



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

Commissioner Jim Horne  
Florida Department of Education  
Turlington Building  
Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399

JAN 21 2004

Dear Commissioner Horne:

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 Florida. 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 Florida from September 9-11, 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 visit to the Florida State Department of Education (FDE), OSEP staff met with Ms. Shan Goff, the State's Deputy Chancellor of Education and members of FDE's staff who are responsible for the State's general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings), the collection and analysis of State-reported data, and State-wide assessment. Prior to and during the visit, OSEP staff reviewed a number of documents<sup>1</sup>, including the following: (1) the Part B State Improvement Plan; (2) the State's Biennial Performance Report for grant years 1999-2000 and 2000-2001; (3) FDE's Work Papers & Source Book for Focused Monitoring, Follow-up Monitoring, and Compliance Monitoring; (4) Florida's State Improvement Grant (SIG) application; (5) FDE Data Base Requirements and other documents related to the collection and reporting of 618 data; (6) Various documents regarding assessment, participation of students with disabilities, accommodations; (7) FDE's tracking logs for complaints, due process and mediation and other documents related to dispute resolution; (8) Selected FDE monitoring files for school districts, including monitoring reports and system improvement plans; (9) The 2003 State and District Profiles; and (10) Other information from the State's website related to Exceptional-Student Education in Florida. OSEP also conducted a conference call on August 1, 2003, with several

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<sup>1</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.

members from Florida's Monitoring Stakeholder Workgroup and the State Advisory Committee 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. Ms. Eileen Amy, the Part B Coordinator, and other FDE Part B staff participated in the call and assisted us by recommending and inviting the participants.

The information that Ms. Goff 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 FDE's systems for general supervision, data collection and reporting, and Statewide 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.

In February 2000, OSEP visited Florida to conduct the Validation Data Collection phase of OSEP's Continuous Improvement Monitoring Process. As set forth in OSEP's April 2001 Florida Monitoring Report, OSEP made several findings related to general supervision: (1) FDE had not been effective in identifying and correcting systemic noncompliance in some districts; (2) FDE had failed to ensure that complaints are resolved within 60 calendar days after a complaint is filed, unless the timeline is extended due to exceptional circumstances with respect to a particular complaint; (3) FDE had failed to ensure that: (a) IEP teams make individualized determinations about what, if any, modifications in the administration of State or district-wide assessments are necessary for a child to participate in the assessment and; (b) that reports on the performance of children with disabilities in State assessments are made available to the public with the same frequency and in the same detail as reports on the performance of nondisabled children.

FDE is in the process of implementing the Part B Improvement Plan developed in response to Florida's 2001 Monitoring Report and must provide documentation to OSEP in January 2004 that it has corrected all of the noncompliance identified in the Report, including the above-described findings regarding general supervision. Areas of noncompliance identified in OSEP's 2001 Florida Monitoring Report are also included in the State's priority goals and stated in the Florida State Improvement Plan for Students with Disabilities.

While OSEP believes that FDE's revised monitoring system is a reasonable approach to the identification and correction of noncompliance identified under this new monitoring system, FDE was not able to show how it would address two findings in OSEP's 2001 Report.

Specifically, at the time of our verification visit, FDE had not yet developed monitoring methods on whether school districts provide psychological counseling services and speech and language pathology as related services to all students with disabilities who need them to benefit from special education. OSEP cannot, without reviewing the documentation that FDE will submit in January 2004 regarding the impact of the improvement strategies that it is implementing, determine whether the State has corrected OSEP's findings regarding general supervision and FDE is fully effective in identifying and correcting noncompliance. In addition, OSEP could not determine how FDE's new system ensures the correction of identified noncompliance identified under its previous system.

Following OSEP's 2000 monitoring visit, FDE reported that a major restructuring of its general supervision systems occurred. FDE explained that the monitoring system moved from a procedural and paperwork process to a system designed to emphasize those requirements that impact student outcomes and better ensure compliance. A Stakeholders Monitoring Workgroup has provided consultation throughout Florida's monitoring revision process and is continuing to recommend improved strategies for identifying, correcting and enforcing noncompliance. FDE informed OSEP that staffing concerns identified in OSEP's Monitoring Report have been addressed with the creation of a number of new positions and the realignment of resources. Peer monitors, including staff from other districts, now participate in on-site monitoring visits to districts. It was evident from FDE's monitoring manuals and monitoring files, as well as from interviews with FDE staff, that FDE relies heavily on the use of data to guide decision-making, including data on due process hearings, complaints, mediations, large-scale assessments and previous monitoring results. On-site visits include several new components such as class visits, case studies, and teacher and student surveys and focus groups that are facilitated by the University of Miami. Responding to the need to increase the involvement of parents and families of students with disabilities, FDE contracted with the University of Miami to develop and administer a Parent Survey in conjunction with FDE's monitoring activities. OSEP also learned that the University of Miami assists FDE, using research-based strategies, in randomly selecting files and records to review as part of FDE's monitoring process.

