

New Jersey Part B Verification Visit Letter

Enclosure

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 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—
 - 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 and fiscal systems
 - State Advisory Panel
 - Parents and advocates
 - Disability Rights Center
 - New Jersey Protection and Advocacy Agency

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?

To effectively monitor the implementation of Part B of the IDEA, 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 a part of that responsibility, a State must ensure that it identifies noncompliance if children with disabilities are not being included in district-wide assessments as required by 20 U.S.C. 1412(a)(16) and 34 CFR §300.160.

In interviews during the verification visit, the State indicated it does not monitor districts for implementation of district-wide assessments. The State indicated that it does not consider district-determined local assessments to be district-wide assessments, and accordingly, has no mechanism to ensure that appropriate alternate assessments and accommodations are offered for district-wide assessments, as required under 34 CFR §300.160(a); nor does it require its LEAs to develop accommodation guidelines for those assessments in accordance with 34 CFR §300.160(b). However, it appears, based on interviews during the verification visit and review of relevant State materials, that local assessments administered by various districts are district-wide assessments because all children in a particular grade are required to take the assessment. Accordingly, these local assessments are subject to the requirements in 34 CFR §300.160 regarding the participation of children with disabilities in those assessments, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs and the requirement for local educational agencies (LEAs) to develop accommodation guidelines.

In addition, as described in the Dispute Resolution section of this enclosure the State reported that it does not have procedures in place to identify noncompliance in a timely manner regarding: (1) ensuring that LEAs implement corrective actions specified in due process hearing decisions without requiring additional parent action; (2) convening resolution meetings as required by 34 CFR §300.510(a); (3) ensuring the content and use of the model form are consistent with 34 CFR §§300.508(a) and 300.509(a); and (4) investigating State complaints in accordance with the requirements of 34 CFR §§300.151 through 300.153.

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 implement general supervision procedures to ensure that any LEAs administering district-wide assessments meet the requirements of 20 U.S.C. 1412(a)(16) and 34 CFR §300.160 and ensure the implementation of Part B requirements identified in the Dispute Resolution section of this enclosure.

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State's systems for general supervision are not reasonably designed to identify noncompliance in a timely manner regarding: (1) whether any LEAs were conducting district-wide assessments, and – if so – were doing so in a manner consistent with the requirements in 20

U.S.C. 1412(a)(16) and 34 CFR §300.160; (2) whether LEAs are implementing corrective actions specified in due process hearing decisions; (3) whether LEAs convene resolution meetings as required by 34 CFR §300.510(a); (4) that the required content and usage of the model form are consistent with 34 CFR §§300.508(a) and 300.509(a); and (5) that the State investigates complaints in accordance with 34 CFR §§300.151 through 300.153.

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must provide a description of the procedures that it has implemented to determine whether any LEAs are conducting district-wide assessments; if so, the number, if any, of LEAs that are conducting such assessments; and 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 20 U.S.C. 1412(a)(16) and 34 CFR §300.160, including that all children with disabilities are included in local assessments, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective individualized education programs (IEPs), as required in 34 CFR §300.160(a); and that LEAs develop accommodation guidelines for district-wide assessments, as required in 34 CFR §300.160(b). In addition, the State must implement the required actions within the designated timelines specified under the Dispute Resolution section of this enclosure.

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, 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, consistent with 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.

In the FFY 2009 APR and during the verification visit, the State reported that although not all findings of noncompliance made in FFY 2008 were timely corrected, all but nine of the 61 findings of noncompliance that were not corrected within one year were subsequently corrected. The State described for OSEP the enforcement actions taken against the districts that had not corrected these nine outstanding findings of noncompliance. These enforcement actions included technical assistance to address barriers, more frequent documentation and on-site visits, student data and records submitted for desk audits.

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, because the data for Indicator

B-15 in the FFY 2009 APR were 89%, OSEP cannot conclude that 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 §§300.500, 300.507 through 300.517 and 300.532.

Enforcement of Corrective Actions in Due Process Hearing Decisions

The State informed OSEP that it does not, as part of its general supervision responsibility under 34 CFR §§300.149, 300.500 and 300.600 and 20 U.S.C. 1232d (b)(3)(E), take action to ensure that LEAs implement corrective actions specified in a due process hearing decision, unless the parent files a complaint under the State complaint procedures in 34 CFR §§300.151-300.153 or uses the State's additional mechanism allowing parties to file a "Request for Enforcement." Hearing officer decisions are final unless appealed (34 CFR §300.514(a)). The SEA must ensure that final due process hearing officer decisions are implemented.

