

South 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,¹ and the State's systems for improving child and family outcomes and protecting child and family rights. 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, data and fiscal systems
 - The South Carolina Advisory Council on the Education of Students with Disabilities
 - Parents and Advocates
 - The South Carolina Protection and Advocacy office

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 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 Part B regulations require, in 34 CFR §300.173, that, “The State must have in effect, consistent with the purposes of [Part B] and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in [34 CFR §300.8].” The regulations further require, in 34 CFR §300.600(d)(3), that the State must monitor LEAs located in the State, using quantifiable indicators in the priority area of “disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.” In addition, SPP/APR Indicators 9 and 10 require the State to provide the number and percentage of districts with disproportionate representation that is the result of inappropriate identification of racial and ethnic groups in: (1) for Indicator 9, special education and related services; and (2) for Indicator 10, specific disability categories.

During the verification visit, the State described the process that it uses to determine whether, for a district that has disproportionate representation, the disproportionate representation is the result of inappropriate identification. The State explained that it sends a letter to districts that the State has determined to have disproportionate representation, based on review of child count data reported under IDEA section 618 and school enrollment data. That notification letter directs those districts to conduct a self-assessment to determine whether or not there was inappropriate identification. As part of that self-assessment, the LEA must review policies, procedures, and practices, and review the records for all newly-identified children with disabilities in the particular racial group (and, for Indicator 10, disability category) to determine whether there was inappropriate identification. The State acknowledged that districts were not directed to review, as part of the process of determining whether the disproportionate representation was the result of inappropriate identification, the identification of any children who were currently receiving special education services, but whose initial identification as a child with a disability had occurred at a time prior to the reporting year, to determine whether their continuing identification was inappropriate. OSEP concluded that the State’s procedures for identifying noncompliance regarding disproportionate representation that was the result of inappropriate identification are not consistent with the requirements of Part B.

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 ensure that its monitoring procedures to determine if disproportionate representation is the result of inappropriate identification are not limited to the review of identification for

children who are newly-identified. OSEP concludes that the State is not meeting these requirements because the State directs LEAs to consider only newly-identified children in their analyses of disproportionate representation that is the result of inappropriate identification. With this exception, based on the review of documents, analysis of data, and interviews with the State, as described above, OSEP concludes that the State's general supervision system is reasonably designed to identify noncompliance in a timely manner using its different components. 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

Within 90 days of the date of this letter or during the opportunity for clarification of its FFY 2010 APR, the State must provide documentation that it has revised its procedures and practice for determining noncompliance for disproportionate representation consistent with the requirements in 34 CFR §§300.173 and 300.600(d)(3). In addition, see Required Actions/Next Steps in General Supervision/Critical Element 4.

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., that the LEA 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.

The State began to implement a new on-site monitoring process during the 2011-2012 school year. The State informed OSEP that it would implement procedures consistent with the requirements of OSEP Memo 09-02 to verify timely correction of findings of noncompliance that it makes through the on-site monitoring visits, but the State could not yet provide documentation during OSEP's fall 2011 CIV of the effectiveness of those procedures.

OSEP Conclusion

Based on the review of documents, analysis of data, interviews with State 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. Further, as explained above, OSEP could not yet make a determination of the effectiveness of the State's systems in ensuring timely correction of noncompliance identified through the new on-site monitoring process.

Required Actions/Next Steps

With its FFY 2011 APR, due February 1, 2013, the State must, in addition to reporting data on the timely correction of findings of noncompliance made in FFY 2010 (as required by the measurement for Indicator 15), also provide a description of the extent to which findings that the State made between July 1, 2011 and December 31, 2011, based on the State’s new on-site monitoring process, were timely corrected (i.e., corrected within one year from the date on which the findings were made).

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.

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 the dispute resolution requirements of IDEA.

Required Actions

No 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.

As described above, under General Supervision/Critical Element 1, SPP/APR Indicators 9 and 10 require the State to provide the number and percentage of districts with disproportionate representation that is the result of inappropriate identification of racial and ethnic groups in: (1) for Indicator 9, special education and related services; and (2) for Indicator 10, specific disability categories. In determining whether, for a district with disproportionate representation, the disproportionate representation was the result of inappropriate identification, the State may not limit its review (or direct districts to limit their review) to whether the identification of *newly-identified* students with disabilities was inappropriate. The review must also address previously-identified students with disabilities who continue, for Indicator 9, to be served in special education and related services, or, for indicator 10, in specific disability categories. The State acknowledged that districts were not directed to review, as part of the process of determining whether the disproportionate representation was the result of inappropriate identification, the identification of any children who were currently receiving special education services, but whose

initial identification as a child with a disability had occurred at a time prior to the reporting year, to determine whether their continuing identification was inappropriate. Thus, it appears that the State's methodology for determining whether disproportionate representation was the result of inappropriate identification is not consistent with the measurement for SPP/APR Indicators 9 and 10.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that, with the exception of SPP/APR Indicators 9 and 10, 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

With its response, during the SPP/APR clarification period, to OSEP's FFY 2010 South Carolina Part B SPP/APR Status Table, the State must provide to OSEP a description of the extent to which the data that the State reported in the State's FFY 2010 APR, due February 1, 2012, for Indicators 9 and 10 are consistent with the measurement for SPP/APR Indicators 9 and 10. If the data are not consistent with the measurement, OSEP will address the corrective actions required in the APR response to the State.

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.

The Part B regulations require, in 34 CFR §300.602(b)(1)(i)(A), that the State must, subject to §300.602(b)(1)(ii), "Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under [34 CFR §300.602(b)(2)]. The regulations further provide, in 34 CFR §300.602(b)(1)(ii), that, "If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained." The State reported that it collects APR data for Indicator 8 (Parent Involvement) through sampling, and does not collect from each LEA every year (but does collect data for Indicator 8 from each LEA at least once during the period of the SPP). The State acknowledged that if, for a particular year, the State has not collected Indicator 8 data from a particular LEA, it indicates in the publicly reported data for that LEA that no data were collected that year for the indicator for that LEA, but does not, as required by 34 CFR §300.602(b)(1)(ii),

include the most recently available performance data for the LEA, and the date the data were obtained.

OSEP Conclusion

To ensure that the State has procedures and practices that are reasonably designed to implement public reporting on LEA performance as required by IDEA sections 34 CFR §300.602(b)(1)(A)(ii), the State must, where applicable, update its 2009-2010 LEA special education profiles, to include the most recently available performance data on each LEA where the State collects performance data through monitoring or sampling, and the date the data were obtained. Based on the review of documents, analysis of data, and interviews with the State, described previously, OSEP concludes that, with the exception noted above, related to public reporting of LEA performance for Indicator 8, the State does have procedures and practices that are reasonably designed to implement selected grant requirements – 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 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 provide an assurance that it will report publicly on the performance of LEAs in a manner consistent with the requirements in 34 CFR §300.602(b)(1)(ii). Further, by June 1, 2012, the State must provide a Web link to public reporting on the FFY 2010 performance of LEAs that is consistent with those requirements.