropriate clarifying language; (2) the State was not tracking its due process complaint, resolution, and due process hearing timelines; and (3) the State’s procedural safeguards notice does not contain the requisite information.

Due Process Complaint 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).

Based on OSEP’s review of Nebraska’s form entitled “Sample Petition Form for Special Education Contested Cases” (sample form), in NE DOE Title 92, Chapter 55, Appendix A, found at <http://www.education.ne.gov/legal/webrulespdf/Clean55may06.pdf>, pages 23-24, OSEP has identified the following areas where the form does not comply with IDEA.

While the Nebraska Department of Education’s (NDE’s) sample due process complaint form generally included the content required in 34 CFR §300.508(b) governing a due process complaint, it also required information that exceeded the content requirements in 34 CFR §300.508(b). Specifically, Nebraska’s sample form stated that a petition must include the address of the respondent and must:

1. “Set forth a concise statement of the grounds upon which the Department’s authority or jurisdiction depends.” and
2. “(Specifically state the legal rights, duties, or privileges of the petitioner that the hearing officer is required by law to determine.”

As discussed with your staff during and subsequent to the verification visit, Nebraska may continue to include this information on its sample form, provided that it does not require parents to provide this information as a condition of processing their due process complaint, if that

complaint meets the other applicable requirements in 34 CFR §§300.507-300.508. Nebraska will need to revise its sample form to specify that the additional information requested is based on applicable Nebraska law, is not required by the IDEA, and that the State will not refuse to process the due process complaint if the parent is unable to provide the requested information

Similarly, OSEP identified the following concerns about the Nebraska Department of Education, Office of Special Education's, State complaint form. With one exception explained below, the form generally conforms to the requirements in 34 CFR §300.153(b) that govern the content of State complaints. However, the form also requires a party to provide the age of child, grade, and verified disability (if known). NDE must revise its State complaint form to specify that this information is required by Nebraska law, and not by the IDEA. NDE must also include a statement on the form informing parties that NDE will not refuse to investigate and resolve their State complaint if the party declines to provide this information.

NDE's State complaint form also requires the party filing the complaint to include "A statement that the school district or approved cooperative has violated a requirement of Rule 51 (Rule 51-009.11131)." This statement does not properly capture the entities against which a Part B State complaint can be filed. Under 34 CFR §300.153, an organization or individual may file a signed written complaint which must include a statement that a public agency has violated a requirement of Part B of the Act or the Part B regulations in 34 CFR part 300. Under 34 CFR §300.33, the term "public agency" includes the SEA, LEAs, educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs and ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. Therefore, NDE must revise its State complaint model form to specify that a State complaint must contain a statement that an entity that meets the Part B definition of "public agency" in 34 CFR §300.33, including the SEA and any other political subdivisions of the SEA that are responsible for providing education to children with disabilities, has violated an applicable requirement of Part B or the Part B regulations, which are incorporated into Nebraska's rules.

#### Resolution and Due Process Hearing Timelines

During the verification visit, OSEP identified an issue regarding Nebraska's procedures for tracking adherence to resolution and due process hearing timelines. As explained further below, the State has since resolved this issue. 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, unless the meeting does not need to be held because the parent and the LEA agree in writing to waive the resolution meeting or the parties agree to use mediation. Further, the State must ensure that there is a 30-day resolution period consistent with 34 CFR §300.510(b), or an adjusted resolution period, if one of the circumstances in 34 CFR §300.510(c) is present. If the parent and the LEA cannot resolve the parent's concerns to the parent's satisfaction during the resolution period, the 45-day hearing timeline is initiated at the conclusion of the 30-day resolution period or an adjusted resolution period. 34 CFR §300.515(a). For FFY 2011, Nebraska reported two due process complaints had been filed and two were pending, according to Nebraska's Dispute Resolution Data (Table 7) reviewed during the verification visit. Despite the small number of due process complaints that resulted in due process hearings in Nebraska, OSEP found that the State did not have procedures for tracking the timeliness of the resolution process, for ensuring that an LEA convened a resolution meeting within 15 days of receiving notice of the parent's due process complaint, in accordance with 34 CFR §300.510(a),

unless the meeting did not need to be held, and that the 45-day due process hearing timeline in 34 CFR §300.515(a) was initiated at the conclusion of the 30-day resolution period or an adjusted resolution period pursuant to 34 CFR §300.510(c), if the parent and LEA were unable to resolve the dispute that is the subject of the due process complaint. Specifically, Nebraska informed OSEP that at the time of the verification visit, it required parents to send a copy of their due process request to NDE and to the school district. NDE also required the parent to mail the copy to the district "return receipt requested" so that the parent would receive documentation from the U.S. Post Office as to the exact date the due process request was received by the district. A copy of that receipt was then forwarded to NDE by the parent so that NDE would know when the resolution timelines began. However, the State reported that this procedure proved to be problematic because in many cases the parent would not get the return receipt to NDE until after the 15-day resolution meeting timeline had expired.

