



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

Honorable Thomas D. Watkins
Superintendent of Public Instruction
Michigan Department of Education
608 West Allegan Street
P.O. Box 30008
Lansing, Michigan 48909

MAR 16 2004

Dear Superintendent Watkins:

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 Michigan. As indicated in my letter to you of August 19, 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 program performance under, Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to Michigan during the week of November 16, 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 Michigan Department of Education (MDE), the OSEP staff met with Dr. Jacquelyn Thompson (the State's Director of Special Education), and members of MDE'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 ensuring the participation in, and reporting of student performance on State-wide assessments. Prior to the visit, OSEP staff reviewed a number of documents¹, including the following: (1) the State Plan for Special Education for Fiscal Year 2000; (2) the Continuous Improvement Monitoring Project Report; (3) the Michigan Monitoring Model; (4) the Monitoring Standards for Special Education, 2003; (5) the Administrative Rules; (6) information from the State's website; (7) the Complaint Procedures for Special Education; (8) the Technical Manual for Submission of the Special Education Student and Personnel Data Counts, 2003; (9) monitoring reports issued by the State; (10) complaint and due process hearing logs; (11) the Center for Educational Performance and Information Single Record Student Database Meta Data, 2003; (12) the WESTAT Michigan

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.

Part B Data Profile, 2003; (13) the MI-Access Handbook; and (14) the MI-Access State Results 2002.

In addition, we conducted a conference call on September 16, 2003, with Michigan's Steering Committee on Special Education, 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. Jacquelyn Thompson also participated in the call.

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

General Supervision – Monitoring

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) utilized 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.

OSEP believes that MDE's monitoring procedures constitute a reasonable approach to the identification and correction of noncompliance; however OSEP cannot, without also collecting data at the local level, determine whether they are fully effective in identifying and correcting noncompliance. OSEP found that MDE's systems for general supervision do not ensure that complaint, due process hearing, and State-level review decisions are issued within the required timelines under 34 CFR §§300.661 (a) and (b) and §§300.511(a), (b), and (c). In an October 30, 2002 letter responding to MDE's Improvement Plan, OSEP required MDE to submit quarterly reports to OSEP on its progress in meeting complaint timeline requirements and to demonstrate compliance by October 30, 2003. The final Progress Report that MDE submitted to OSEP on September 30, 2003 for the period between June 1, 2003 and August 31, 2003 indicates that MDE continues to be out of compliance with the requirement in 34 CFR §§300.661 (a) and (c) that complaints are resolved within 60 calendar days after a complaint is filed or within an extension of time granted due to exceptional circumstances that exist with respect to a particular complaint. MDE did not provide any data during the verification visit that indicates that this noncompliance has been corrected.

As documented in MDE's monitoring procedures, OSEP found that local level compliance is determined through special education monitoring that occurs on a five-year cycle. The complete monitoring cycle includes all intermediate school districts, and their constituent local educational agencies, along with programs operated by the Michigan Family Independence Agency and Departments of Education, Corrections, and Community Health. In each

monitoring cycle a combination of approximately 12 intermediate school districts (ISD) and State agencies are monitored based upon two sampling options: (1) monitoring the total number of students receiving special education at a confidence level of 90% with a 10% sampling error; or (2) monitoring five percent of all students in the ISD or State agency. MDE hires contractors to serve as monitors and conduct monitoring visits. MDE staff supervises all contracted monitors. The monitoring cycle begins with reviews and subsequent reports from an ISD monitor or a State agency monitor. Next, the MDE monitor validates the reports. The final step in the monitoring process is the issuance of a formal written monitoring report within 60 business days. The monitoring process includes the following: (1) administrative interview; (2) forms review; (3) personnel review; (4) parent survey; (5) student file review; and (6) a program and service review. The ISDs and State agencies also conduct annual monitoring of all districts and facilities during the years in which they are not monitored by MDE.

MDE staff informed OSEP that a written response to any required corrective actions is due 10 days after the written report is issued. The corrective action process includes the following steps to ensure noncompliance is corrected: (1) after receiving the monitoring report the local educational agency or State facility may submit proof of compliance within thirty school days and achieve "close out status" or the local educational agency or State facility must submit a corrective action plan within thirty school days with proof of compliance submitted within the following thirty school days; (2) MDE follows-up to ensure effectiveness of the corrective action plan at a five-year follow-up review; and (3) during the five-year follow-up compliance monitoring review any deviation from an approved corrective action plan will not be accepted as corrective action unless a deviation request was submitted prior to conducting the follow-up compliance monitoring review. In addition, the ISD and State agencies conduct an annual self-monitoring of all constituent districts and facilities. ISD and State agencies are required to maintain all monitoring results and corrective actions for validation by MDE during its onsite review.

