



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Robert Rice
Acting Superintendent
District of Columbia Public Schools
825 North Capitol Street, NE - 9th Floor
Washington, DC 20002

JUN -8 2004

Dear Acting Superintendent Rice:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification activities in the District of Columbia. As indicated in my letter to you of June 27, 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 activities in the District between May and September 2003.

The purpose of our verification reviews of States is to determine how they 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 activities in the District of Columbia Public Schools (DCPS), OSEP staff met with Dr. Raymond Bryant (the District's Chief of Special Education Reform), Ms. Anne Gay (formerly the District's Assistant Superintendent for Special Education) and members of DCPS's staff who are responsible for: (1) the oversight of general supervision activities (that include 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) DCPS's Part B Improvement Plan, approved by OSEP on February 27, 2004; (2) the State's Biennial Performance Report for grant years 1999-2000 and 2000-2001; (3) the current settlement agreement in the *Blackman-Jones* class action lawsuit; (4) the current agreement in the *Petties* class action lawsuit; (5) DCPS's State Improvement Grant (SIG) application; (6) information from DCPS's web site; (7) correspondence between DCPS and WESTAT regarding submission of data under section 618 of the IDEA; (8) the DCPS Outcomes Document; (9) the Strategic Plan adopted by the DC Special Education Task Force; (10) the OSEP Monitoring Report issued to DCPS on June 18, 2002; (11) a draft of DCPS's monitoring manual; and (12) DCPS's intranet site containing the *EZ Forms* online.

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.

OSEP also conducted a conference call on August 28, 2003, open to DCPS stakeholders who had participated in improvement planning activities and preparation of the State Improvement Grant (SIG) application, to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and, for Part B, State-wide Assessment. Dr. Bryant, Ms. Karen Griffin, and Ms. Paula Perelman of DCPS, and Ms. Kathy Chapman, of the Mid-South Regional Resource Center, also participated in the call. Dr. Bryant, Ms. Gay and Ms. Griffin also assisted us by recommending and inviting the participants.

The information that Dr. Bryant, Ms. Gay and the other participants 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 DCPS's systems for general supervision, data collecting and reporting, and State-wide assessment.

General Supervision

In reviewing 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.

DCPS is in the process of implementing the Improvement Plan that OSEP approved in a letter dated February 27, 2004. OSEP's June 18, 2002 Monitoring Report identified several areas of noncompliance in the area of general supervision, including a failure to identify and correct deficiencies. DCPS's Improvement Plan included strategies to address all of the areas of noncompliance identified by OSEP in the 2002 Monitoring Report. OSEP's February 27, 2004 letter requires that, except for Special Conditions attached to the DCPS Part B Grant Award, that must be met within the time lines established in the September 2003 Grant Award letter, the District must ensure that all of the areas of noncompliance identified in the Monitoring Report are corrected within time lines established by DCPS in the Improvement Plan, which cannot exceed one year from the date of the letter, February 27, 2004. Based on OSEP's review of the District's monitoring system during the verification visit, OSEP cannot yet determine whether the improvement strategies identified in the Improvement Plan will result in a system for general supervision that is effective in identifying noncompliance with all Part B requirements and ensuring the correction of identified noncompliance. DCPS must continue to keep OSEP informed of its progress on this issue through the progress reports required in the February 27, 2004 letter.

Monitoring: It has been several years since DCPS has conducted comprehensive, onsite monitoring.² A monitoring unit has been created in the Office of Special Education (OSE) consisting of one supervisory monitor and four monitors who have responsibility for monitoring 146 public schools, 37 charter schools, 288 nonpublic schools, three correctional facilities and four programs operated by the Department of Health. OSEP and DCPS conducted a joint training academy during the fall of 2003 to create a cadre of peer monitors (e.g., special education specialists, school social workers, special education supervisors and coordinators, etc.) to assist in the monitoring activities. OSEP reviewed the initial monitoring manual between November 2002 and May 2003, and worked with DCPS to implement changes. The revised manual was reviewed by OSEP in the fall of 2003 and DCPS made final revisions based on OSEP's comments in early 2004. Schools complete a self-assessment survey that is submitted to the Monitoring Division prior to a scheduled on-site visit. The Monitoring Division reviews student records along with other building-level documents (such as specific building procedures) and conducts interviews of parents and school staff. Following the on-site visit, a report is issued with a required corrective action plan. Technical assistance and follow-up visits support the implementation of corrective actions and ensure that identified deficiencies are corrected.

