



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

Honorable Dwight D. Jones
Commissioner
Colorado Department of Education
201 East Colfax Avenue, Room 500
Denver, CO 80203-1799

MAY - 9 2008

Dear Dr. Jones:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP) verification and focused monitoring visit to Colorado during the week of December 10, 2007. The August 15, 2007 letter informed you that OSEP is conducting verification, and in some cases, focused monitoring 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 Part B of the Individuals with Disabilities Education Act (IDEA). As re-authorized in 2004, IDEA requires the Department to monitor States with a focus on: (1) improving educational results and functional outcomes for children and youth with disabilities; and (2) ensuring that States meet the program requirements, particularly those most closely related to improving educational results for children with disabilities.

The purpose of our verification and focused monitoring visit was to evaluate the State's general supervision and data systems in order to assess and improve State compliance and performance, child and family outcomes, and the protection of child and parent rights and to review the State's procedures for its distribution and use of IDEA funds and the timely obligation and liquidation of those funds. During the verification and focused monitoring visit, OSEP: (1) analyzed the components of the State's general supervision and data systems to determine the extent to which they are designed to ensure compliance and improve performance; and (2) targeted the issues regarding transition from Part C to Part B identified in our June 15, 2007 letter responding to the Colorado Department of Education's (CDE) Federal fiscal year (FFY) 2005 Annual Performance Report (APR)/State Performance Plan (SPP).

OSEP also conducted a conference call on October 18, 2007 with a few stakeholders and met on December 10, 2007 with several members of Colorado's Special Education Advisory Council to hear their perspectives on the strengths and challenges of the State's systems for general supervision, data collection, and fiscal management.

As part of the December 2007 verification and focused monitoring visit to Colorado, OSEP staff met with CDE personnel responsible for: (1) Colorado's general supervision system (including monitoring and dispute resolution) and its procedures for distribution

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and use of IDEA Part B funds for ensuring the timely obligation and liquidation of those funds; and (2) the collection and analysis by CDE of required State-reported data under IDEA. In addition, OSEP staff accompanied by State representatives, visited El Paso 11 and South Central BOCES to meet and discuss issues with leadership representatives regarding noncompliance with the requirements at 34 CFR §300.124.

Prior to and during the visit, OSEP staff reviewed a number of documents, including the following: (1) Colorado's February 2007 submission of the State's FFY 2005 APR and revised SPP; (2) Colorado's grant award letters and applications for the periods of FFY 2003 through FFY 2007; (3) progress reports related to Colorado's FFY 2007 grant award's special conditions; (4) OSEP's verification visit letter to Colorado, dated June 9, 2005; (5) CDE's web-site; (6) CDE's Continuous Improvement Monitoring Process (CIMP) Manual; (7) 26 Administrative Unit (AU)¹ monitoring reports for the period of 2004 through 2007; (8) 17 AU corrective action plans for the period 2004 through 2006; (9) dispute resolution logs for the period of 2004 through 2007; (10) 14 records from two AUs of children with disabilities who transferred from Part C to Part B; and (11) other pertinent data.

OSEP's discussion, conclusions and required actions for each of the critical elements used to guide our review of each State's general supervision, data, and finance systems are provided below.

General Supervision System – Discussion

Critical Element 1: Does the State have a general supervision system that is reasonably designed to identify noncompliance?

The Colorado CIMP was implemented in 2005. CDE staff reported that Colorado monitors its eight regions and State operated programs on a five-year cycle for compliance with IDEA and Colorado's Exceptional Children Education Act (ECEA) requirements. The CIMP is conducted by CDE's Exceptional Student Services unit. The initial phase of the CIMP requires the AU to conduct a formalized self-assessment. As described in the CIMP manual and reported by staff, the AU establishes a steering committee that determines its strengths and improvements needed in the areas of local general supervision (i.e., mechanisms to ensure appropriate supports and services such as parent and child protections and dispute resolution), parent involvement, transition (early childhood and secondary), child find, eligibility, initial evaluation and reevaluation, and free appropriate education (FAPE) in the least restrictive environment. During this initial phase, AUs also collect data from a variety of sources that include: child and staff counts; student record reviews; parent, teacher and administrative surveys; and focus groups. The data is reviewed by a visiting team that is composed of members of CDE's nine regional liaisons, four contractors, and other staff members who conduct onsite visits to the AU. The contractors are former Colorado special education directors or supervisors of the CIMP monitoring process. The visiting team used the results of the data in

¹ "Administrative Unit shall mean a school district or board of cooperative services approved by the Colorado Department of Education." Rules (for the) Administration of the Exceptional Children's Education Act, May 9, 2002

determining the scope of the onsite visit, and the data serve as a mechanism for improving services to children with disabilities.

