



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

Dr. Lana Seivers
Commissioner of Education
Tennessee Department of Education
6th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243-0375

FEB - 6 2004

Dear Commissioner Seivers:

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 Tennessee. 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 and improving performance under Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to Tennessee during the week of August 18, 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 Tennessee Department of Education (TDE), the OSEP staff met with Mr. Joseph Fisher (the State's Director of Special Education), and members of TDE'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) Tennessee's Part B State Self-Assessment and Improvement Plan; (2) TDE's Continuous Improvement Monitoring Procedures; (3) OSEP's 1996 Monitoring Report of TDE; (4) Tennessee Census Reporting Directions; (5) Tennessee's 2003 Eligibility Documents; (6) the State's Biennial Performance Report for grant years 2000-2001; (7) selected TDE monitoring files for school districts, including monitoring reports and corrective action documents; (8) a tracking log of special education complaints sent to TDE for resolution; (9) a log and selected files regarding requests for due process hearings; and (10) other information from the State's website. OSEP also conducted a conference call on August 4, 2003, with Tennessee's State Advisory Panel on Special Education, 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, for Part B, State-wide Assessment. The information that Mr. Fisher and his 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 TDE'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.

OSEP believes that TDE's systems for general supervision constitute a reasonable approach to the identification and correction of noncompliance. OSEP is, however, concerned that the absence of a procedure for interviewing related service personnel, administrators, and parents may impact on TDE's ability to identify noncompliance. Further, OSEP cannot, without also collecting data at the local level, determine whether TDE's systems are fully effective in identifying and correcting noncompliance. In addition, OSEP found that TDE was not in compliance with the Federal requirement to process complaints within 60 days as provided for by 34 CFR §300.661(a) & (b)(1). Finally, as noted below, OSEP found that TDE was not in compliance with the Federal requirement for due process hearings at 34 CFR §300.511.

Through interviews, TDE staff informed OSEP that Tennessee has developed a new monitoring system, the Continuous Improvement Monitoring Process (CIMP), which TDE began during the 2001-2002 school year. The CIMP is utilized to assess compliance with Part B requirements and improve the outcomes for children with disabilities in local educational agencies. Through interviews with TDE staff, OSEP was informed that TDE uses its "old," primarily compliance-oriented, monitoring system to assess Part B compliance in State operated programs. TDE also monitors private schools where children with disabilities are placed by local educational agencies.

As explained by TDE staff and confirmed by OSEP's review of monitoring documents, TDE's CIMP process has been patterned after the model utilized by OSEP. TDE's monitoring process includes a self-assessment and validation visit for every local education agency on a 3-year cycle. Each local education agency annually completes and submits a self-assessment. Districts "have the opportunity to describe current and planned efforts to improve performance for each indicator." As documented by TDE's monitoring schedule, TDE visits approximately 48 districts (out of 139) per year to validate each local education agency's self-assessment. TDE staff confirmed that all districts will complete all phases of the CIMP during the 2003-04 school year.

TDE staff stated that they provided regional training to local educational agencies on conducting a self-assessment when the CIMP process was initiated. TDE provides annual CIMP training throughout the State for new staff. Local educational agencies are given the school year to complete the self-assessment and have to provide documentation to support performance relative to the performance indicators. In consultation with the local Steering Committee, local educational agencies make a determination whether each indicator has been met. Further, OSEP confirmed that TDE validates the self-assessment by returning to conduct a records check, and an exit meeting is conducted with the Steering Committee. The Steering Committee works with local education agencies to develop a program improvement plan (PIP). TDE staff oversees the PIP process and provide guidance and technical assistance to the local educational agencies as needed.

As explained by TDE staff and confirmed through a review of monitoring files, TDE consultants follow-up on the PIP. Local education agencies are required to provide documentation to support the action steps in the PIP. If the local education agency does not meet the timelines, TDE may impose sanctions. TDE stated that imposing sanctions against local educational agencies is usually unnecessary. As explained to OSEP, each local educational agency must also have an approved Comprehensive Plan every year. TDE may hold Federal funds until the Comprehensive Plan is approved and the Comprehensive Plan may be held until PIP action steps are taken. TDE noted that one local educational agency had not received approval of their Comprehensive Plan until a problem with comparable classrooms for special and non-special education programs was fixed.

