



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

Honorable Inez M. Tenenbaum  
State Superintendent of Education  
South Carolina Department of Education  
1006 Rutledge Building  
1429 Senate Street  
Columbia, SC 29201

MAY -7 2004

Dear Superintendent Tenenbaum:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP) verification visit to South Carolina. 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 (IDEA).

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 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 South Carolina's Department of Education (SCDE), OSEP staff met with Mrs. Susan DuRant (the State's Director of Special Education), and members of SCDE'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 the participation in and reporting of student performance on State-wide assessments. Prior to and during the visit, OSEP staff reviewed a number of documents including: (1) South Carolina's Part B State Improvement Plan; (2) the State's Biennial Performance Report for grant years 1999-2000 and 2000-2001; (3) South Carolina's Monitoring Manual; (4) South Carolina's General Supervision Enhancement Grant and State Improvement Grant applications; (5) the State Assessment Manual; (6) selected SCDE monitoring reports for districts, including monitoring reports and corrective action documents; (7) SCDE tracking logs for complaints, mediation, and due process hearings; and (8) other pieces of information from the State's website. In addition, OSEP conducted a conference call on September 17, 2003 with South Carolina's State 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 Statewide Assessment. Special education services staff members from SCDE's Office of Exceptional Children (OEC) also participated in the call and assisted us by recommending and inviting the participants.

The information that Mrs. DuRant 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 SCDE's systems for general supervision, data collection 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.

As set forth in OSEP's January 2003 Monitoring Report under the area of general supervision, OSEP found that: 1) SCDE's monitoring system was not effective in identifying and correcting noncompliance with all Part B requirements; 2) SCDE did not ensure that all Part B complaints are resolved within 60 days from the date the complaint is filed unless exceptional circumstances exist with regard to a particular complaint; and 3) SCDE did not ensure that due process hearing and review decisions are conducted within the required timelines. OSEP's August 2003 Improvement Plan (IP) letter to SCDE assessed the State's strategies, activities, resources and evidence of change identified in the State's IP to address noncompliance identified in OSEP's 2003 Monitoring Report. On March 5, 2004, SCDE submitted its latest revisions to the IP.<sup>1</sup> OSEP is in the process of reviewing this latest proposed IP and will provide its comments under separate cover.

OSEP believes that SCDE's has made reasonable progress in modifying its systems for general supervision to address the concerns raised in OSEP's Monitoring Report. Because OSEP is still reviewing the State's submissions under the IP and Annual Performance Report (APR) processes, OSEP cannot, without such additional review or

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<sup>1</sup> SCDE's March 5, 2004 Improvement Plan replaces previous Improvement Plan submissions dated February 19, 2004, October 30, 2003, March 7, 2003, October 1, 2001, and July 1, 2001 (that respond to those areas of need identified during the self-assessment phase of the Continuous Improvement Monitoring Process).

without collecting additional data at the local level, determine whether the general supervision systems are fully effective in identifying and correcting noncompliance in accordance with federal requirements.

### ***Monitoring***

During the verification visit in September 2003, SCDE staff informed OSEP that SCDE determines local-level compliance with IDEA requirements by conducting a review of each district and public agency every four years. SCDE's current monitoring system consists of four activities: 1) preliminary monitoring; 2) on-site monitoring; 3) corrective action; and 4) technical assistance. During the preliminary monitoring activity, SCDE conducts IDEA compliance monitoring training for each local education agency (LEA) that will be monitored during the school year. The training is conducted two weeks prior to the on-site visit. The on-site monitoring activities include: 1) a review of at least thirty records to determine areas of noncompliance and to identify trends; 2) classroom observations; and 3) interviews with parents, school and district administrators, regular and special education teachers, students, and related service providers.