Between November 2002 and May 2003, the Monitoring Division conducted monitoring activities in 15 DCPS public schools and issued reports with required corrective actions following the visits. A review of a sample of the reports indicated to OSEP that while child-specific findings of noncompliance were made, procedures did not result in the identification of systemic or overarching issues, nor were the procedures comprehensive in addressing all IDEA requirements. In the fall of 2003, the Monitoring Division monitored 17 nonpublic facilities in conjunction with a new contracting procedure, currently being used with nonpublic facilities. Beginning in January 2004, utilizing the peer monitors, DCPS began monitoring all the High Schools in the District. Middle/Junior High Schools will be monitored in the fall of 2004. Elementary schools will be monitored during the spring and fall of 2005. In addition, public charter schools, nonpublic facilities, Department of Health Programs and correctional facilities will be monitored over the three-year cycle. DCPS intends to monitor all facilities on a three-year cycle.

Sanctions exist for failure of a school to correct noncompliance; however, it is not clear that the Monitoring Division has authority to implement the sanctions. In addition, the lack of sufficient staff to oversee the monitoring process, write reports, and conduct follow-up activities, severely hampers DCPS's ability to identify and correct noncompliance. The creation of peer monitors will alleviate part of the problem; however, these individuals have other duties and monitoring will be a minor part of their responsibilities.

The Special Education Tracking System (SETS) was implemented in 1999 and data accuracy is now well over 90%. DCPS is able to integrate and retrieve data across all requirements of Section 618 of IDEA, due process hearing data, and complaint and mediation information to identify systemic issues and problems. This resource is just beginning to be used by OSE in its monitoring activities. DCPS is working to integrate SETS with the Student Information System

² DCPS contracted with the Delaware State Department of Education to pilot Delaware's new monitoring system within DCPS in 1998. DCPS told OSEP that a report was issued in 1998, following the on-site activities, but no follow-up actions or documentation were available. DCPS was unable to provide OSEP with a copy of the report.

(SIS) that houses large-scale assessment data. OSE is creating a database to incorporate monitoring results and data that will be used in conjunction with SETS to identify systemic issues and pinpoint specific problems and potential causes. DCPS uses this data extensively in educational planning along with problem identification and resolution. The Monitoring Division has plans to incorporate the use of data and information from SETS in the identification of potential noncompliance across DCPS schools. DCPS staff report that SETS provides sound data on which to assess risk for noncompliance and to determine when correction of noncompliance has occurred. The lack of SETS in charter schools impedes DCPS's ability to monitor compliance and student improvement in charter schools.

Complaint Management: Until approximately January of 2002, formal written complaints were investigated and resolved by the Office of the Ombudsman in the Office of the Superintendent of DCPS. That office was eliminated during a reorganization and DCPS had no complaint office until June 2003. Issues regarding special education received in writing between January 2002 and June 2003 were addressed and resolved by the Assistant Superintendent for Special Education. The Director of the State Complaint Office has been hired and is currently in the process of hiring additional staff. Training is being provided for the Director and will be provided for her staff, once hiring is completed. The Board of Education has completed final rule-making for the Office. Two formal written complaints were received from June 2003 until October 2003. One complaint was withdrawn and the other was held in abeyance pending the outcome of a due process hearing that subsequently resolved all the issues in the complaint.

