

## **Texas Part B Continuous Improvement Visit**

### **Enclosure – Verification Component**

#### **Scope of Review**

During the verification component of the Continuous Improvement Visit (CIV), the Office of Special Education Programs (OSEP) reviewed critical elements of the State's general supervision and fiscal systems,<sup>1</sup> 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 Individuals with Disabilities Education Act (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
  - State Advisory Panel
  - Parents and Advocates

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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.

## **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 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., 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.

### **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 B15 in the FFY 2009 APR were 83%, 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 §§300.507, 300.508, 300.509 through 300.517 and 300.532.

#### State Model Forms

Based upon a review of the State’s model due process and State complaint forms, OSEP found that the forms require information that is not required under the IDEA in 34 CFR §§300.508(b), 300.509, 300.152, and 300.153. Specifically, the State’s Due Process model form requires the name of the district in which the student’s school is located and the signature of the complainant, which are not requirements under the IDEA. Also, the State’s model complaint form requires the name of the district in which the student’s school is located, the date of birth of the student, and the relationship of the complainant to the student, which are not requirements under the IDEA. The State explained that it does not delay processing a due process complaint to require a complainant to provide the information not required under IDEA; however, information on the State’s Web site indicates that all information on the form is required to “complete” the form.

#### State Complaints: Public Agency

The IDEA requirements in 34 CFR §300.153(b)(1) state that the complaint must include a statement that a public agency has violated a requirement of Part B of the Act....” The State’s model form, Dispute Resolution Handbook, and Procedural Safeguards do not make it clear to complainants that complaints can be filed against the TEA. The State’s model complaint investigation form states that, “if you believe that special education requirements have not been followed by a public school, you have the following dispute resolution options....” The State’s Dispute Resolution Handbook indicates that a State complaint alleging IDEA violations may be filed against a school district. The State’s Procedural Safeguards document states that State complaints may be filed against a school.

#### Expedited Due Process Hearing

The State’s 45-day timeline for issuing a hearing decision in an expedited hearing is inconsistent with the requirements of IDEA in 34 CFR §300.532 (c)(2) which says that that an expedited due process hearing must occur within 20 school days of the date the hearing was filed and the hearing officer must make a determination within 10 school days after the hearing.<sup>4</sup> At the time

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<sup>4</sup> §89.1191. Special Rule for Expedited Due process Hearings. An expedited due process hearing requested by a party under 34 Code of Federal Regulations, 34 CFR §300.532, shall be governed by the same rules as are applicable to due process hearings generally, except that the final decision of the hearing officer must be issued and mailed to each of the parties no later than 45 days after the date the request for the expedited hearing is received by the Texas Education Agency (TEA), without exceptions or extensions.

of OSEP’s on-site visit, the State’s Admission, Review, and Dismissal (ARD) guidance also reflected an incorrect timeline for expedited due process hearings. Subsequent to OSEP’s visit, the State corrected the timeline in the ARD guidance posted on the State’s Web site.

#### Due Process Hearing Timeline Exceptions

The State has adopted a one-year timeline for filing a due process complaint as permitted in 34 CFR §300.511(e). However, Texas Education Code in §89.1151 does not list the exceptions found in 34 CFR §300.511(f) to that timeline.<sup>5</sup> Specifically, the State must provide that the one-year limit does not apply if a parent was prevented from filing a due process complaint because of misrepresentation by an LEA that it had resolved the issues for which the parent filed the complaint or an LEA withheld information that the LEA was required under regulations to provide to the parent.

#### Tracking Due Process Hearing Timelines

The State demonstrated its Correspondence and Dispute Resolution Management System (CDRMS). The CDRMS system automatically calculates a hearing officer’s due process hearing decision due date based upon a timeline of 30 days for the resolution period plus 45 days for the hearing decision. TEA uses the CDRMS 75-day timeline to identify when a hearing decision is not timely. The CDRMS 75-day deadline does not take into account resolution periods that are waived, adjusted, or involve an expedited due process complaint, as required in 34 CFR §§300.510(c) and 300.515. The State said that it has added fields to help track the resolution process and that it will adjust the database to account for hearing timelines in cases where the parties have waived the resolution process, adjusted the resolution period, or that involve an expedited due process complaint.