TDE reported that it has reviewed its monitoring process and made some changes to the process as a result. During the 2002-2003 monitoring cycle, TDE sent surveys to special education teachers, select administrators, and parents to validate the information collected in the self-assessment. Through its review of its monitoring system, TDE has decided to conduct onsite teacher interviews to validate data collected in its sample of record reviews during the 2003-2004 monitoring cycle. TDE is also revising its parent survey to address suggestions made by parents during the previous year. TDE stated that it also utilizes data collected for Federal reporting to further validate the CIMP process and to make data-based decisions. For example, TDE requires local educational agencies to report disproportionality rates to examine placement patterns based on race and this data is compared annually to look at trends. OSEP encourages TDE to include a method for obtaining monitoring information from related service providers and to evaluate current procedures to determine if interviews with administrators and parents would further enhance TDE's ability to identify noncompliance.

During OSEP's call with members of the State's Steering Committee, members expressed a concern that not all Part B complaints are being resolved within the 60-day timeline. TDE explained that delays were due to local educational agencies failing to respond in a timely manner to the complaints as well insufficient staff at the State level. In the Improvement Plan that TDE submitted to OSEP on September 17, 2003, TDE documented that timelines were not being met. TDE has addressed this issue by hiring another person to respond to the complaint workload and is revising procedures to ensure that responses from local educational agencies are received in a timely manner. In addition, OSEP reviewed documentation that demonstrates TDE has established a complaint tracking system.

OSEP will work with TDE regarding the approval of the Improvement Plan to address issues related to the 60-day timeline in a separate letter. TDE must provide OSEP with documentation in its March 2004 Performance Report to demonstrate compliance with the requirement at 34 CFR §300.661(a) & (b)(1).

TDE informed OSEP that due process hearings are conducted by a pool of 17 contracted hearing officers through TDE's Division of Special Education. One concern expressed during OSEP's call to the Steering Committee was the excessive amount of time that it was taking to get decisions because of extensions of timelines granted by hearing officers. As set forth at 34 CFR §300.511, TDE is required to ensure that not later than 45 days after the receipt of a request for a hearing a final decision is reached 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.

TDE provided OSEP a log of due process hearing requests from July 2001 through August 2003. In examining the log, OSEP was not able to determine if extensions of the timelines were granted or when written decisions were provided to the parties participating in the due process hearings. OSEP also requested and reviewed a sample of seven due process hearings. All seven decisions went over the 45-day timeline. In some files, there was no record of whether a request for an extension had been made, whether a request had been granted, or a specific amount of was being granted for an extension. When asked about tracking due process hearing requests, the TDE staff person responsible for administering the due process hearing system stated that hearing officers were responsible for ensuring that timelines were met and that there was no tracking system within TDE to ensure that due process timelines were being met.

In the Improvement Plan that TDE submitted to OSEP on September 17, 2003, TDE indicated that it will implement a new procedure, the "Model Order of Continuance," to address the timely resolution of due process hearings. OSEP will work with TDE regarding the approval of the Improvement Plan in a separate letter. TDE must provide OSEP with documentation in its March 2004 Performance Report to demonstrate compliance with the requirement at 34 CFR §300.511.

TDE is in the beginning stages of integrating data across systems. As indicated above, TDE is utilizing disproportionality rates to examine placement patterns on race through its monitoring of local education agencies. TDE is also beginning to integrate issues identified through due process hearings and complaint investigations into its monitoring system. In addition, data collected under 618 is being examined by TDE through its monitoring of local education agencies.

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.