OSEP reviewed the monitoring files from the Traverse Bay Area ISD, selected as an example of MDE's five-year special education monitoring cycle. Student files were reviewed based upon a stratified random sample reflecting eligibility and the district of the program. In this particular file review MDE found 20 standards to be out of compliance based upon the Michigan Monitoring Model and Standards. MDE found 18 of the 20 standards identified to be out of compliance 25% or more of the time within the local districts of the Traverse Bay Area ISD, and therefore considered them potential systemic issues. MDE provided the Traverse Bay Area ISD a record of the items found out of compliance and the corrective actions needed to bring them into compliance. To ensure that the Traverse Bay Area ISD completed corrective actions, MDE conducted a follow-up targeted monitoring.

As documented through written executive orders from MDE, a significant change over time to the special education system has been the number of special education divisions that have been transferred to other departments of government in Michigan. Currently, special education and early intervention services are provided through seven departments outside of MDE that include: (1) Treasury; (2) Management and Budget; (3) Department of Information Technology; (4) Corrections; (5) Family Independence Agency; (6) Career Development; and (7) Community Health. MDE informed OSEP that within the next six months to a year, MDE will be engaged in a major reorganization that will transfer some special education functions

back to their Department. MDE informed OSEP that this is a positive change that will allow a more efficient and effective monitoring process resulting from greater influence in direct supervision of services and better organization of services provided by MDE.

General Supervision-Complaint management

As set forth at 34 CFR §§300.661 (a) and (b), each State educational agency shall include in its complaint procedures a time limit of 60 days after a complaint is filed to issue a written decision to the complainant, unless an extension of time is permitted due to exceptional circumstances that exist with respect to a particular complaint. The implementation of 34 CFR §300.661 has been a long-standing area of noncompliance for MDE. In 1993 OSEP found that MDE's State complaint procedures were not sufficient to ensure that complaints were resolved within 60 days of the agency's receipt of a request for an investigation or within timelines extended due to exceptional circumstances. In a follow-up monitoring review in 1996, OSEP found that the MDE had revised its tracking system and was only resolving complaints within required timelines 88% of the time. In 2002 OSEP again found that the MDE did not meet the requirements under 34 CFR §300.661(a), as demonstrated by data that MDE provided in the State's Improvement Plan submitted in July of 2002. In a letter to MDE dated October 30, 2002, OSEP required MDE to submit quarterly reports to OSEP on its progress in meeting complaint timeline requirements and to demonstrate compliance by October 30, 2003. The final Progress Report that MDE submitted to OSEP on September 30, 2003 concerning MDE's implementation of 34 CFR §300.661 indicated that MDE was out of compliance with this requirement. MDE did not submit any additional data during the verification visit related to complaint timelines and discussions with MDE staff during the verification visit confirmed that MDE continues to be out of compliance with this requirement.

After onsite discussions between MDE staff and OSEP staff and OSEP's review of MDE's quarterly Progress Reports, complaint logs, procedures for tracking complaint timelines for fiscal year (FY) 2003, OSEP has again determined that MDE does not ensure that complaints are resolved within 60-days of the agency's receipt of a request for a complaint investigation or within extended timelines due to exceptional circumstances with respect to a particular complaint. Specifically, OSEP found, and the MDE staff confirmed, that: (1) MDE was unable to bring complaint timelines into IDEA compliance by October 30, 2003 as indicated by the last quarterly Improvement Plan Progress Report submitted to OSEP on September 30, 2003. The September progress report indicated that during the period of June 1, 2003 and August 31, 2003, 64.5% of complaints were resolved within 60 days or within extended timelines due to exceptional circumstances with respect to a particular complaint; (2) MDE does not maintain a system that ensures the accurate calculation of the 60-day time limit for complaint investigations. Currently MDE maintains three tracking documents. MDE staff identified one complaint log that indicated the dates complaints were submitted; a second complaint log that identified the dates letters and documents were transmitted between the State, ISD, and complainant; and a third complaint log that indicated the final status of complaints with timeline extension information. MDE initially submitted only one complaint log. After consultation with MDE staff to understand the log submitted, OSEP was informed of the other tracking documents for complaints. Overall, OSEP found that the documents were difficult to reconcile because of missing cases, and that tracking complaint timelines required a time intensive process of reviewing all three documents. (3) One of the criteria MDE uses for

determining what is considered an “exceptional circumstance” with respect to a particular complaint does not meet the standard in 34 CFR §300.661 (b)(1). MDE staff informed OSEP that extensions are granted for complaints whenever both parties are in agreement with the need for an extension. The requirements under 34 CFR §300.661(b)(1) allow granting of extensions only if exceptional circumstances exist with respect to a particular complaint. OSEP found that MDE has incorrectly applied 34 CFR §300.661 (b)(1) and this has contributed to timelines exceeding the 60-day time limit.