During the verification visit, OSEP learned that FDE's formal monitoring processes include several major components—Continuous Improvement Monitoring Plans and Visits, Focused Monitoring, and Follow-up Monitoring Visits. On an annual basis, FDE provides each district with a data profile for key indicators. These key indicators are an integral part of FDE's monitoring system and include: participation and performance on state-wide assessments; percentage of students exiting with a standard diploma; graduation and dropout rates; retention and discipline rates; and disproportionality of student membership (required by the Office for Civil Rights (OCR)).

For districts found to be out of compliance in a monitoring visit, a System Improvement Plan is required within 30 days after release of the district's final monitoring report. The System Improvement Plan identifies the strategies, activities, and benchmarks required to achieve compliance and outcomes. Semi-annual reports indicating progress and evidence of change are submitted to FDE. Timelines for corrections vary based on the issue, its impact on students, or the need for time for interventions to be effective. For specific items considered to be significant and having an immediate impact on services, FDE requires the IEP team to reconvene and compliance must be met in 30-45 days. For other compliance issues, timelines are negotiated

between FDE and the district and range from 30 days to 2 years, depending upon the complexity or the need for effective interventions, such as training. FDE reported that it is no longer sufficient to conduct a training activity without also demonstrating that the training increased skills as evidenced by a review of records and observations. Although OSEP recognizes that the effect of training may take time to evaluate, FDE must ensure that districts resolve noncompliance as soon as possible and within one year of FDE's findings of noncompliance. If compliance is not achieved within that time period, FDE must take additional measures to resolve the noncompliance.

FDE staff explained that enforcement activities also include fund adjustments for certain violations. FDE informed OSEP that the Monitoring Stakeholder's Workgroup is continuing to assist Florida with developing additional mechanisms and strategies related to enforcement. During the visit, OSEP learned that the Florida School Code was recently rewritten by the Florida legislature to allow the State broader enforcement authority.

Within 6 years, between 2002 and 2007, FDE staff indicated that all 67 districts will have been visited, including certain charter schools in the districts selected for monitoring, in addition to the Florida School for the Deaf and Blind and programs in the Department of Corrections. During this time period, FDE also will have been in 38 (57%) of the districts twice to complete a follow-up visit.

Interviews with FDE staff regarding interagency agreements indicated that FDE is actively engaged in developing and improving interagency agreements with a goal of making these agreements more functional and ensuring the provision of required services. FDE reported that agency officials are actively involved as members of the State Advisory Committee. FDE staff reported that FDE monitors the implementation of interagency agreements to ensure that services are not delayed or denied, and strategies are used when agreements are not implemented.

FDE's restructuring of its general supervision systems has included a refinement of the complaint management system, including internal timelines, and the increased use of additional dispute resolution activities such as mediation and informal resolutions. Two additional staff members have been added to the Conflict Resolution Unit. FDE continues to maintain a well-designed system for tracking complaints. In addition, in preparation for each monitoring visit, FDE's pre-briefs now include a review of relevant information from FDE's dispute resolution systems, including trends and specific complaints, due process hearings, mediations, OCR complaints and parent calls.

OSEP learned, through its review of FDE's complaint logs and interviews with staff that are responsible for resolving complaints that not all complaints are resolved within 60 calendar days from receipt of the complaint, unless the timeline is extended due to exceptional circumstances that exist with regard to a particular complaint, consistent with 34 CFR §300.661(a) and (b)(1). A comparison of the extent that FDE met the required timelines between the periods of 2000-01 and 2002-03 revealed the following: In 2000-01, the average number days for resolving complaints over the required completion date was 25.9 days; in 2002-03, this figure was 9.6 days. Although FDE has not issued all complaints decisions within 60 days from receipt of the complaint, unless the timeline is extended, during the 2002-03 school year, FDE improved significantly. As a result of FDE's progress toward meeting timelines and based on interviews

with FDE staff, OSEP believes that the revisions that FDE made to its complaint management system are appropriate and seem to contain those elements necessary to be effective. As noted above, in January 2004, FDE's Improvement Plan must demonstrate that FDE has corrected all noncompliance identified in OSEP's 2001 Monitoring Report, including the finding set forth in 34 CFR §300.661(a) and (b)(1) regarding timelines for resolving complaints.

