



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Ms. Valerie Woodruff
Secretary of Education
Delaware Department of Education
Townsend Building #279
401 Federal Street, Suite 2
Dover, Delaware 19903-1402

DEC 15 2003

Dear Ms. Woodruff:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification visit to Delaware. As indicated in my letter to you of June 18, 2003, OSEP is conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with, and improving performance under, Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to Delaware during the week of September 22, 2003.

The purpose of our verification reviews of States is to determine how States use their general supervision, State-reported data collection, and State-wide assessment systems to assess and improve State performance, and to protect child and family rights. The purposes of the verification visits are to: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify and correct noncompliance.

As part of the verification visit to the Delaware Department of Education (DDOE), OSEP staff met with Dr. Martha Brooks (the State's Director of the Exceptional Children and Early Childhood Group), and members of DDOE's staff who are responsible for: (1) the oversight of general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings); (2) the collection and analysis of State-reported data; and (3) ensuring participation in, and the reporting of student performance on, State-wide assessments. Prior to and during the visit, OSEP staff reviewed a number of documents¹, including the following: (1) Delaware's State Improvement Plan and Annual Report; (2) the State's Biennial Performance Report for grant years 1999-2000 and 2000-2001; (3) Delaware's Administrative Manual for Special Education Services; (4) Delaware's State Improvement Grant (SIG) application; (5) the DDOE Continuous-improvement and Compliance Monitoring System (CCMS) Manual; (6) the State's Administrative Complaint Procedures; (7) DDOE tracking logs for administrative

¹ 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.

complaints and due process hearings and selected complaint and due process hearing results; (8) the DDOE IEP Facilitation Project end of the year report; (9) the Integrated System for Delaware Student Information System (DELSIS) Updating Report; (10) the 2002 OSEP Grant Award Letter; (11) the Delaware Student Testing Program (DSTP) Manual and DSTP Inclusion Guidelines; (12) information from the State's website; and (13) other relevant information submitted by the State and other sources including constituent correspondence.

On August 6, 2003, OSEP also conducted a conference call with a number of members of the Partners' Council for Children with Disabilities to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and State-wide Assessment. Dr. Brooks participated in the call and assisted us by recommending and inviting the participants.

The information that Dr. Brooks and her staff provided during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of DDOE's systems for general supervision, data collection and reporting, and State-wide assessment.

General Supervision

In looking at the State's general supervision system, OSEP collected information regarding a number of elements, including whether the State: (1) has identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede the State's ability to identify and correct noncompliance; (2) has systemic, data-based, and reasonable approaches to identifying and correcting noncompliance; (3) utilizes guidance, technical assistance, follow-up, and—if necessary—sanctions, to ensure timely correction of noncompliance; (4) has dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) has mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.²

OSEP believes that DDOE's systems for general supervision constitute a reasonable approach to the identification and correction of noncompliance; however, OSEP cannot, without also collecting data at the local level, determine whether the systems are fully effective in identifying and correcting noncompliance.

During the September visit, DDOE staff informed OSEP that it has designed its general supervision systems to ensure both compliance and improved results for students with disabilities. OSEP learned from interviewing DDOE staff, contractors, and stakeholders, and reviewing DDOE's monitoring materials and monitoring files, that several components constitute DDOE's general supervision system.

² Mechanisms that DDOE has in place to compile and integrate data across systems are discussed in the 618 data collection section of this letter.

OSEP learned from interviewing DDOE staff and reviewing monitoring materials and monitoring files, that DDOE implements a Continuous-improvement and Compliance Monitoring System (CCMS) in order to monitor each district every three years. This process began during the 2001-2002 school year. The Delaware CCMS includes: (1) a Desk Audit by the DDOE of district documentation and data; (2) a Self-Assessment by each district that analyzes how successful the district, and each school, has been in achieving compliance and improving results for children with disabilities and their families in seven cluster areas, which align with the indicators of the State Improvement Plan: Improve student performance, Increase student placement in the least restrictive environment (LRE), Improve student behavior, Increase family involvement, Increase student completion of high school, Improvement General Supervision, Improve availability of family friendly information; (3) validation of results from the Self-Assessment; (4) reporting of results to the public; (5) improvement planning to address compliance issues and improvements in results for children; and (6) verification of the effectiveness of the improvement plan.

By reviewing monitoring files, OSEP learned that within the past three years, DDOE conducted a desk audit on each district. Each district was required to submit all of its forms, policies, procedures, training manuals, etc. for compliance review. All districts use a State mandated Individualized Educational Program (IEP) form. If noncompliance is found, the State asks the district to take the appropriate corrective action and verifies that corrective action was taken during the annual unit audit. Charter schools are subjected to a desk audit as well.

Annually, DDOE conducts unit audits in every district to verify child count data. A checklist is used that requires a review of IEPs pulled from each grade level and across all disabilities. In addition to verifying child count data, the State uses these annual unit audits as a means of monitoring other IDEA requirements, including issues generated by the State's dispute resolution systems, and LRE, a longstanding area of noncompliance in Delaware.