SCDE staff informed OSEP that personnel needs of the State Education Agency previously hindered the State's ability to conduct effective monitoring activities. Due to staff shortages, SCDE could not ensure that monitoring staff consistently followed the State's monitoring procedures. SCDE made improvements to its monitoring system by hiring two staff members whose sole responsibility is to conduct IDEA monitoring activities. The two staff members assemble monitoring teams that conduct on-site visits. Members of the monitoring teams include staff from OEC's program and compliance sections and are supplemented with retired special education teachers. Staff further explained that the monitoring teams complete written monitoring reports within three weeks following the monitoring visits and submit the monitoring reports to the State's special education director for review. The monitoring reports include the corrective action that LEAs must take in order to correct the identified noncompliance. Staff also reported that LEAs are required to submit corrective action documentation to the State within 60 days of receipt of the monitoring report. SCDE monitoring staff review the documentation submitted to verify that corrective action activities have been implemented. In interviews, SCDE staff stated that SCDE would, as necessary, conduct follow-up visits, provide technical assistance, and impose monetary sanctions to ensure that corrective actions are implemented and result in compliance.

SCDE staff informed OSEP that as a result of SCDE's evaluation of its monitoring system and findings in OSEP's 2003 Monitoring Report, they are reviewing and revising the current monitoring system during the 2003-2004 school year. Based on the State's review of its monitoring system, SCDE is using a "focused monitoring approach" during the 2003-2004 school year to determine compliance with IDEA requirements. The focused monitoring approach is applied to South Carolina's current monitoring system. Staff explained that the focused monitoring approach allows the State to target specific areas of compliance and program performance related to State and Federal IDEA requirements. For example, during OSEP's 2002 monitoring visit, OSEP made several findings related to the provision of a free appropriate public education (FAPE) to all

children with disabilities. SCDE has included questions related to the OSEP findings as part of its monitoring protocols.

In order to determine the focus areas, SCDE reviewed previous State monitoring report trend data collected for the prior four years, OSEP's monitoring findings, and used additional criteria that included a review of the dispute resolution system's complaints, mediation and due process hearing issues in order to select the districts to be monitored. Twenty LEAs were selected for monitoring during the 2003-2004 school year. According to the staff interviewed and as documented in South Carolina's focused monitoring procedures, the focus areas for the 2003-2004 school year include: (1) determination of needed services and settings by appropriate personnel for children with disabilities who have been suspended or expelled; (2) consideration, provision, and identification in the individualized education program (IEP) for counseling services provided as part of FAPE; (3) provision of FAPE to children eligible for special education and related services by their third birthday; and (4) ensuring decisions regarding medical homebound instruction are made on an individual basis.

SCDE will evaluate the implementation of the "focused monitoring approach" at the end of the current school year to determine the need for any additional changes to the monitoring system. OSEP is reviewing the monitoring documents including the protocols as part of the IP process and will provide SCDE with its analysis under separate cover. It is OSEP's understanding that SCDE included additional monitoring data from onsite visits in its APR and will review this submission as well.

### ***Complaints and Hearings***

OSEP found through its review of SCDE's complaint logs and interviews with staff who are responsible for resolving complaints, that SCDE has improved its system to ensure that it issues written decisions on Part B complaints within 60 calendar days from its 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). In OSEP's review of the complaint logs for the period of September 1, 2002 to September 1, 2003, OSEP found that from September 1, 2002 to April 30, 2003, 14 of 46 complaints filed exceeded the 60-day time line by 30 to 95 days. There was no documentation in the complaint logs of exceptional circumstances for these overdue complaints.

SCDE staff informed OSEP that in May 2003, SCDE hired complaint investigation staff that is solely responsible for ensuring complaint timelines are met. The investigation staff developed a computerized form that provides data fields for tracking complaints and includes fields that document exceptional circumstances. The investigation staff also track complaint timelines by posting "trigger" dates on a wall calendar as a reminder to contact districts regarding the written decision timelines. As a result of these measures, OSEP found in its review of SCDE's complaint data for the period of May 2003 to September 2003 that SCDE issued written decisions within the 60-day timeline on all 22 complaints filed during that period. OSEP expects that SCDE will continue to report on this issue including, but not limited to, the identification of activities that it is carrying out

to maintain performance in meeting compliance at 34 CFR §300.661(a) and (b)(1) either through the APR submission or through its IP submissions.

