

## **Oklahoma 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 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,<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 website
  - 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
  - State Advisory Panel
  - Parents and Advocates
  - The State's Protection and Advocacy Center

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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 Systems

### ***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 LEAs, as required by IDEA Part B 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 Oklahoma State Department of Education (OSDE) informed OSEP that it uses its general supervision system, including its dispute resolution processes, Comprehensive Compliance Review, Concern-Specific Compliance Review, Focused Monitoring Review, and the Special Education Child Count System database, to identify noncompliance with the requirements of Part B of the IDEA. OSDE employs approximately six monitors who are responsible for conducting the monitoring visits and issuing findings. The purpose and content of the monitoring reports of a given LEA differed according to the type of monitoring that OSDE conducted with the LEA. As described to OSEP, OSDE identifies noncompliance through the following four monitoring mechanisms:

1. Comprehensive Compliance Review. OSDE reviews all special education and related services provided by the LEA, the LEA's Part II Finance Application, and any expenditure reports submitted by the LEA for appropriate use of funds under Part B of the IDEA. On-site coordinators conduct Comprehensive Compliance Reviews through the following methods: review of student records, student tracking, interviews of students, personnel and parents, and review of administrative records. OSDE selects districts for Comprehensive Compliance Reviews based on issues and needs identified through district applications, data reports, Desk Audit Reviews, parent surveys and the dispute resolution system (i.e., due process hearings, resolution sessions, mediations and State complaints). OSDE staff reported that they also conduct Comprehensive Compliance Reviews at the request of district superintendents or district special education directors and as a follow-up to noncompliance identified through other mechanisms. OSDE conducts approximately 60 Comprehensive Compliance Review visits per year. OSDE reported that it also conducts Comprehensive Compliance Reviews of Interlocal Cooperatives (referred to as Interlocal Cooperatives Compliance Reviews) to ensure that Interlocal Cooperatives responsible for providing special education and related services are providing those services in accordance with the requirements in Part B.
2. Concern-Specific Compliance Review. OSDE reviews special education and related services within a specific area(s) of concern. Concern-specific areas may include, but are not limited to, services for children with disabilities, provision of accommodations and modifications, parent participation, and discipline procedures. OSDE initiates Concern-specific compliance reviews based on repeated noncompliance in a district or school or at the request of a district official and includes on-site monitoring that focuses on the area of concern. OSDE conducts approximately four Concern-Specific Compliance Reviews per year.
3. Focused Monitoring Review. Each year a stakeholder group selects two monitoring priority areas from the indicators in the State Performance Plan (SPP). For each priority area, the lowest ranking LEA in each of the six enrollment clusters (and a randomly selected LEA)

will receive an on-site visit. OSDE conducts approximately 14 Focused monitoring reviews each year. OSDE purposefully selects priority areas to examine for compliance and results while not specifically examining other areas for compliance in order to maximize resources, emphasize important variables, and increase the probability of improved results.

4. Desk Audit Review. OSDE annually compares / (reported information (through the Special Education Child Count System) to the performance and compliance targets identified in the SPP. In January of each year, OSDE issues initial “district data profiles” to LEAs and gives the LEAs 30 days to verify the accuracy of the data. After the LEAs verify the data, OSDE uses it to report in the APR. In February and March, OSDE reissues the district data profiles to one-sixth of the districts it randomly selects to be monitored through the Desk Audit review process. The Desk Audit review process is the mechanism OSDE utilizes to issue formal written notices of noncompliance based on data collected through its database. In the event that the LEA’s performance is below the State’s target, OSDE issues a finding and requires the LEA to submit a written improvement plan. OSDE ensures that all LEAs receive a Desk Audit review once during the six-year cycle. OSDE conducts Desk Audit reviews on approximately 90 school districts, randomly selected from six enrollment clusters, on a six-year cycle. The six enrollment clusters are: 1) 9,000 students and above; 2) 3,000 to 8,999 students; 3) 1,000 to 2,999 students; 4) 500 to 999 students; 5) 250 to 499 students; and, 6) one to 249 students.

