



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

JUN 16 2004

Honorable Henry L. Johnson
State Superintendent
Mississippi Department of Education
P.O. Box 771
Jackson, MS 39205-0771

Dear Superintendent Johnson:

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 Mississippi. As I explained in my letter to you of January 20, 2004, 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 Mississippi during the week of March 29, 2004.

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 Mississippi Department of Education (MDE), OSEP staff met with Dr. Melody Bounds (the State's Director of Special Education), and members of MDE'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) Mississippi's Part B State Improvement Plan; (2) the Biennial Performance Report for grant years 1999-2000 and 2000-2001; (3) MDE's Part B Program Improvement Monitoring document; (4) monitoring files for school districts, including monitoring reports and corrective action documents; (5) MDE's written response to the overarching questions around which OSEP is focusing its verification reviews; (6) tracking logs for complaints, mediations, and due process hearings; and (7) information on MDE's website regarding the State-wide assessment system. OSEP also conducted a conference call on March 9, 2004 with a number of stakeholders to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data

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.

collection, and State-wide assessment. Dr. Bounds participated in the call and assisted us by inviting the participants.

The information that Dr. Bounds and other MDE 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 MDE's systems for general supervision, data collection and reporting, and State-wide assessment. During the last day of the visit, OSEP staff had the opportunity to have a brief meeting and discussion with Superintendent Johnson and other MDE administrative staff.

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.

OSEP conducted an onsite-monitoring visit to Mississippi in April 1997. As set forth in OSEP's August 1997 Monitoring Report, OSEP found that MDE had not ensured: (1) that prior written notice that includes all required content was provided; (2) provision of services to students with disabilities in the least restrictive environment (LRE); (3) that statements of needed transition services are developed as a component of individualized education programs (IEPs) for students 16 years of age or older; (4) that notices used to inform the participants in IEP meetings where needed transition services are to be considered contain all required information; (5) when a purpose of an IEP meeting was the consideration of transition services for a student, the public agency invited other agency representatives likely to be responsible for providing or paying for transition services, and (6) that students with disabilities receive educational services that meet State standards regarding length of school day. OSEP determined that MDE had corrected all of the noncompliance identified during the April 1997 visit, and closed Mississippi's Part B Corrective Action Plan in January 1998.

Pursuant to the long-standing consent decree in *Mattie T. v Holiday*², MDE must collect and report specified data regarding identification and placement of students with disabilities. MDE has incorporated the requirements of the consent decree into its Improvement Plan.

² In 1975, the Children's Defense Fund filed the *Mattie T.* class action against MDE, on behalf of a class of students with mental retardation and specific learning disabilities. The 1979 consent decree set forth a number of specific requirements for Mississippi's special education system, particularly in regard to failure to identify children with disabilities, disproportionate representation of minorities, least restrictive environment, and discipline. The Court has retained jurisdiction, but the revised consent decree, dated December 23, 2003, includes specific criteria for sunseting the issues when defined, measurable goals are met.

MDE informed OSEP that it had transitioned from a monitoring system that previously focused upon procedural compliance to one that now focuses on program effectiveness and student results. They explained that, in the current system, district and MDE staff collaborate in the analysis of program effectiveness and in the implementation of Improvement Plans in order to make programs more effective and to impact upon outcomes for students with disabilities.

MDE informed OSEP that it has designed its Program Improvement Monitoring System around indicators, the key elements that have the greatest potential for improving results for children with disabilities. The Statewide Steering Committee, a diverse group of stakeholders including MDE staff, selects these indicators through an annual, data-based, self-assessment process. The Committee selected the following indicators for the 2003-2004 school year: (1) least restrictive environment (LRE), (2) disproportionate representation, and (3) students with emotional disabilities. MDE informed OSEP that it collects data and uses them on an ongoing basis to determine district program performance, select districts for onsite monitoring, and in making decisions regarding programs and services provided to meet the needs of children in each district.

MDE explained to OSEP that although it is using data to focus its general supervision activities on those districts and issues that need the greatest attention, it addresses all Part B requirements for all districts through its procedures for reviewing and approving district applications for Part B funds. MDE conducted a comprehensive review of each district's special education policies and procedures, and requires districts to submit any revisions and to provide a yearly assurance that the approved procedures remain in effect and that all policies and procedures comply with Part B requirements.