OSEP continues to find that South Carolina does not have an adequate system in place to track and ensure that decisions for due process hearings and reviews are reached and a copy of the decision is mailed to each party within federal timelines, i.e., 45 days and 30 days, respectively, unless an extension is granted at the request of either party as set forth at 34 CFR §300.511. Through OSEP's review of SCDE's due process hearing logs from September 1, 2002 through September 1, 2003, and interviews with SCDE staff, OSEP found that SCDE does not always ensure that a hearing decision is reached and a copy of the due process hearing decision is mailed to each party. OSEP's review of SCDE's due process logs indicated that for the ten due process hearings filed during the above dates, the State did not track timelines from the date the request was filed with the LEA to the date of the decision. Staff told OSEP that the State has difficulty meeting the 45-day timeline because LEAs do not notify hearing officers when due process hearings have been filed and court reporters do not consistently complete the reports in a timely manner. In order to address this problem, SCDE developed a web-based data system to track due process hearing timelines. This system was online at SCDE's web site at the end of November 2003. The LEAs will be responsible for entering the due process hearing timeline dates in the system and SCDE staff will review the data to ensure that the 45-day timeline is met. As an interim measure, SCDE developed and distributed an electronic tracking sheet for due process hearings to LEAs for reporting timelines to SCDE. Because this measure was initially implemented during OSEP's visit, data was not available for OSEP's review.

According to the logs for State-level appeals, the three appeals filed over the period of September 1, 2002 through September 1, 2003 exceeded the 30-day timeline and decisions were issued 53 to 95 days after the date of filing. The logs did not indicate whether the second tier Hearing Officer granted extensions. Staff informed OSEP that these appeals were over the 30-day timeline because court reporters were late in submitting transcripts to the hearing officers.

SCDE staff informed OSEP that SCDE is conducting training for hearing officers and LEA staff so that they are aware of their responsibilities to ensure that due process hearing timelines are met. As part of the due process hearing technical assistance activities, SCDE provides dispute resolution information on SCDE's web site, policy letters and guidance memos to hearing officers and district administrators. SCDE will examine the effectiveness of the training and technical assistance, and will follow-up on the status of due process hearing and State-level appeal decisions as part of the focused monitoring. It is OSEP's understanding that SCDE's APR submission includes data on compliance with 34 CFR §300.511. In addition, it is OSEP's expectation that the State's IP submissions will continue to include data related to this issue.

#### **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.

OSEP believes that SCDE is improving its system for collecting and reporting accurate data to OSEP under section 618. However, until SCDE implements its plan to change its data collection system, and OSEP receives SCDE's data submissions, OSEP cannot determine if SCDE's revised system will result in the collection of more valid and reliable data.

SCDE staff informed OSEP that in order to meet the 618 data reporting requirements, South Carolina uses electronic and pencil/paper data collection systems. SCDE's electronic database, School Administrative Student Information System (SASI) provides such information as, administrative (e.g. personnel data), instructional (e.g. class scheduling) and reporting (e.g. student enrollment). To collect and report Table 1 (Child Count) and Table 3 (Placement) data, the State uses a software program, *Tranquility*, that integrates with SASI and enables schools and LEAs to track and report information on students enrolled in special education, as well as compliance with State and Federal individualized educational program (IEP) requirements. For each student, the system stores disability type, district codes, relevant dates related to eligibility and referral data, and residential status. The application generates local special education reports, including duplicated and unduplicated pupil counts, placement settings, and summaries by age group, ethnicity, and disability category.

SCDE staff informed OSEP that the majority of schools continue to use pencil/paper methods for collecting and reporting all 618 data to LEAs because SCDE cannot require schools to use electronic formats. SCDE staff also informed OSEP that efforts to enter accurate data are hampered by school personnel's misinterpretation of 618 directions, errors in paper data submissions, and schools' lack of consistency in submitting data to LEAs. To address these issues, SCDE is planning to: 1) add data fields to the Excel database to collect data for Tables 2 (Personnel), 4 (Exiting), and 5 (Discipline); 2) strongly encourage schools to submit data electronically; and 3) schedule additional training sessions for schools and LEAs on proper methods for collecting and submitting accurate data to the State.<sup>3</sup> Also, SCDE developed, with the help of a full-time data manager in OEC, a customized Excel spreadsheet for LEAs to collect and submit data for Tables 1 and 3. The Excel database includes checks and balances designed to ensure accurate data collection, such as a color-coded system that identifies errors in data entry and crosschecks between Tables 1 and 3.