Due Process System: OSEP cannot determine whether DCPS's system for due process hearings has been effective in ensuring compliance with the requirement that a final decision is reached and a copy of the decision mailed to each of the parties not later than 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension of time at the request of a party consistent with 34 CFR §300.511(a) and (c). The failure of DCPS to ensure that hearing officer decisions were reached within the required timeline has been a long-standing area of noncompliance in the District and was part of the Compliance Agreement between the U.S. Department of Education and DCPS from 1998-2001. DCPS had come into compliance with this requirement at the conclusion of the Compliance Agreement. DCPS confirmed reports from stakeholders that during the period following the relocation of the scheduling office in the fall of 2002 from the OSE to an office directly responsible to the Superintendent, due process decisions were not being issued within required timelines. However, since that time, DCPS staff have reported that the backlog has been reduced and hearing officer decisions are generally reached within 45 days of the request in the majority of cases (unless extensions are granted at the request of either party).

DCPS continues to receive approximately 250 requests for due process hearings each month. OSEP requested hearing logs for the past three years and DCPS complied with that request. However, because the dates in the logs overlapped, it was not possible for OSEP to determine the actual number of hearing decisions that were not reached within 45 days or within timelines specified by appropriately-granted extensions. Within 60 days of the date of this letter, DCPS must provide data to OSEP as follows: For each month, from January 2003 until the date of this letter, the number of hearing decisions that became overdue during that month (hearing decisions reached outside the 45-day timeline because of an appropriately granted extension are not considered overdue if the hearing decision was reached within the extended timeline). Along

with this data, if necessary, DCPS must provide an explanation for overdue hearings. If, after reviewing the data, OSEP determines that DCPS is not meeting the requirement in 34 CFR §300.511(a) and (c), OSEP will require DCPS to submit a plan, including strategies, proposed evidence of change, targets/benchmarks and timelines for ensuring that this requirement is met within a reasonable period of time not to exceed one year from the date OSEP accepts the plan.

DCPS continues to struggle with implementation of due process decisions. At one point, more than 600 decisions were reached within a quarter and the system was overwhelmed by determinations requiring implementation. DCPS continues to be under special conditions, attached to its grant award, regarding implementation of hearing officer decisions.

DCPS has a mediation office and mediation is available on request, and is always offered when a due process hearing is requested. Persistent problems include the inability of DCPS to respond in a reasonable period of time to implement mediation agreements.

DCPS has created a Parents' Special Education Service Center with TDD capabilities and trained individuals to respond to parents' concerns and questions, seven days a week, in English, Spanish, Chinese, Vietnamese, French and Amharic.

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; and (4) has identified any barriers, (e.g., limitations on authority, sufficient staff or other resources, etc.) that impede the State's ability to accurately, reliably and validly collect and report data under section 618.

The SETS (see *General Supervision*, above) Office within the OSE, conducts three, two-week, system-wide training activities each year: one at the beginning of the year, one immediately after Christmas break, and one in the spring. These training activities are mandatory for principals of each building, or their designees, and are enforced through the office of the Superintendent. Typically, more than 50% of the principals attend personally. The others send designees who are usually building-level SETS managers or building special education coordinators. The first week of the two-week session is for the principals (or designees). The second week is designed for data entry personnel from each building. Schools are assigned an attendance date and time and a principal (or designee) signature on the attendance form is required. Non-attendance is reported to the Superintendent. A make-up session may be held and if a building is still not represented, it becomes part of the principal's evaluation.

In addition to the three, two-week sessions, there is a training opportunity every Friday throughout the school year. Some are optional and some are mandatory. They focus on things such as the residence verification component, encounter tracker (which documents service

provision to individual children with disabilities), *EZ Forms* on-line (the web-based special education forms available on the DCPS intranet), and other SETS-related issues.