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 verification visit, the State informed OSEP that although it has a systematic way to monitor whether the LEA has offered a resolution meeting, it acknowledged that it did not issue findings of noncompliance to the LEA 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) when the State determined that an LEA failed to offer the resolution meeting as required in 34 CFR §300.510(a).

Investigation of Alleged Violations of IDEA

The IDEA Part B regulations require a State to resolve written complaints in accordance with 34 CFR §§300.151 through 300.153. While OSEP was on-site, NJOSE staff indicated that the SEA has declined to investigate complaints that appear to involve a disagreement regarding the child's educational placement, indicating that the State believed that such complaints do not allege a violation of State and/or Federal regulations and are outside the State's jurisdiction. The SEA, in resolving a complaint challenging the appropriateness of a child's educational program or

services or the provision of a free appropriate public education should determine whether the public agency has followed the required procedures to reach that determination and 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.

Model Forms

Under 34 CFR §300.509(a), the SEA or LEA may not require the use of a model form. Parents and public agencies may use the appropriate model form, or another form or other document, so long as the form or document that is used meets the content requirements in 34 CFR §300.508(b) for filing a State complaint or due process complaint. NJOSE has model State complaint and due process hearing forms posted on its Web site. In addition, the State reported that the model form is also being disseminated throughout the State by LEAs, professional organizations, parent groups and advocacy organizations.

During the on-site discussion with OSEP, NJOSE acknowledged that the State model forms include information that is not required by 34 CFR §300.508(b) and does not indicate that a complainant is not required to use the model form and may use another form or document when filing a request for a State complaint or due process hearing pursuant to 34 CFR §300.509(a) as long as it meets content requirements in 34 CFR §300.508(b).

OSEP Conclusion

To ensure the State has procedures and practices that are reasonably designed to implement the dispute resolution 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 §§300.500, 300.507 through 300.517 and 300.532, the State must:

1. Develop and implement procedures and practices to ensure that all corrective actions a due process hearing officer orders in a due process hearing decision are implemented.
2. Ensure that when an LEA fails to comply with the requirement to convene a resolution meeting as required by 34 CFR §300.510(a), the State issues a finding of noncompliance and 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.
3. Develop and implement procedures and practices to ensure that it investigates State complaints in accordance with 34 CFR §§300.151 through 153, including those that involve disagreements regarding the child's educational placement.
4. Indicate, on their model forms, which information is not required by 34 CFR §300.508(a) and must clarify that complainants are not required to use the State model forms pursuant to 34 CFR §300.509(a).

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 procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA.

Required Actions/Next Steps

1. Within 90 days of the date of this letter, the State must provide a written assurance that it has revised its dispute resolution procedures and practices to ensure that:
 - a. The State ensures that all corrective actions a due process hearing officer orders in a due process hearing decision are implemented.
 - b. The State monitors LEA compliance with IDEA resolution meeting requirements and issues findings of noncompliance when an LEA fails to comply with 34 CFR §300.510(a) and 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.
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 that the State declined to accept or were dismissed without resolution.
 - 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) involved children who have graduated.
 - c. For all complaints not meeting the criteria in #2b above: (1) provided a letter to all complainants or inquirers and offer to reopen and resolve the complaint; (2) reviewed all files, determine which should have been resolved, notify the complainant or inquirer and proceed to resolve the complaint; or (3) reviewed all files, determine which should have been resolved, and provide a letter to the complainant or inquirer and ask if they want the complaint resolved, and, if they do, proceed to resolve it.
 - d. Identified all complaints from the actions described in #2c that will require resolution.

Additionally, within 90 days following submission of the documentation required above to OSEP, the State must submit documentation that it has resolved all complaints identified that should have previously been resolved.

3. Within 90 days of the date of this letter, the State must provide a Web link to updated due process and State complaint model forms that clearly indicate which content is required and what is optional based on review of 34 CFR §§300.153(b) and 300.508(b).

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, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State does 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.

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 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. 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.