The September 30, 2003 progress report indicates that 35.5% of complaints are not resolved within the 60-day time limit or within extended timelines due to exceptional circumstances. MDE’s inability to implement 34 CFR §300.661 over a span of 10 years beginning when OSEP identified noncompliance with this requirement in 1993, represents an egregious long-standing disregard of the provisions of parent and student rights as identified in IDEA. MDE’s previous assurances of their ability to bring their complaint system into compliance and the continued history of noncompliance are of great concern to OSEP and signal the need for stronger change and intervention strategies. As a result, OSEP requires that MDE take immediate and effective action to correct this noncompliance. If MDE does not submit data that demonstrates that this noncompliance is corrected within 60 days from the date of this letter, OSEP will consider the imposition of sanctions, including the designation of MDE as a high risk grantee, and the imposition of special conditions on the State’s Part B grant award for Federal Fiscal Year (FFY) 2004, pursuant to 34 CFR §80.12 or other enforcement actions authorized by law.

General Supervision – Due process hearings

MDE operates a two-tier due process system. As set forth at 34 CFR §§300.511(a) and (c), the public agency must ensure that not later than 45 days after the receipt of a request for a hearing a final decision is reached in the hearing and a copy mailed to each of the parties, unless the hearing officer at the request of either party grants a specific extension of time. MDE’s log of due process hearing requests for fiscal year 2003, provided to OSEP for review indicated that MDE calculated the percentage of cases found to be outside of the 45-day timeline plus any extensions of time granted, using only “closed” due process cases instead of including due process cases still in process. When all due process cases were examined (e.g. pending due process hearings) to determine if a final decision was reached in the hearing and a copy mailed to each of the parties within the required 45-day timeline from receipt of the request for a hearing, and any granted extensions, OSEP found that only 67% of the cases were completed within the required 45-day timeline plus any additional timeline extensions.

Sections 300.511(b) and (c) require that the State educational agency must ensure that not later than 30 days after the receipt of a request for a review, a final decision is reached in the review and a copy mailed to each of the parties, unless the reviewing officer at the request of either party grants a specific extension of time. MDE does not maintain a separate log to track State level reviews. MDE’s log of due process hearing requests for fiscal year 2003 provided to OSEP for review indicated that only nine requests for State level review were filed and of those decisions seven were reached within 30 days or within a properly granted extension and the remaining two cases were four and seven days late respectively. In the review and analysis of the hearing log, OSEP found that the log as currently constructed does not facilitate the tracking of separate timelines for each tier of the MDE due process system.

OSEP found that MDE was not in compliance with 34 CFR §§300.511 (a), (b) and (c) and requires that within 60 days from the date of this letter MDE must submit a plan to correct its noncompliance with the due process hearing and state level review timelines as soon as possible but no later than one year from the date of this letter.

In the final review and analysis of the due process systems and the complaints system, OSEP found MDE does not conduct an analysis of its complaint and due process decisions and use that information to identify systemic issues. For example, when OSEP discussed with MDE a due process case concerning the validity of a settlement agreement, MDE was not aware of the case. OSEP recommends that MDE conduct an analysis of its complaint, mediation, and due process systems and use that analysis when conducting on-site monitoring and targeting improvement strategies for the State and ISDs.

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 Michigan's system for State-wide assessment, OSEP also discussed with MDE 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 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.

The Michigan Educational Assessment System (MEAS) was approved by the State Board of Education and is comprised of three assessment programs: (1) the Michigan Educational Assessment Program – MEAP; (2) MI-Access – Michigan's alternate assessment; and (3) ELL-Access – Michigan's assessment for English language learners. MDE staff informed OSEP that all students are required to participate in the MEAP. If a student does not participate in the MEAP with standard or non-standard accommodations, the student must take the MI-Access. The consequences of using a nonstandard accommodation include the assessment: (1) counting as being assessed for participation rate; (2) counting as not proficient when calculating adequate yearly progress; and (3) not counting toward the Michigan Merit Award that is a monetary award based on a student's assessment score. All assessment accommodations must be specified in the IEP. MDE tracks student participation in the assessment process through its centralized system. Every student is assigned a unique student identification number and must

be accounted for through testing. MDE does not require students to pass the State-wide assessment to receive a diploma.

Both the general and alternate assessments are aligned with the Model Content Standards contained in the Michigan Curriculum Framework. The alternate assessment has two components. The first component of the alternate assessment (MI-Access Phase 1) is designed to assess students based on observation of the student carrying out a standard set of activities during the course of a normal school day. The second component of the alternate assessment (MI-Access Phase 2) incorporates a variety of formats including multiple-choice, short answer, extended response, and teacher observation. Approximately 3% to 4% of all students take the alternate assessment.