Subsequent to the verification visit, on January 11, 2012, the State informed OSEP that it revised its procedures and has implemented those revised procedures with a due process complaint that was recently filed. Under the revised procedures, NDE requires its Legal Counsel Office to inform the special education office when a due process request is received from the parent. An NDE Regional Special Education Representative then contacts the district to determine when the School district receives the due process request from the parent and when the Resolution meeting is scheduled. The district is also contacted on the date after the scheduled resolution meeting to make sure that the meeting has occurred or has been appropriately waived. NDE has also informed OSEP that it has implemented a revised procedure to ensure that the 45-day due process hearing timeline is initiated at the expiration of the 30-day resolution period or an adjusted resolution period, if the LEA and the parents are unable to resolve the dispute that is the subject of the parent's due process complaint.

#### Procedural Safeguards Notice

As part of the verification process, OSEP also reviewed Nebraska's document, entitled "Parental Rights in Special Education," revised May 2009, posted on NDE's Web site at <http://www.education.ne.gov/SPED/parentinfo/parentalrightseng.pdf>, and found that this document does not meet all of the content requirements in IDEA section 615(d)(2) and 34 CFR §300.504(c). A State's procedural safeguards notice must contain a full explanation of all of the procedural safeguards available under Part B to the parents of a child with a disability under 34 CFR §§300.148, 300.151 through 300.153, 300.300, 300.502 through 300.503, 300.505 through 300.518, 300.520, 300.530 through 300.536, and 300.610 through 300.625. OSEP identified a number of areas in NDE's Parental Rights document that must be revised to meet this Part B requirement. These include the explanations of when reimbursement for unilateral private school placement by a court or hearing officer may be available under 34 CFR §300.148(c), some requirements regarding parental consent under 34 CFR §300.300, the scope of due process complaints and State complaints and relevant procedures, in accordance with 34 CFR §§300.507(a) and 300.510 and §§300.151 through 300.153, one of the requirements governing the impartiality of mediators and hearing officers in accordance with 34 CFR §§300.506(c)(1)(i) and 300.511(c)(1)(i)(A), some of the parental rights at hearings under 34 CFR §300.512(c), the child's status during proceedings under 34 CFR §300.518, and some of the discipline procedures under 34 CFR §§300.530 through 300.536. OSEP will advise the State under separate cover of the specific areas that must be revised in order for Nebraska's document, "Parental Rights in Special Education," revised May 2009, to provide a full explanation of all of the procedural

safeguards available to the parents of a child with a disability, in accordance with IDEA section 615(d)(2) and 34 CFR §300.504(c). OSEP will work with NDE staff to ensure that all necessary changes are made so that its “Parental Rights in Special Education” document is revised to conform to applicable Part B requirements.

### **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 and practices that are reasonably designed to implement all of the dispute resolution requirements of IDEA. Specifically, as noted above, OSEP has identified concerns with: 1) The State’s model form, entitled “Sample Petition for Special Education Contested Cases,” for the filing of due process complaints; 2) Nebraska’s Office of Special Education State Complaint Form; and 3) Nebraska’s document, “Parental Rights in Special Education.”

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

Within 90 days of the date of this letter, the State must submit data and information that demonstrate that it has revised its forms entitled “Sample Petition for Special Education Contested Cases” and the Nebraska Office of Special Education State Complaint Form to: (i) identify the specific information required by Nebraska law, and not by Part B of the IDEA; and (ii) include language in the forms advising parents in the case of a due process complaint, or parties in the case of a State complaint, that the State will not refuse to process their due process complaint or investigate and resolve their State complaint if the additional information required under State law is not provided. Additionally, Nebraska must revise its Office of Special Education State complaint form to specify that a party may file a State complaint alleging that a public agency, as defined in 34 CFR §300.33 as including the SEA and any other political subdivisions of the State that are responsible for providing education to children with disabilities, has violated an applicable requirement in Part B or the Part B regulations, as incorporated into Nebraska’s regulations.

Within 90 days of the date of this letter, the State must revise its document entitled “Parental Rights In Special Education,” revised May 2009, to accurately reflect the requirements in IDEA section 615(d)(2) and 34 CFR §300.504(c) to provide a full explanation of all of the procedural safeguards available to the parents of a child with a disability, must inform public agencies in the State that its Parental Rights in Special Education document has been revised, and must post its revised Parental Rights document on its Web site.

### ***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/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. 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.

**OSEP Conclusion**

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.

**Required Actions/Next Steps**

No action is required.