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<sup>3</sup> According to SCDE's data manager, training is currently provided to schools and LEAs three times during the school year. Training materials are also posted on SCDE's web site.

SCDE staff informed OSEP that the State downloads and compiles data for Table 2 from the human resource office database within the SASI system. Schools and LEAs can use the *Tranquility* software or other forms they have created to report data to the State for Table 4. LEA special education directors use information from school administrators' discipline databases to collect and report data for Table 5.

SCDE staff informed OSEP that collecting and reporting accurate discipline data is "problematic" because: 1) schools and LEAs use different formats to collect and submit the data to the State; and 2) schools' discipline data definitions are not the same as OSEP's. To ensure that accurate discipline data is collected and submitted in a consistent manner across schools and LEAs, SCDE staff informed OSEP that LEA special education directors are working with school administrators to match OSEP's discipline data definitions with those identified in the school's database. In addition, SCDE's monitoring staff is reviewing schools' suspension and expulsion data during monitoring visits to further examine the collection of the discipline data.

In order to ensure that the improvements SCDE is making to its system for collecting and reporting data under section 618 will result in more accurate data, OSEP requests SCDE to report on its progress within 60 days of receipt of this letter.

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

As documented in South Carolina's *Spring 2002 Assessment Manual* and confirmed in interviews with SCDE staff relating to South Carolina's State-wide assessment program, all students with and without disabilities must participate in South Carolina's assessment program. South Carolina utilizes the Palmetto Achievement Challenge Test (PACT) and the High School Assessment Program (HSAP), beginning the spring of 2004, to evaluate students in South Carolina for the attainment of curriculum standards. The PACT measures student performance in the areas of mathematics, reading/language arts, science and social studies in grades three through eight. The four performance level test results for the PACT are "below basic," "basic," "proficient," and "advanced." Assessment results are documented on SCDE's website and the results are used for reporting adequate yearly progress (AYP) under the *No Child Left Behind Act (NCLB)*.

According to the written materials and staff interviews, the HSAP is administered when a student enters tenth grade and measures student achievement in mathematics and language arts. The HSAP's mathematics and language arts tests have four levels: 1, 2, 3, and 4. A student must score level 2 or higher on the HSAP, as well as meet the required number of Carnegie units, to receive a regular high school diploma. Students who do not meet standards in any of the areas tested by the HSAP, may re-take that portion of the test. Students who do not pass the HSAP receive a certificate of attendance instead of a regular high school diploma.

Staff informed OSEP that students with disabilities in grades three through eight are administered the PACT with or without accommodations, out-of-level testing, or an alternate assessment as identified in the student's IEP. Students who require an alternate assessment are tested using the PACT-Alternate (PACT-Alt) or the HSAP-Alternate (HSAP-Alt). The PACT-Alt and the HSAP-Alt are portfolio-based assessments that provide evidence of student performance relative to progress within the content areas of the South Carolina curriculum standards. The PACT-Alt performance level test results are the same as the PACT and the HSAP-Alt achievement levels are the same as the HSAP.

Based on the published results on SCDE's web site, SCDE is reporting the performance of students with disabilities on the regular and alternate assessment, to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children consistent with Federal requirements at 34 CFR §300.139. SCDE staff also informed OSEP that throughout the school year, the State provides assessment workshops, training and a bi-monthly newsletter that includes information on assessing students with disabilities, for school and LEA staff. The State has also implemented an assessment television series designed to keep teachers and administrators informed about issues related to the PACT and HSAP. LEA test coordinators are responsible for ensuring that appropriate staff is provided with the necessary technical assistance.

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

### **Conclusion**

In conclusion, as noted above, OSEP requests that SCDE continue to report on its progress in meeting and/or maintaining compliance with 34 CFR §§300.511 and 300.661 through its APR and IP submissions and report on its progress in improving the accuracy of student placement data within 60 days of receipt of this letter. In addition, OSEP will review information submitted that relates to the new monitoring system and continue to address this issue through the IP and APR processes.

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to our continued collaboration with South Carolina 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: Mrs. Susan DuRant