The second phase, the verification process, consists of two stages to verify the data from the first phase. The first stage includes a preliminary visit to the AU to determine the scope of the onsite visit. During the second stage, the verification team conducts an onsite visit that includes: (1) interviews with staff and parents; (2) meetings with focus groups; and (3) comprehensive services reviews. The comprehensive services reviews include classroom observations and student record reviews noting compliance with IDEA and ECEA requirements.

CDE staff reported that the State uses both qualitative and quantitative data to identify noncompliance. Staff is trained to use multiple sources of data prior to making a finding of noncompliance to increase the validity of its findings. The State makes a finding of noncompliance when the State determines that the AU's policy, procedure, or practice does not meet Federal or State requirements. When the State identifies an isolated incidence of noncompliance involving a student's IEP, the State cites the AU for noncompliance, but does not cite the AU for a systemic violation.

Staff also reported that, prior to August 2007, CDE used an 80% threshold to make a finding of noncompliance. CDE officials reported that, beginning with FFY 2007, CDE will use a 95% threshold. OSEP finds that CDE's establishment of a single 95% threshold for making all findings and identifying all noncompliance is inconsistent with Part B monitoring and correction requirements in IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E). While the State may take into account the extent of the noncompliance in determining what corrective action is required and in making determinations about LEA performance, the State must ensure the correction of all noncompliance, notwithstanding the extent of the noncompliance.

OSEP reviewed CDE's monitoring reports for 23 of the 26 AUs visited by the State during the period of 2004-2007. Each AU is responsible for ensuring compliance with IDEA and ECEA rules. OSEP noted during the review of the 23 AU monitoring reports that CDE cited systemic findings regarding noncompliance with the following requirements included in Colorado's FFY 2004 SPP and FFY 2005 APR submissions: (1) 34 CFR §300.101 related to FAPE; (2) 34 CFR §300.170 related to significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than 10 days in a school year (Indicator 4A); (3) 34 CFR §300.600(d)(3) related to disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification (Indicators 9 and 10); (4) 34 CFR §300.301(c)(1) regarding initial evaluation within State-established timelines (Indicator 11); (5) 34 CFR §300.124 regarding the development and implementation of an IEP by their third birthday for children with a disability transitioning from Part C to Part B (Indicator 12); and (6) 34 CFR §300.320(b) ensuring that an IEP for youth aged 16 and above includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals (Indicator 13). OSEP found that CDE also cited noncompliance with the requirements at 34 CFR

§300.115 regarding a continuum of alternative placements for children with disabilities in two AUs and cited the same issue as an area of recommendation in two other AUs. In interviews with OSEP, CDE staff explained that it makes a “recommendation” to AUs, rather than a finding of noncompliance, when CDE determines that: (1) some data (quantitative, qualitative or a combination of both) establish a concern or an isolated violation but the data, when viewed as a whole, are ambiguous or conflicting and there is not enough evidence to support a legally sufficient citation of a systemic violation, e.g., an isolated individual violation exists but systemic noncompliance is not substantiated by review of multiple files; (2) compliance standards have been met, but quality standards or guidelines (i.e., best practices) established by the CDE have not been reasonably met; and/or (3) an area does not fall within the purview of the IDEA (e.g., recommendations regarding raising low achievement scores). In the cases where two reports addressed the area as recommendations related to 34 CFR §300.115, the State determined that there was not enough evidence to support a legally sufficient citation of a systemic violation.

Staff reported that although there have not been major revisions to the CIMP since the FFY 2005 APR submission, the CIMP is being reviewed, and changes to the system are proposed for fiscal year 2008. The CIMP redesign will place a greater emphasis on the assessment of quantitative data collected on the Indicators. Therefore, the State will select AUs for either focused or comprehensive monitoring based on local reports of performance on SPP Indicators. Colorado has established a list of factors to be considered in targeting AUs for monitoring, including: (1) nature and number of citations issued and outstanding noncompliance not corrected within one year of identification; (2) compliance related to Indicators 9, 10, 11, 12 and 13; (3) data reliability, validity, and timeliness of submission; (4) nature and number of dispute resolution complaints; (5) performance on key results indicators; and (6) desk audit results and determination history. CDE plans to focus its efforts on low performing AUs and periodically monitor high performing AUs to identify best practices. An annual performance profile will be completed for each AU and posted on CDE’s website. The profile is a tool to assist CDE in determining an AU’s performance in relation to the State’s performance and will assist the State in determining which AUs will participate in each year of the CIMP; developing improvement strategies and activities; and making additional changes to the CIMP.