There is a monthly “top ten” newsletter that includes major issues of concern in special education in DCPS and may include SETS-related or data-related issues as they arise. Publications on the web site and on the intranet address data issues. Necessary changes may be incorporated into weekly training or disseminated through mass emails to building personnel. The requirements under section 618 are transmitted through directives and mechanisms listed above. DCPS does not directly transmit OSEP guidance, but provides it in a format and through training and presentation that customizes it to DCPS and SETS.

Non-DCPS contractors conduct SETS audits annually and visit all DCPS schools to verify data. Twenty percent of student records are randomly chosen and physically compared with the SETS data. Schools are awarded designations based on the accuracy of their data and the majority of schools have received the “Platinum” designation (indicating 98% accuracy of data). For 2002-2003, 117 schools achieved the Platinum standard.

The SETS system contains compliance-related edits, including edits on information related to section 618. There are checks and balances built into the software and “canned” reports provide ongoing information related to a variety of compliance-related issues, and section 618 data. Verification beyond the built-in edit checks is accomplished by running a sample of raw data in an ad hoc report and manually comparing the information to the information in the “canned” report. Verification of the data entry at the student level is accomplished through the annual audits described above.

A significant barrier to DC’s ability to accurately, validly, and reliably collect and report data under section 618 is that the charter school data collection is a paper-and-pencil process. In addition, the charter schools (whether they are LEAs or part of DCPS for the purposes of special education) are not included in SIS. Given the number of charter schools in the District, this represents a significant data gap that has major implications for DCPS’s ability to carry out its general supervisory responsibilities. The Office of Federal Grant Programs (OFGP) reformats forms provided by OSEP to accommodate District-specific issues and provides them to the charter schools. No training is provided and the only guidance provided is that which OSEP provides to States. The tables are transmitted approximately a week before they are due to DCPS. Data is submitted to the SETS data manager for compilation and submission to OSEP. When questioned about the reliability and validity of this data, DCPS personnel were unable to articulate any mechanisms for ensuring the accuracy, reliability and validity of the charter school data. There is currently no plan to identify and create such mechanisms at this time. DCPS has offered to subsidize the installation and customization of SETS for the charter schools; however, the licensure was originally offered for only two years. The charter schools indicated reluctance to establish a data system that they could not necessarily afford after the first two years. DCPS is attempting to identify funding in order to make it possible for all the charter schools to participate in SETS.

Even with the implementation of SETS, DCPS has not demonstrated the ability to compile and report accurate data to OSEP in a timely manner. Progress toward accuracy is being made, with the exception of the charter schools; however, timely submission of data remains a problem to be

resolved. On February 8, 2003, OSEP issued a letter to DCPS indicating that DCPS failed to submit complete and accurate data reports in several areas required by section 618 of IDEA and requesting that DCPS put procedures in place to ensure submission of the data in an accurate, complete and timely manner. Data regarding exit information for 2002-03 that was due to OSEP on November 1, 2003 has not been submitted as of June 7, 2004. In addition, the educational environment information for 2003 due to OSEP on February 1, 2004 has not been received as of June 7, 2004.

During the collecting of information through the verification activities, DCPS staff reported to OSEP that the child count data for December 1, 2003 was inaccurate and environment data has been incorrectly collected. DCPS has been reporting amounts of services received by children with disabilities rather than the environments in which services are being provided. One of the Special Conditions attached to DCPS's September 30, 2003 grant award letter was that DCPS must report to OSEP on the actions it is taking and its progress in collecting accurate placement data. DCPS reports that at the beginning of school year 2003-2004, it changed the LRE codes in SETS to reflect the education environment data categories accepted by OSEP. As individualized education programs (IEPs) are developed for students when annual reviews come due, the LRE code will be adjusted to reflect the codes accepted by OSEP and entered into SETS. DCPS reports that it expects this process to be completed for all IEPs by June 2004.

Therefore, within 60 days of the date of this letter, DCPS must submit a plan to OSEP for ensuring that: (1) data submitted by charter schools, which the SETS data manager compiles and submits to OSEP, are accurate and reliable and (2) data required under section 618 of IDEA including data from charter schools, beginning with data collected for the 2003-2004 school year, are accurate, reliable, valid, complete and submitted to OSEP in a timely manner.