Through TDE's data reporting documents and information reported by TDE data personnel, OSEP learned that TDE collects data from its local educational agencies through one system, the Special Education Information Management System (SEIMS). This system, with refinement, has been in operation since the 1991-1992 school year. TDE utilizes the same contractor to compile, check, aggregate, and provide the data to TDE. The data collected through the SEIMS is used for Federal reports, State required information (e.g., financial reports), and information Tennessee is required to collect due to a court case. The data for child count is submitted to TDE by December 13. The "End of the Year Report" is reported to TDE by June 30 and includes all the remaining data required by OSEP.

In interviews with TDE personnel and the data contractor, OSEP identified a number of strengths and weaknesses with TDE's data collection system. TDE is moving to a web-based collection system that will be implemented during the 2003-2004 school year. This new system will eliminate problems in transferring information via paper or disk and issues with agencies not using up-to-date software versions of the data collection program. TDE also collects data through simple, understandable data entries. This helps eliminate error through incorrect interpretation of instructions by data entry personnel. TDE's system has been successful in collecting timely and accurate data. TDE staff reported that 100% of local educational agencies submitted their data according to timelines during the last year and that only five or six out of the 146 local educational agencies were required to correct errors.

TDE staff acknowledged that there were challenges in the data collection process. Although approximately 80% to 90% of local educational agencies use Social Security Numbers (SSNs) for student identifiers, local educational agencies are not required to use a student identifier. For the local educational agencies that do not use SSNs, it is possible that data errors such as duplicate counts could result from the lack of a student identifier. TDE staff stated, however, that checks using other data fields for matches have made up for this potential problem. In addition, TDE informed OSEP that one large school district maintains its own data management system that does not conform to the State's system. TDE stated that it has not required conformity by the large school district. OSEP believes that the lack of conformity may create problems in maintaining consistent data collection procedures. OSEP encourages TDE to determine whether these data collection procedures and the accuracy of the data have been significantly affected and, if so, to develop and implement strategies to correct these issues.

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 Tennessee'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 on the participation and performance of students with disabilities on the regular State-wide assessments 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. Further, as explained below, TDE is in non-compliance with 34 CFR §300.139(a) by not reporting on the participation and performance of students with disabilities on the alternate assessment as required by Part B.

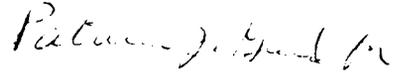
TDE informed OSEP that it has provided extensive training and guidance to local education agencies on the State-wide testing requirements. All children with disabilities participate in each of the regular assessments in which nondisabled children participate, unless the individualized education program team determines that participation in the regular assessment is not appropriate for a specific student and administers the alternate assessment. TDE's procedures show that TDE monitors local education agencies through sample record reviews of individualized education plans for compliance with requirements regarding State-wide assessment.

As evidenced by documents relating to Tennessee's State-wide testing program and interviews with TDE staff, Tennessee utilizes the Tennessee Comprehensive Assessment Program (TCAP) to evaluate all students in Tennessee for attainment of curriculum standards and as a requirement for obtaining a high school diploma. Interviews with TDE testing personnel confirmed that all students are required to participate in the TCAP. Testing personnel acknowledged that the participation rate is approximately 95%. Based on the published results on TDE's web site, Tennessee is reporting the performance of students with disabilities on the regular TCAP to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children consistent with the requirement at 34 CFR §300.139.

TDE informed OSEP that Tennessee's alternate assessment, the TCAP Alternate Assessment (TCAP-Alt), is utilized to assess children with disabilities when the individualized education program team has determined that the regular TCAP with or without accommodations is not appropriate. The TCAP-Alt is a portfolio or body of evidence method of assessment. As set forth at 34 CFR §300.139(a), TDE is required to report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children the participation and performance of children with disabilities on the alternate assessment. When examining the TDE published TCAP performance data, OSEP was unable to find the performance and participation of children with disabilities on the TCAP-Alt. TDE administrators in interviews with OSEP acknowledged that TCAP-Alt had not been published on TDE's web site. As a result, OSEP finds that Tennessee is not in compliance with the reporting requirements for State-wide assessments at 34 CFR §300.139(a) and requests that TDE submit a plan to correct noncompliance with this requirement within 60 days from the date of this report.

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to our continued collaboration with Tennessee 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: Mr. Joseph Fisher