MDE's staff reported that extensive training and technical assistance are provided on the MEAP and MI-Access. MDE holds a fall conference each year in different regions of the State along with a live teleconference designed to facilitate questions and answers around assessment. MDE also maintains an extensive website related to assessment especially for the MI-Access. The website contains all training materials, related resources, and upcoming information related to assessment. Training and technical assistance also include guidance for individualized education program (IEP) teams on making decisions regarding appropriate accommodations, who should be given the alternate assessment, and procedures for conducting an alternate assessment. As evidenced through MDE written procedures, the State ensures that IEP teams address student participation in assessment through its two-tier monitoring process. The first tier of the monitoring process is a review of the ISD by an ISD Compliance Monitor. The second tier of the monitoring process is the validation of the ISD and monitoring of the LEA by the State Special Education Compliance Monitoring Team.

In conclusion, OSEP found that MDE has a State-wide assessment system that ensures the participation of students with disabilities and accountability for improving the performance of children with disabilities.

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; (3) implements procedures for identifying anomalies in data that are reported, and for 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.

MDE staff informed OSEP that the Registry Management System (RMS) that has been in place for over 10 years is being replaced by the Michigan Compliance Information System (MICIS). Although the RMS was in place for over 10 years, the use of this system was not mandatory for all ISDs and LEAs. Therefore, in some cases ISDs and LEAs have various software vendors to

meet their daily student information tracking needs. The MICIS functions in the same way as the RMS but with enhanced web functionality and a greater ability to coordinate information across several different systems. LEAs and ISDs may choose to use MICIS as their daily tracking system or they may choose to use an outside software vendor for this function. All LEAs and ISDs are required to submit their data to the MICIS data system using its web interface. The MICIS system provides electronic documentation of the student's IEP services and service providers.

MDE staff informed OSEP how MICIS utilizes several checks and balances to help ensure the integrity of the data the system collects. One of the most impressive checks is the ability of the system to automatically crosswalk information from one of several previous systems used in the State when submitting data. In some cases LEAs and ISDs are still currently using an older system as their means of daily record tracking. To significantly lower the rate of error in entering data into MICIS, MICIS allows the transmitter to identify the data stream and configure MICIS to automatically crosswalk the categories in the older data system to the categories in the newer MICIS system without reentering the information. A second level of data validation occurs in the entry of the actual data. Each data field in the MICIS system is configured to identify common errors and requires the user to pass an online error and logic check. The system also utilizes a duplicate data check to ensure the accuracy of the data as the data is being prepared for ISD/LEA reports, and 618 data submission tables that are submitted to OSEP.

OSEP was informed that the State implements the following mechanisms to ensure that all individuals who are responsible for collecting and reporting 618 data receive effective and accurate guidance: (1) a year-round web site concerned with 618 data collection and other modules of MICIS (www.micis.org); (2) a year-round helpdesk for technical assistance staffed by the State's 618 data collection subcontractor; (3) yearly in-service training conducted by the State for those individuals responsible for 618 data collection and reporting; and (4) yearly State dissemination of the Michigan Special Education Technical Manual for Student and Personnel Counts. The subcontractor also maintains a support web site with an automated help desk, training schedules and registration, manual downloads, and current news about the system.

As noted above, MDE is refining MICIS use. Currently, ISDs, LEAs, and public school academies may each maintain different Part B systems. Each system may also have different software providers. MDE staff informed OSEP that an ongoing challenge is coordinating data collection activities between the State's contractor, the Center for Educational Performance Information and other data collection offices outside the Department of Education. MDE also informed OSEP that data validity and reliability issues often originate outside of MICIS and may require working with multiple software vendors or the Department for Correction.

In conclusion, OSEP found that Michigan has constructed a valid and reliable data collection system to capture, record, and report data for students with disabilities that supports 618 data reporting requirements of IDEA.

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to receiving your plan within 60 days from the receipt of this letter for addressing

noncompliance with the due process hearing and state level review timeline requirements under 34 CFR §§300.511(a), (b) and (c). As noted above, if MDE does not demonstrate compliance with the complaint timelines within 60 days from the date of this letter, OSEP will consider the imposition of sanctions, including the designation of MDE as a high risk grantee, and the imposition of special conditions on the State's Part B grant award for federal fiscal year 2004, pursuant to 34 CFR §80.12 or other enforcement actions authorized by law. In addition, we will be looking for updates and an analysis of timelines for your complaint management and due process system in your Annual Performance Report. We look forward to our continued collaboration with Michigan 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. Jacquelyn Thompson