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 the State's system for State-wide assessment, OSEP also discussed with your staff how the alternate assessment is aligned with grade-appropriate content standards.

DCPS currently tests children using the Stanford Achievement Test, 9th Edition (SAT9), grades 3-11, in reading and math. Science will be added in 2006. DCPS will be utilizing a different assessment instrument for the 2003-2004 school year. DCPS does not use out-of-level testing but is exploring the possible utilization of computer-adapted testing, under guidelines approved by the U.S. Department of Education, Office of Elementary and Secondary Education. DCPS also allows exemptions by request of the parent. If any parent (regular or special education) chooses for their child not to be tested, the child is not assessed. Any deviation from the regular District-wide program (e.g., use of an alternate form of the SAT9) by either Charter Schools or

nonpublic schools, must be approved in advance by DCPS. There are a very limited number of schools (one or two) that have requested alternatives.

Modifications and accommodations for children with disabilities are determined by the child's IEP team and an alternate assessment using a portfolio model is available for children with disabilities who cannot participate in all, or part of, the regular District-wide assessment program. Approximately 88% of children with disabilities participate in the District-wide assessment program (both regular assessment and alternate assessment) as compared with 98% of children without disabilities. The primary reasons given for the 12% of children with disabilities not participating, were that the child did not attend school during the testing period or the parent had requested an exemption. DCPS works with principals to ensure that attendance files are current and that DCPS policies requiring court involvement when the child has been absent for 15 consecutive days are implemented.

DCPS provides annual training in the administration of the District-wide assessment. Specific training is provided regarding children with limited-English proficiency or who are non-English proficient, as well as children with disabilities. Support from the test publisher (Harcourt) was received for the training as well as the development of the manuals that are provided.

Monthly meetings of principals include a focus on the various subgroups identified in the assessment by No Child Left Behind (NCLB) Act requirements (special education is a specific subgroup) and a monthly NCLB newsletter provides ongoing information regarding large-scale assessments. Person-to-person training is conducted in the spring, and every other week there is optional training on Fridays around curriculum alignment. There is a staffing issue in that only one person is available to manage all the training and communication.

DCPS has a data system to assist in the monitoring of implementation of procedures and requirements. The OSE utilizes information in the SETS system on an ongoing basis to ensure that assessment requirements are fulfilled and to identify and track children with disabilities who are participating in the alternate assessment. Because the charter schools utilize their own system for attendance and assessment, and do not have SETS for special education, it is more difficult to accurately monitor implementation of the procedures and requirements for District-wide assessment in charter schools.

DCPS will soon issue school-based report cards. Results for children with disabilities were reported publicly in June as part of a request under the Freedom of Information Act by the *Washington Post*. The DCPS web site will include the report cards, building enrollments and both aggregated and disaggregated data after the report cards are issued. The results of the alternate assessment were received from the scorers on September 3, 2003. Results of the alternate assessment will be made available on the web site at the same time, and in the same detail, as information on administration of the SAT9 is made available.

Conclusion

As stated above, within 60 days of the date of this letter, DCPS must submit to OSEP:

1. For each month, from January 2003 until the date of this letter, the number of hearings decisions that became overdue during that month (hearing decisions reached outside the 45-day timeline because of an appropriately granted extension are not considered overdue if the hearing decision was reached within the extended timeline). Along with this data, if necessary, DCPS must provide an explanation for overdue hearings.
2. A plan for ensuring that: (1) data submitted by charter schools, which the SETS data manager compiles and submits to OSEP, are accurate and reliable and (2) data required under section 618 of IDEA including data from charter schools, beginning with data collected for the 2003-2004 school year, are accurate, reliable, valid, complete and submitted to OSEP in a timely manner.

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to our continued collaboration with DCPS to support your work to improve results for children with disabilities and their families.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Dr. Raymond Bryant