MDE requires all districts to conduct an annual self-review, and develop an improvement plan with data analysis, strategies, and timelines. While the primary focus of the self-review is to evaluate district *performance*, based on analysis of data for the State's ten Special Education Goals³, it can, as explained below, also result in the identification of noncompliance. MDE provides a Self-Review Protocol for districts to use in determining their effectiveness and to develop strategies that will impact the goal areas. If the district, through the self-review process, identifies noncompliance, it must also include with its application for funds a corrective action plan, with timelines and evidence of change, to address the noncompliance. If a corrective action plan requires a change in policies and procedures, the district has 90 days in which to make those changes. However, MDE expects procedural violations to be corrected immediately, and

³ The MDE, along with the Statewide Steering Committee, established the following ten goals for improving Mississippi's programs for students with disabilities: (1) increase the number of eligible children transitioning from Part C to Part B; (2) increase the percentage of students identified as having Emotional Disturbance; (3) Increase the percentage of children identified as Other Health Impaired; (4) ensure that districts have a differential of 1.15% or less in the proportion of Black students from the proportion of Other race students identified with educable mental retardation; (5) ensure that districts have a differential of 1.85% or less in the proportion of Black students from the proportion of other race students identified as specific learning disabilities; (6) increase the percentage of students with disabilities who are removed from general education less than 21% of the day; (7) increase the percentage of students with low incidence disabilities who are removed from general education less than 21% of the day; (8) decrease the percentage of students with disabilities who are educated in separate settings 60% or more of the day; (9) decrease the percentage of students with low incidence impairments who are educated in separate settings 60% or more of the day; and (10) increase the percentage of students with disabilities in grades 3, 5, and 7 scoring "Proficient" or above on the Mississippi Curriculum Test (MCT).

reported that it follows up on each corrective action plan through phone conferences, review of documentation and, if necessary, follow-up visits.

In addition to the above-described approval and self-review procedures that MDE applies to all districts, MDE has implemented a focused system of on-site monitoring. MDE explained that it has divided the State's 152 districts into four groups based on overall enrollment, and ranks each group annually according to data measuring the indicators. Based on these rankings, MDE targets the lowest performing districts on each indicator (the lowest 15 percent within each of the four groups) for onsite monitoring. If a district is in the lowest 15 percent for more than one indicator, MDE will select one indicator on which to focus with the district, and then – for the other indicator(s) for which the district was also in the lowest 15 percent, MDE will select the next lowest district for monitoring. MDE informed OSEP that it also randomly selects one additional district for each of the priority areas each year.

For the 2003-2004 school year, MDE selected a total of 24 districts for onsite visits. MDE has assigned eight full-time MDE staff to monitoring special education programs, and utilizes seven contracted Team Leaders to prepare for and lead onsite-monitoring visits. In addition to the Team Leaders, members of the monitoring teams include MDE staff, peer reviewers (usually special education administrators from other districts), and parents. MDE provides training for each group of reviewers. MDE explained that parents play a key role in the onsite visits, by facilitating focus groups, interviewing parents, and observing classrooms with other team members. While, as explained above, MDE focuses its onsite visits on the priority areas, if the monitoring team identifies noncompliance in areas related to the priority area and/or in other areas, MDE addresses that noncompliance in its monitoring report, and requires the district to correct the noncompliance. Once it receives MDE's monitoring report, each district must: (1) publish a summary of the report in the local newspapers for five consecutive days; (2) present the MDE monitoring results to the local school board within 45 days of receipt of the report; and (3) develop and implement a Corrective Action Plan to address any noncompliance that MDE identifies through an on-site visit. The Corrective Action Plan must include timelines for implementation and measurable benchmarks for improvement. If a district fails to complete a Corrective Action Plan to address identified needs, the Office of Accreditation is immediately notified. In addition, a meeting is scheduled between MDE staff and the local school board. MDE informed OSEP that MDE has the authority to withhold Part B funds from districts if they fail to ensure timely correction, and MDE is now considering the need to withhold funds from one district that has not implemented a hearing decision. MDE stated that, with the exception of that one district, MDE has been successful in ensuring timely correction of monitoring findings, and complaint and hearing decisions without the need to use sanctions such as withholding. MDE has, in four instances, required districts to provide compensatory services to students.

MDE informed OSEP that, because the State's focus is on continuous improvement, technical assistance is a high priority. Major issues identified in focused monitoring, complaint resolution, due process, and mediation, are compiled annually and analyzed to determine the relationship of such issues to the State's goals, and to determine areas of need with regard to technical assistance and professional development. Components of technical assistance include assisting districts in developing corrective action plans, training at the State and district levels, identification and dissemination of promising practices, and other strategies that meet the needs

of local districts. MDE staff informed OSEP that follow-up visits are conducted by the Team Leaders to verify implementation of the corrective action plans. According to documentation reviewed in several monitoring files, MDE provides districts with intensive follow-up and requires them to submit specific documentation showing that correction had been achieved. MDE staff informed OSEP that, as part of each onsite visit, MDE's monitoring staff collects data to confirm that the district has effectively implemented any hearing decisions.