In DDOE's Self-Assessment and subsequent Improvement Plan updates, DDOE has identified the funding formula as a barrier to students being placed in the LRE. DDOE has been working with the Delaware Legislature for several years to realign the funding formula in order to eliminate barriers such as a requirement that a student be with a special education teacher 12.5 hours per week in order to have full time status as a special education student and receive the funding that follows that full time status. OSEP confirmed that the Delaware Legislature recently approved actions that increase flexibility for placement of preschool students in the LRE by removing funding barriers. The director informed OSEP that DDOE is now piloting a system of granting waivers for the 12.5 hour requirement for the school age population in two districts and has hired an outside consultant to evaluate the impact of this change. Also, DDOE identified the need to continue to collaborate with the Child Development Watch program in the Delaware Department of Health and Social Services to ensure that each eligible child has an IEP in place on his/her third birthday.

DDOE staff informed OSEP that each district is given a mini-grant to encourage participation at the onset of the self-assessment process. The State also provides districts with a summary of data to use in creating the self-assessment as well as redacted versions of all complaints filed with DDOE regarding the district. DDOE staff indicated that in several instances, districts have not met the requirements of the first phase of the CCMS process, which includes completing a self-assessment within one year. In such instances, DDOE has taken actions such as contacting superintendents and giving a verbal notice that grant applications will not be processed until a satisfactory self-assessment has been submitted. In addition to delaying application processing, the director informed OSEP that enforcement measures may include requiring districts to target IDEA funds for specific purposes determined by the State.

As part of its evaluation of the CCMS process, DDOE is exploring whether to expand the monitoring system to include focused monitoring. Regardless of other components of the system, DDOE staff informed OSEP that the annual unit audits will continue to function as a means of addressing noncompliance. An additional component of DDOE's monitoring system is the use of an annual parent survey to assess parent satisfaction.

DDOE reported that mechanisms are in place to ensure compliance with federal regulations regarding administrative complaints, due process hearings and mediation. DDOE staff responsible for administering administrative complaints, informed OSEP that written decisions on all Part B complaints filed in Federal Fiscal Year (FFY) 2002 were issued within 60 calendar days from its receipt of the complaint, unless the timeline was extended due to exceptional circumstances that exist with regard to a particular complaint, consistent with 34 CFR §300.661(a) and (b)(1). OSEP verified this information through review of the complaint log and complaint files.

OSEP verified through review of complaint files that evidence of implementation of complaint decisions is provided to the State by districts in the form of copies of training materials, attendance sheets at training meetings, and copies of IEPs developed as a result of corrective action. Upon receipt of evidence of corrective action, DDOE submits a follow-up letter to the district verifying that corrective action has been implemented. The letter is copied to the filer of the complaint in order to verify satisfaction with the implementation. Redacted versions of all complaints filed in a district are given to the district to examine as part of the self-assessment process.

Due process hearings are heard by a three-member panel, chaired by a lawyer and including an educator and a layperson, in accordance with State statute. Members are appointed to the panel pool for two-year periods. During that time, panel members must accrue at least seven-hours of training. After reviewing the hearing logs, OSEP was unable to verify that due process hearing decisions are being issued within the 45-day timeline after a request for a hearing unless an extension has been granted by the hearing officer, based on the request of a party, consistent with 34 CFR §300.511. However, OSEP learned that while it is not yet in effect, DDOE is initiating a mechanism to ensure that due process hearing decisions are issued within the 45-day timeline. Within 60 days

from the date of this letter, DDOE must submit to OSEP a plan that describes how DDOE will monitor and enforce timelines for due process hearing decisions.

Mediation, contracted through University of Delaware, is automatically offered to parties requesting due process and parties filing administrative complaints and is additionally available to parties at any time. DDOE reported that of nineteen requests for due process hearings filed in 2003, six reached an agreement at mediation. Although DDOE does not have a process in place to follow up on issues resolved through mediation similar to those used for due process hearing and complaint decisions, such a process is being developed.

As a result of a presentation by DDOE staff and contractors, OSEP was informed that another option offered to parents to resolve concerns is a facilitated IEP meeting. Meeting facilitation was reported to be a popular alternative to other dispute resolution processes for both parents and districts. During the 2002-2003 school year, 42 meetings were facilitated and at 75% of those meetings, an IEP was signed.

Collection of data under section 618 of the IDEA

In looking at the State's system for data collection and reporting, OSEP collected information regarding a number of elements, including whether the State: (1) provides clear guidance and ongoing training to local programs/public agencies regarding requirements and procedures for reporting data under section 618 of the IDEA; (2) implements procedures to determine whether the individuals who enter and report data at the local and/or regional level do so accurately and in a manner that is consistent with the State's procedures, OSEP guidance, and section 618; and (3) implements procedures for identifying anomalies in data that are reported, and correcting any inaccuracies.