Administrative law judges in the Division of Administrative Hearings (DOAH) located in the Department of Management Services administer FDE's due process hearings. FDE staff in the Bureau of Instructional Support and Community Services, the office that administers IDEA, are engaged in some oversight activities regarding due process, including training of Administrative Law Judges, a review of due process orders to determine issues and trends, and follow-up of due process hearing results through letters to districts as a reminder of required corrective actions. However, at the time of OSEP's verification visit, OSEP learned, through its review of FDE's due process hearing logs and interviews with staff, that FDE does not routinely track timelines for due process hearing decisions to ensure that these decisions are issued within 45 days from FDE's receipt of the hearing request, unless the hearing officer grants a specific extension of the timeline at the request of a party, consistent with 34 CFR §300.511(a) and (c). It is important that FDE carefully monitor due process hearing decision timelines to ensure compliance for all due process hearings. Within 60 days from the date of this letter, FDE must submit to OSEP a plan that describes how FDE will monitor and enforce timelines for due process hearing decisions.

FDE reported that its mediation system continues to be a successful process for resolving disputes. From July 1, 2002 through June 30, 2003, 130 mediations were requested and 116 were held. Sixty-two resulted in a full agreement and 22 resulted in a partial agreement.

### ***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.

FDE informed OSEP that staff from the Bureau of Instructional Support and Community Services, Education Information and Accountability Services, the State Management Information Office, and the Office of Student Assessment Services collaboratively carry out 618 reporting requirements. OSEP learned that FDE operates an integrated, pupil-based information system. Special education is part of the system, just as is vocational education, compensatory education, and other program areas. The Florida data system provides data for the funding mechanism, OCR reporting, OSEP reporting, and NCES reporting, as well as other areas. FDE explained that all definitions are from the OSEP data dictionary and each student has a student identifier. Districts provide electronic files to the State and paper reports are submitted from the

Department of Health, the Department of Corrections and Head Start. In addition, paper reports are provided for exceptional student education personnel. FDE staff further indicated that all 618 data is summarized at the State and then sent to OSEP. Consistency is ensured through technical assistance, data manuals, and bulletins from the State. Edits checks are built into an automated database to ensure validity. OSEP also learned that the State produces reports for districts that are used to correct errors. In addition, the State offers data quality reviews to districts requesting assistance to help improve accuracy and reliability.

FDE staff reported that the State relies heavily on 618 data for monitoring and determining trends in student performance. For example, the SEA and district profiles contain a series of data indicators that describe measures of educational benefit, educational environments, and prevalence for exceptional students. FDE staff explained that these profiles provide districts with a tool for use in planning for systemic improvement. The data are presented for each district, districts of comparable size and the State as a whole. In some cases comparative data for general education students are included. As described in the general supervision section of this letter, key indicators are used in the selection of districts for focused monitoring.

FDE staff informed OSEP that FDE provides guidance through the FDE website and offers ongoing technical assistance and support for personnel responsible for data through various methods such as data base manuals, bulletins and database workshops. In order to ensure that individuals who enter and report data at the local level do so accurately and in a manner that is consistent with the State's procedures, FDE staff reviews and verifies local data at the State level by doing edit checks and contacts districts regarding discrepant data and outliers. FDE also monitors 618 data through an in-depth analysis of selected data fields, such as high school graduation, and child count data disaggregated by disability category. As part of the FDE monitoring of local data, FDE reviews the State's funding formula in relation to the actual provision of IEP services.

FDE staff reported that technical assistance is also provided through a document called The Administrative Management Data Book that is used for general reporting of important information in special education. This is an annual publication that provides district level data to directors and other school-based personnel in program planning, evaluation and continuous improvement.