These data are also used for public reporting. In addition, local determinations are issued in June and are based on the district data profiles.

As described to OSEP, OSDE has used data collected through a database to collect the statewide data reported for Part B compliance indicators in the APR, and to report publicly on the performance of each LEA against the compliance indicator targets of 100%. OSDE’s current practice of issuing findings of noncompliance identified through its database to only one-sixth of districts through its Desk Audit review process is inconsistent with Part B requirements to effectively monitor and correct noncompliance (sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E)). If a State has data available through its database that show noncompliance, the State must address the noncompliance evidenced in the database. Generally, this will mean verifying the data, issuing findings of noncompliance and requiring timely correction. While OSDE addresses the noncompliance found in its database through its Desk Audit review process for one-sixth of the total districts, it does not issue findings (or require correction within one year) for any of the other districts with data demonstrating noncompliance. In addition, such database evidence of noncompliance does not trigger findings and correction under one of the other processes such as the Concern-specific compliance reviews. OSDE reported that it is in the last year of its six-year cycle and is currently in the process of re-drafting its monitoring procedures to ensure that all noncompliance found through its database is identified and corrected within one year of identification.

### **OSEP Conclusion**

To effectively monitor the implementation of Part B of the IDEA by LEAs, as required by IDEA Part B 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. In general, the State must identify noncompliance by issuing timely findings of noncompliance when the State obtains reliable data reflecting noncompliance with IDEA Part

B requirements. Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State does not have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components because the State reviews data in its database, and makes findings of noncompliance when those data showed noncompliance, for only one-sixth of its LEAs each year, and does not review data, and make findings of noncompliance when those data indicate noncompliance, for the remaining five-sixths of its LEAs.

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

Within 90 days from the date of this letter, Oklahoma must submit: (1) revised procedures regarding the identification of noncompliance that provide for (a) reviewing Part B compliance data in its database at least once each year, and (b) as appropriate, making findings of noncompliance when data show less than 100% compliance with a Part B requirement; (2) documentation that OSDE has made findings of noncompliance based on the data it collects through its database as well as other monitoring processes; and (3) an assurance that it will include data regarding the correction of all findings of noncompliance (including the correction of findings it makes based on data it collects through its database) in its data for Indicator 15 in the FFY 2012 SPP/APR (due February 1, 2014).

### ***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 IDEA Part B 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, dated October 17, 2008 (OSEP Memo 09-02), Reporting on Correction of Noncompliance in the APR required under sections 616 and 642 of the IDEA, 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.

For correction of noncompliance identified in monitoring reports issued under the Comprehensive, Concern-specific, and Focused monitoring review processes, OSDE reported that it requires LEAs to complete and implement corrective action plans (CAP)s<sup>4</sup> to address any noncompliance within sixty days of the issuance of the monitoring report. LEAs are required to obtain an assurance from the district superintendent that the corrective actions will be implemented, and to include technical assistance and training (generally provided by OSDE staff), in the specific area(s) of noncompliance. The LEA is also required to submit child-specific individualized education program data to demonstrate correction of child-specific noncompliance. The LEA provides supporting documentation for some CAP activities such as: teacher training certificates or evidence of completion of on-line training. In some cases, OSDE

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<sup>3</sup> OSDE utilizes the term “Corrective Action Plan” (CAP) for its Comprehensive, Focused and Concern-specific monitoring mechanisms. For Desk Audit Reviews, OSDE uses the term “Improvement Plan.” Both terms are used to describe the process by which LEAs are required to demonstrate correction of noncompliance. However, there are differences in each process as described above.

considers the LEA to be in compliance when OSDE issues a close-out letter 90 days following the issuance of the monitoring report, with a statement that, based on the assurance received from the district superintendent, “the corrective actions have been or will be implemented.” OSDE reported to OSEP that, for LEAs that receive such letters, it does not review updated data to determine whether the LEA is correctly implementing the specific regulatory requirements under the Comprehensive or Concern-specific monitoring processes. As described by OSDE staff, the Focused monitoring review is the only process in which the standards in OSEP Memo 09-02 are appropriately applied. Specifically, OSDE stated that it works with the LEA for a 12-month period ensuring that the LEA has corrected the individual noncompliance and reviews updated data to ensure that the LEA has come into compliance with the specific regulatory requirement(s).