MDE informed OSEP that it provides recognition to districts achieving the highest performance level on each of the indicators for two consecutive years, including a letter to the district Superintendent, a certificate of recognition, press releases, and commendations on MDE's website and in publications.

As described above, MDE uses data from several different sources to help focus its State-wide general supervision efforts. In addition, OSEP learned from its review of the State's improvement planning documents, and through interviews with staff, that MDE uses data from its monitoring findings, 618 data, assessment data, and other similar data to inform its improvement planning process and to refine its monitoring procedures. The State has not identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede its ability to identify and correct noncompliance.

OSEP believes that MDE's monitoring procedures represent a reasonable approach to the identification and correction of noncompliance. However, without collecting data at the district level, OSEP cannot determine whether the State is fully effective in identifying and correcting noncompliance.

Complaints, Mediation and Due Process Hearings

MDE's special education complaint log for the period of July 8, 2003 to March 9, 2004 included 21 complaints. The complainant in three of those complaints withdrew the complaint. For each of the remaining complaints for which 60 calendar days had elapsed at the time of OSEP's visit, MDE had issued written decisions on Part B complaints within 60 calendar days from its receipt of the complaint, unless the timeline was extended due to exceptional circumstances that existed with regard to a particular complaint, consistent with 34 CFR §300.661(a) and (b)(1). MDE staff informed OSEP that, as part of each onsite monitoring visit, staff follow-up to ensure that the district has effectively implemented complaint decisions.

The Part B regulations require, at 34 CFR §300.511(a) and (c), that MDE ensure that a final decision is reached in each due process hearing 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 specific extensions of time beyond the 45 day timeline at the request of a party. A State education agency must ensure that if a hearing officer exceeds the 45-day timeline, there is documentation that the hearing officer extended the timeline at the request of a party and for a specific period of time.

OSEP reviewed the special education hearing log that MDE maintained for the period of July 28, 2003 through February 19, 2004, which included 25 requests for a hearing. For 21 of those

hearing requests, the parties resolved the issues without a hearing within the 45-day timeline. One case, filed February 19, 2003, was still pending and within the 45-day timeline at the time of OSEP's visit. For the 3 remaining cases, the decision was either reached more than 45 days after the request for a hearing, or was still pending (as of the date of OSEP's visit) more than 45 after the request for a hearing. OSEP reviewed the files of those three hearing requests and found documentation, in all three cases, that hearing officers were "postponing" the date for the proceedings without: (1) documenting that the hearing officer had extended the timeline at the request of a party; or (2) establishing the new date by which a decision must be reached and mailed to the parties. MDE staff confirmed that the documentation reflected in this sample of files was representative of the way in which hearing officers were extending timelines regarding other hearings. On April 30, 2004, MDE sent a memorandum to all Due Process Hearing Officers in the State, informing them of the noncompliance relating to the timeliness of due process hearing decisions, and specified the necessary actions to be taken immediately.

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 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 informed OSEP that during the 2002-2003 school-year it began to use its new student-based data collection system, the Mississippi Student Information System (MSIS), for students with and without disabilities. School districts enter data on an on-going basis, and updates are transmitted daily to MDE via the Internet. Each public school student is assigned a 9-digit unique identifier, which follows the student if he or she moves to another district in the State. Each month every school in the State submits an electronic file that contains up to 150 data elements per student.

MDE requires that all entities (including districts, mental health facilities, and correctional facilities) use MSIS to enter child count, personnel, services, and settings data. Based on the teacher and student schedules, MSIS calculates placement on each student by the percentage of the school day the student is removed from the regular education class. MDE informed OSEP that discipline data are submitted either daily (if the incident involved weapons or drugs) or monthly in an electronic file to MSIS.

MDE informed OSEP that a full time data manager, a full time assistant, and a technical team that includes additional programmers and analysts (all housed within MDE's office of Planning, Analysis, and Information Resources) provide support and oversight for the 618 data collection system. MDE explained that it provides annual State-wide training institutes and district staff

training as needed, and posts down-loadable, data-related training information on its website in a number of different formats. In addition, MDE prepares data profiles yearly for each of the 152 school districts, which are posted on the State's website. These profiles are used for ranking of data, monitoring of districts, and identifying trends.

Beginning in January 2004, MDE began conducting random visits to verify that district data submitted through MSIS reflect actual schedules for teachers and students. According to a December 2003 Memorandum from MDE to District Superintendents, any discrepancies between MSIS information and actual practice will be reported to the Office of Accreditation. MDE informed OSEP that it performs monthly data checks and generates system error reports to identify anomalies in all student data fields. During the 2002-2003 school-year, WESTAT reported no data issues regarding Mississippi's Part B 618 data.