DDOE reported to OSEP that DELSIS, the Delaware Student Information System and Pentamation, the state-wide pupil accounting system are used by DDOE to track data for each student in the State, identified by personal identifiers. DELSIS is an integrated system with several checks allowing only quality-controlled data to be entered into the main system. The number of errors since implementation of DELSIS has decreased significantly. A noteworthy feature of DELSIS is its ability to eliminate duplicate drop out counts. A weakness identified by DDOE is the difficulty in tracking children who receive services under Part C but not under Part B. Currently, thirteen of seventeen districts are utilizing the Pentamation system to update DELSIS directly. The other districts submit data to DDOE, where it is entered into DELSIS weekly. All districts will be using the Pentamation system to update DELSIS directly beginning in September 2004. Within the next three years, Pentamation and DELSIS will have moved to a completely web-based data system that includes every student in the State. This will allow for retrieving real-time data and will better track movement of students.

During the visit, OSEP observed the DELSIS system as well as Pentamation, which is used to enter additional special education data for students tracked by DELSIS. There are specific Pentamation screens that allow for the entry of special education data including eligibility status, IEP dates, exit dates, etc. The definitions for these categories are aligned with the OSEP definitions. Data enterers (support staff, certified teachers, or

other employees) at the school level access these screens and enter data for each student. A data manual is given to data enterers each year to provide guidance regarding IDEA requirements and DDOE procedures for collecting data. As determined necessary by DDOE and district administration, DDOE staff provides training for district personnel and districts are responsible for training data enterers at the school level.

DDOE staff informed OSEP staff that Delaware is currently piloting a School Interoperability Framework. This will serve to connect all data systems throughout the State to better track student movement. Personnel data, as well as discipline data, including suspension and expulsion data are currently being tracked on a separate system. However, the systems will be combined eventually.

The data retrieved from DDOE's data systems is used during the CCMS process. Data reports are used to verify the December 1 child count as well as to create data summaries for districts to use in completing the self-assessment. When this data is compiled, staff performs a check of data across multiple years to detect anomalies. The data system provides for several checks at the local and State levels to ensure that data is correct and complete.

State-wide Assessment

In looking at the State's system for State-wide assessment, OSEP collected information regarding a number of elements, including whether the State: (1) establishes procedures for State-wide assessment that meet the participation, alternate assessment, and reporting requirements of Part B, including ensuring the participation of all students, including students with disabilities, and the provision of appropriate accommodations; (2) provides clear guidance and training to public agencies regarding those procedures and requirements; (3) monitors local implementation of those procedures and requirements; and (4) reports on the performance of children with disabilities on those assessments, in a manner consistent with those requirements. In order to better understand your system for State-wide assessment, OSEP also discussed with your staff how the alternate assessment is aligned with grade-appropriate content standards.

From the DDOE website, which appears to be parent friendly, easy to navigate, and contains extensive up-to-date information, as well as from interviews with DDOE staff, OSEP learned that the Delaware Student Testing Program (DSTP) assesses students for accountability purposes in reading, writing and mathematics in grades three, five, eight and ten. The DSTP assesses science and social studies in grades four, six, eight and eleven. DDOE informed OSEP that testing accommodations are entered and tracked through the DELSIS and Pentamation systems.

As OSEP explained in the July 7, 2003 letter, Delaware's FFY 2003 IDEA Part B grant award was released subject to special conditions regarding the alternate assessment. Specifically, OSEP determined that Delaware is not developing and administering alternate assessments and reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments, as required at

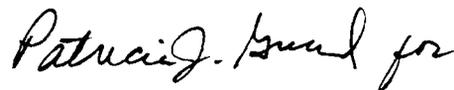
20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a)(2). DDOE staff informed OSEP that in an effort to address this noncompliance, the former Delaware Alternate Portfolio Assessment (DAPA) domains; communication, personal management, social, career/vocational, and applied academics, have been restructured to align with assessment standards in two content areas, reading/language arts and mathematics. However, domains aligned to the science and social studies assessment standards are still being developed in order to fully align the DAPA with the DSTP. OSEP confirmed this during interviews with DDOE staff. In order to demonstrate compliance, DAPA content areas must be aligned with all DSTP content areas.

As evidenced by assessment performance reports contained on the State website, DDOE reports to the public on the performance of children with disabilities on the DSTP with the same frequency and in the same detail as it reports on the performance of nondisabled children. While DDOE has reported to the public on the DAPA performance of students with disabilities, performance reports currently available to the public, on the website, are for the 2001-2002 school year and only for the content area of reading. In order to demonstrate compliance, DAPA scores must be reported for the same school year as DSTP scores and must include scores for all content areas contained in DSTP reports.

The State has submitted to OSEP a timeline documenting a plan to implement the DAPA in accordance with IDEA regulations. OSEP is in the process of analyzing the timeline. While it is a reasonable plan, it does not ensure that special conditions will have been met until scores from the 2004-2005 school year are publicly reported.

We appreciate the cooperation and assistance provided by your staff during our visit. As noted above, we request that you inform within 60 days of your progress in ensuring that due process hearing decision timelines are met in accordance with the due process hearing requirements. OSEP will also track the special conditions regarding alternate assessment through quarterly reports, and DDOE's progress in addressing LRE through monitoring and revisions to the funding formula in the Annual Progress Report. We look forward to collaborating with Delaware as you continue to work to improve results for children with disabilities and their families.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Dr. Martha Brooks