#### **OSEP Conclusion**

To ensure that the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, as required by IDEA sections 34 CFR §§300.152(c), 300.153(b)(1), 300.508(b), 300.509, 300.510(c), 300.511(f), 300.515, and 300.532(c)(2), the State must revise or amend:

1. The State’s due process model and State complaint forms to indicate optional content on the form.
2. The State’s model complaint investigation form, Dispute Resolution Handbook and State Procedural Safeguards and any other documents to indicate that complaints can be filed against TEA.

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<sup>5</sup> §89.1151. Due process hearings. (a) A parent or public education agency may initiate a due process hearing as provided in IDEA, Part B, as amended, 20 United States Code (USC), §§1401 et seq., and the applicable federal regulations, 34 CFR §§300.1 et seq. (b) The TEA shall implement a one-tier system of due process hearings under the IDEA. The proceedings in due process hearings shall be governed by the provisions of 34 CFR, §§300.507-300.514, and 34 CFR, §300.532, if applicable, and §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185 and 89.1191 of this subchapter. (c) A parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.

3. Texas Education Code to make it consistent with the expedited due process hearing requirements of IDEA.
4. The Texas Education Code to make it consistent with IDEA requirements regarding due process hearing timelines.
5. The CDRMS data collection system to account for hearing timelines in cases where the parties waived the resolution process, adjusted the resolution period, or that involve an expedited due process complaint.

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 the dispute resolution requirements of IDEA.

OSEP is currently reviewing whether Texas is: (1) not investigating complaints that alleged violations of FAPE; and (2) investigating systemic complaints only with regard to the specific child referenced in the complaint rather than "all children similarly situated." OSEP makes no conclusions in this enclosure about these two issues related to the State's complaint system and may have further communication with the State with regard to these issues.

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

TEA must submit within 60 days of the receipt of this letter documentation that demonstrates that it has:

1. Revised its model due process and State complaint forms to indicate to complainants which of its content is "optional" and is not required under IDEA.
2. Revised its model complaint forms, Dispute Resolution Handbook, Procedural Safeguards, and any other State documents to make it clear that a State complaint can be filed against any entity that fits the definition of public agency as found in 34 CFR §300.33 (e.g., the State Education Agency and nonprofit charter schools).
3. Adjusted its CDRMS database to account for hearing timelines in cases where the parties have waived the resolution process, adjusted the resolution period, or if the issue involves an expedited due process complaint.
4. Informed all hearing officers of the State's adjustment to hearing timelines in the CDRMS database when they are determining due process hearing decision due dates.

TEA must submit within 60 days of the receipt of this letter an assurance to the Department that:

1. The expedited hearing timeline requirement of 45 days in the Texas Education Code and any other guidance or training documents will be revised to be consistent with the requirements in 34 CFR §300.532(c)(2) which says that that an expedited due process hearing must occur within 20 school days of the date the hearing was filed and the hearing officer must make a determination within 10 school days after the hearing.
2. The Texas Education Code in §89.1151 and any other guidance or training documents will be revised to reflect the exceptions found in 34 CFR §300.511(f) to the timeline within which a parent or public education agency may file for a due process hearing.

TEA must submit within one year of the receipt of this letter documentation that:

1. The expedited hearing timeline requirement of 45 days in the Texas Education Code has been revised and approved by the State legislature consistent with the requirements of 34 CFR §300.532(c)(2).
2. Texas Education Code in §89.1151 has been revised to reflect the requirements in 34 CFR §300.511(f).

***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.

In OSEP’s November 16, 2011 letter to the State, OSEP responded to the State’s method of calculating disproportionate representation. Please reference that letter for additional details.

***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, 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; (3) CEIS requirements pursuant to IDEA sections 613(a)(2)(C) and (g) and 34 CFR §§300.205 and 300.226.

**OSEP Conclusions**

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 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**

No action is required.