For the one-sixth of the LEAs chosen for a Desk Audit review, if the SPP/APR compliance data are below 100%, the LEA has 30 days from the date of the finding to submit a written improvement plan that generally includes a plan for teacher training, self-monitoring, hiring additional staff, and accessing technical assistance from OSDE specific to the area of noncompliance. Upon submission of the written improvement plan and signed written assurance by the district superintendent, OSDE issues a close-out letter that states that the LEA is in compliance, based on the assurance that the LEA has implemented or will implement the improvement plan. OSDE reported that for noncompliance identified through Desk Audit reviews, it examines updated data to ensure that the LEA is in compliance with the regulatory requirements by reviewing a year’s worth of data before the one year correction timeline but that it does not ensure that when compliance data are below 100%, child-specific noncompliance is corrected.

### **OSEP Conclusion**

A State cannot establish that an LEA has come into compliance with IDEA Part B based on a written assurance that the corrective actions will be implemented. Furthermore, 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 any LEA with noncompliance identified through its monitoring mechanisms has been corrected, by ensuring 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.

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 a general supervision system that is reasonably designed to correct noncompliance in a timely manner using its different components because the State did not verify correction of noncompliance identified through all of its monitoring mechanisms consistent with OSEP Memo 09-02. Specifically, OSEP found that: (1) OSDE is not ensuring that the LEA 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, when noncompliance is identified through Comprehensive and Concern-specific reviews; and (2) OSDE does not ensure that when compliance data are below 100% for any of the one-sixth of LEAs that have

been chosen for Desk Audit Reviews, that the LEAs have corrected the noncompliance for each child, unless the child is no longer within the jurisdiction of the LEA.

On October 10, 2011, OSDE submitted to OSEP a revised close-out letter that appropriately notifies a LEA of its correction of noncompliance based on the completion of all corrective actions and the LEA's demonstration of continued compliance. Additionally, OSDE stated that it will revise its policies, procedures and practices to ensure that a close-out letter is not issued to an LEA unless OSDE has demonstrated compliance consistent with OSEP Memo 09-02.

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

Within 90 days from the date of this letter, the State must provide revised policies and procedures for determining timely correction of noncompliance, ensuring that it only determines that a finding of noncompliance has been corrected when the LEA has both: (1) correctly implemented the specific regulatory requirements; and (2) corrected each individual case of child-specific noncompliance (even if late) unless the child is no longer in the jurisdiction. In addition, when reporting on subsequent correction for compliance indicators (other than Indicator 15) in its FFY 2011 APR due February 1, 2013, the State must specify whether subsequent correction of noncompliance was consistent with OSEP Memo 09-02 in light of these findings.

### ***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 IDEA sections 612(a)(11) and 615(a), 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) and (o) and 34 CFR §§300.507, 300.508, and 300.510 through 300.517.

OSDE utilizes the provisions of 34 CFR §300.151(a)(ii) which allow for, at the State education agency's (SEA) discretion, the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint. OSDE's procedural safeguards and State brochures provide information on parents' rights to file a State complaint at the LEA level or the SEA level. OSDE has available, on its Web site, a model form for a State complaint that can be filed at the LEA level and a model form for a State complaint that can be filed at the SEA level (both contain the required content requirements).