MDE staff informed OSEP that, in general, they have a high level of confidence in the accuracy of the data reported by MSIS, and did not identify any barriers that would impede the State's ability to collect data accurately.

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 assessments 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.

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.

Participation in Assessments

MDE's Office of Student Assessment develops and administers all State-wide assessments. All students in Mississippi public schools are required to participate in the State-wide assessment program, and cannot be exempted from an assessment based on demographics, instructional program, or type of school. All students in grades 2 through 8 must participate in the Mississippi Curriculum Test (MCT). As an out-of-level assessment, Mississippi uses a modified MCT at the student's instructional level. MDE informed OSEP that it requires students' district of residence to ensure that students that they place in State-operated schools and non-public facilities

participate in the assessment system, and receive needed accommodations and modifications as prescribed in the students' Individualized Education Program (IEP). If the IEP team determines that a child cannot participate in the MCT, even with accommodations, then the child participates in the Alternate Assessment.

Mississippi's diploma requirements include taking Algebra I, Biology I, United States History from 1877, and English II, and passing a State-wide Subject-Area Test. Only students who are enrolled in these courses participate in SATP or alternate test for that area.

The State has developed guidelines for districts to use in selecting test accommodations for students with disabilities and has made this information available via "list-servs" and the MDE website. In the *Guidelines for Testing Students with Disabilities and English Language Learners*, the allowable accommodations for each test are delineated in the areas of settings, timing/scheduling, presentation, and response. That document also includes guidelines for IEP teams to use in determining which students should take the alternate assessment. MDE provides annual training and on-going technical assistance to district Special Education Supervisors and Test Coordinators.

As part of local special education policies and procedures, MDE requires each district to provide a yearly assurance that procedures regarding participation of students with disabilities in the State-wide assessments system are in effect. In addition, if MDE identifies noncompliance in this area through the State monitoring process, MDE addresses that noncompliance in its monitoring report, and requires the district to correct the noncompliance.

Alternate Assessments

The Mississippi Alternate Assessment is a process for assessing the degree to which students have met measurable goals and objectives in their IEP. The alternate assessment for the MCT is based on IEP goals and objectives selected by the IEP team. An "Evidence of Progress Form" is prepared for each goal assessed. Near the end of the school year, the Alternate Assessment Review Committee (a district level group) evaluates the student's progress in meeting each goal based on the collected evidence. The alternate assessment for the SATP must be based on the same content and achievement standards as the regular SAPT tests, and the review process is at the State level.⁴

⁴ 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 Mississippi's compliance with requirements of Title I.

MDE has developed the following set of “Guiding Principles of the Mississippi Alternate Assessment”:

1. The Alternate Assessment functions as a part of the Mississippi Curriculum Content Assessment System, functioning as a part of the school accountability system to the extent that data are statistically sound, allowing all disabled students to be assessed at the same age as their non-disabled peers, and permitting assessment data collection and reporting to follow the same time frame.
2. The Alternate Assessment measures each student’s performance on the objectives set forth in each student’s IEP, allowing students to use their typical modes of expressive and receptive communication to demonstrate their knowledge and understanding, and requiring annual decisions about participation in an IEP meeting that are based on the student’s curriculum, present level of educational performance, and learning characteristics.
3. The Alternate Assessment results influence decisions about promotion, retention, and graduation in compliance with policies set by the State Board of Education.

MDE staff reported that Mississippi is in the process of revising the alternate assessment process to meet the requirements of the No Child Left Behind Act (NCLB), and that they expect this process to take about 18 months. In addition, the State has drafted new criteria/definition of “students having significant cognitive disabilities.”

Reporting

MDE reports on the participation and performance of all children in the grades assessed, including children with disabilities who participate in the general or alternate assessment, through a variety of local, district, and State level reports. MDE also includes participation and performance information in the district profiles, which it posts each year on the State’s website. All parents receive a copy of their child’s Individual Student Report showing performance in the assessment system. In addition, parent brochures and information are available to parents on the MDE website.

The data for all students who have been in the school for a full academic year are included in the achievement, growth, and calculations of Adequate Yearly Progress (AYP) under NCLB. To the extent possible, all test results reported in the State Report Card are disaggregated by subgroup, based on information in the student’s MSIS record. Each student’s score falls into one of four proficiency levels on the MCT. The proficiency levels are “minimal,” “basic,” “proficient,” and “advanced.” In addition, links to district reports are posted on the MDE website. Reports to the schools, districts, and the public are made available in mid-July of each year.

Conclusion

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephanie Smith Lee".

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Dr. Melody Bounds