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

OSEP has determined, through its review of the State's written procedures for State-wide assessments and the State's reports to the public and the Secretary on the participation and performance of children with disabilities on such assessments, that those procedures, as written, and those reports are consistent with Part B requirements. OSEP cannot, however, without also collecting data at the local level, determine whether all public agencies in the State implement the State's procedures in a manner that is consistent with Part B.

FDE informed OSEP that it has provided extensive training and guidance to districts regarding the participation on State-wide assessments, clearly requiring that all children with disabilities participate in each of the regular assessments in which nondisabled children participate, unless the IEP team determines that participation in the regular assessment is not appropriate for a specific student even if appropriate accommodations are provided, and administers the alternate assessment. FDE staff stated that one of the goals of the technical assistance activities is to help special educators become more comfortable with using State-wide assessment performance data to improve results for students with disabilities. FDE reported that the State conducts many technical assistance activities to explain why gathering accurate data is important and how data can be used to improve student outcomes.

OSEP found that the FDE website contains a variety of information regarding the State assessment program including "hot issues" and frequently asked questions, as well as technical assistance papers, policy papers and briefs, the Alternate Assessment Project, and links to other assessment resources. The State Improvement Plan developed in response to OSEP's 2001 Florida Monitoring Report addresses OSEP's finding concerning State-wide assessments and contains strategies for improvement that have been implemented. These include procedures to review accommodations data and inclusion/exemption data annually; expansion of allowable accommodations for students with disabilities taking the FCAT; and expansion of staff development efforts to teachers. FDE's monitoring manuals and monitoring files show that FDE monitors districts for compliance with requirements regarding State-wide assessment, and provides improvement strategies for districts when necessary.

Participation in the general assessment is a key indicator for focused monitoring. During the conference call with members of FDE's Monitoring Stakeholder's Group and the State Advisory Committee, a director of special education reported that activities related to FDE's focused monitoring resulted in an improvement of the participation rate of children with disabilities in State-wide assessments.

FDE staff reported that during the past year, they have provided intensive training and technical assistance in a short period of time in order to assist the districts to effectively implement several key legislative actions impacting assessment of students with disabilities. The first action concerns the promotion and retention of students in third grade. Beginning with the 2002-03 school year, if a student's reading deficiency is not remedied by the end of grade three, as demonstrated by scoring at level two or higher on the grade three reading portion of Florida's state-wide assessment test, the Florida Comprehensive Assessment test (FCAT), the student must be retained. Students with disabilities, who have IEPs indicating that participation in the general State-wide assessment is not appropriate, are exempted from this provision. The second

legislative action provides for a waiver for FCAT as a requirement for graduation if a student's abilities cannot accurately be measured by the general State-wide assessment test.

OSEP learned through interviews with FDE staff that several initiatives regarding the area of assessment are underway. These include a review of data of those students who had the FCAT waived by the IEP team and the impact of this decision-making process, as well as a longitudinal study to show outcomes for students upon exiting high school. In addition, the State has provided funds to school districts to assist 12<sup>th</sup> graders in passing the FCAT. In response to issues raised regarding the provision of reasonable accommodations for students with disabilities on the FCAT, a Blue Ribbon Task Force appointed by the Governor resulted in expanded accommodations for students with disabilities.

FDE does not provide or require one specific alternate assessment that districts must use. FDE reported that funds are provided for districts to train teachers in the use of performance-based assessment as an alternative assessment strategy. The State also provides schools with guidelines and other technical assistance materials on alternate assessments. FDE also indicated that through the Alternate Assessment Project the State provides funding to schools and districts to implement alternate assessments.<sup>2</sup>

We appreciate the cooperation and assistance provided by your staff during our visit. As noted above, we request that you keep us informed concerning your progress in ensuring that due process hearing decisions timelines are met in accordance with the due process hearing requirements. In addition, FDE must provide OSEP with a plan to demonstrate those actions that FDE will take to ensure that districts are in full compliance within one year of FDE's identification of noncompliance. We look forward to our continued collaboration with Florida 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: Ms. Michele Polland

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<sup>2</sup> Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. For example, the Title I regulations require, at 34 CFR §200.2(b)(3) and (4), that all State assessments must, "(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and (ii) Provide coherent information about student attainment of those standards. (4)(i) Be valid and reliable for the purposes for which the assessment system is used; and (ii) Be consistent with relevant, nationally recognized professional and technical standards." This letter does not, and should not be interpreted to, address Florida's compliance with requirements of Title I.