OSEP found through interviews with OSDE staff, that OSDE does not have a mechanism to track State complaints filed at the LEA level. Therefore, OSDE cannot ensure that State complaints filed at the LEA level are investigated and a written decision issued consistent with the requirements of 34 CFR §§300.151 through 300.153.

Since OSDE only reports data on State complaints filed at the SEA level, OSEP is concerned about the data reported under section 618 of the IDEA and Indicator 16 of the APR. In its Table 7 data reported under section 618 and the FFY 2009 APR, submitted February 1, 2011, OSDE reported the 25 State complaints filed at the SEA level but did not appear to include State complaints filed at the LEA level.

### **OSEP Conclusion**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined the State has not demonstrated that it has procedures and practices that are reasonably designed to implement all dispute resolution requirements of Part B. As stated above, OSDE utilizes the provisions of 34 CFR §300.151(a)(ii) which allow for, at the SEA's discretion, filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint. OSEP finds that the State does not have procedures in place and properly implemented to ensure that State complaints filed at the LEA level are investigated and a written decision issued consistent with the requirements of 34 CFR §§300.151 through 300.153. This includes ensuring that: (1) each State complaint filed is resolved within the 60-day timeline or an appropriately extended timeline due to the exceptional circumstances with respect to the particular complaint or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State; (2) each of the allegations in the complaint is addressed in the written decision; and (3) a written decision is issued that clearly states the conclusion as to whether the public agency had violated a requirement of Part B.

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

Within 90 days of the date of this letter, the State must submit documentation that it has revised its State complaint policies and procedures to ensure that either: (1) OSDE has developed a mechanism to track State complaints filed at the LEA level and that those State complaints are investigated and a written decision is issued consistent with the requirements of 34 CFR §§300.151 through 300.153 or; (2) that OSDE no longer chooses to implement the provisions of §300.151(a)(ii). In addition, if OSDE continues to allow State complaints to be filed at the LEA level, then it must ensure that it includes data for all State complaints, including complaints filed at the local level, when reporting Table 7 data under section 618 and on Indicator 16 in its FFY 2011 APR, due February 1, 2013.

#### ***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/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 (g) and 34 CFR §§300.205 and 300.226.

OSDE's policies and procedures state that "If an LEA is found to be significantly disproportionate for two consecutive years, the LEA will also be required to set aside 15% of Part B Flow-Through Funds for CEIS." OSDE staff informed OSEP that an LEA identified with significant disproportionality in year one *would not* be required to reserve 15% of their Part B funds for comprehensive CEIS; however, if OSDE identified the same LEA with significant disproportionality the following year (year two), the LEA *would* be required to reserve 15% of their Part B funds for comprehensive CEIS. OSEP Memo 08-09 dated July 28, 2008, (OSEP Memo 08-09), specifically states that a State must determine significant disproportionality annually and require any LEA that is found to have significant disproportionality based on race or ethnicity to reserve the maximum amount of funds under section 613 (f) of the IDEA (15 percent) for comprehensive CEIS either from the funds awarded following the date on which significant disproportionality was determined or from funds awarded from the appropriation for a prior Federal fiscal year (FFY).

**OSEP Conclusion**

To ensure that the State has procedures and practices that are reasonably designed to implement the selected grant requirement related to significant disproportionality/CEIS as required by IDEA section 613(f) of the IDEA and OSEP Memo 08-09, the State must determine significant disproportionality annually and require any LEA that is found to have significant disproportionality based on race or ethnicity to reserve the maximum amount of funds. 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 implement selected grant requirements related to significant disproportionality/CEIS. Further, 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 90 days of the date of this letter, the State must submit revised policies and procedures consistent with IDEA section 613(f) and OSEP Memo 08-09 to ensure the State determines significant disproportionality annually and that any LEA that is found to have significant

Oklahoma Part B 2011 Continuous Improvement Visit Letter-Enclosure-Verification Component

disproportionality based on race or ethnicity reserve the maximum amount of funds for comprehensive CEIS.