Critical Element 2: As part of its general supervision system, does the State have mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, previous monitoring results, etc.) to identify systemic noncompliance issues?

CDE staff reported that the CIMP is driven by performance, survey, observation and student file data that are collected across the State’s data systems. CDE outlined in the State’s November 2007 desk audit submission and reported during the December verification visit, how data are used for the various components of its general supervision system. In Phase I of the CIMP, the visiting team spends three months prior to the on-site visit reviewing local 618, financial, and dispute resolution data to develop interview questions for addressing the suspected noncompliance issues. Results of the data review are also used to analyze trends for reporting in the SPP/APR submissions, determine

systemic issues, and ensure that accurate student data is submitted to CDE.

CDE also utilizes data from dispute resolution, 618 submissions, and assessment data to target AUs for monitoring, compile data for the SPP/APR, and make determinations. The State's determinations for the FFY 2005 reporting period were based on data collected through the CDE's data systems. For this reporting period, CDE determined that 23 AUs met requirements, 21 AUs need assistance, and 13 AUs need intervention.

The 13 AUs that received a State determination of "needs intervention" received that determination due to the lack of "C" to "B" transition data. Colorado did not include in its February 1, 2007 FFY 2005 APR submission to OSEP data regarding the number of Part B eligible children who were served by Part C and had an IEP developed and implemented by their third birthday (34 CFR §300.124). CDE reported during the verification visit that the State had data for two-thirds of the AUs, but that the remaining third reported no data. Upon examination, CDE found that the data for these AUs existed in the AUs' early childhood preschool offices; however, staff responsible for reporting data for Indicator 12 was not aware that this data existed. In addition, the State's spring 2006 end-of-the year report did not include elements to capture the transition data.

OSEP examined how the State is monitoring the implementation of the transition requirements at 34 CFR §300.124(b). OSEP selected two AUs and found that all children with disabilities who were transitioning from Part C to Part B had an IEP developed and implemented by their third birthday, and that these AUs submitted the required transition data to CDE. However, the State reported that two AUs had not reported the required data. The State was awaiting the receipt of data from these two AUs for inclusion in the FFY 2007 APR reporting to OSEP. Therefore, without the data submission from all AUs, OSEP is not able to determine whether the State meets the requirements at 34 CFR §300.124(b). OSEP will provide a determination of the State's compliance with these requirements in its response to Colorado's FFY 2007 APR submission.

Critical Element 3: Does the State have a system that is reasonably designed to correct identified noncompliance, including the use of State guidance, technical assistance, follow-up, and if necessary, sanctions?

CDE's monitoring procedures indicated that within 90 days of an onsite visit, CDE issues a written report to AUs that includes an executive summary, findings, strengths, and recommendations. CDE reported in Colorado's 2005-2010 SPP that it developed and implemented a comprehensive system for correcting noncompliance through the third phase of the CIMP process. The AUs have 45-calendar days after the issuance of the monitoring report to correct findings of noncompliance related to individual children (nonsystemic findings). CDE reported that systemic findings of noncompliance must be corrected within one year of identification. The CIMP manual states and CDE reported that monitoring reports and the executive summaries are provided to AUs 90 days after the Phase II verification visit activities have been completed. The executive summary includes the deadline for correction of all identified noncompliance. The AUs provide a

corrective action plan (CAP) within 90 days from receipt of the report, and CDE provides AUs written notification of acceptance or disapproval of the CAP within 30 days of receipt.

CDE implemented additional CIMP procedures and activities during the 2006-2007 school year to address timely correction of noncompliance that included increasing monitoring personnel through contracting. CDE staff reported that regional liaisons and contractors are primarily responsible for: (1) leading monitoring teams during Phases I and II; (2) writing the monitoring report; and (3) providing technical assistance during Phase III with a focus on ensuring that AUs provide sufficient evidence demonstrating that noncompliance has been corrected. Sufficient evidence may include, but is not limited to, data and information from interviews with school personnel, student files, desk audits, service logs, and policies, procedures and practices. Regional liaisons and contractors determine, at the close of the one-year correction period, whether Federal and State compliance requirements have been met and prepare documentation for the letter of closure or recommendation for sanctions. The decision for imposing sanctions is made by CDE's administrative council. The CIMP coordinator reviews all documentation and prepares the letter of closure or sanction for signature by Colorado's special education director. Although not included in the CIMP manual, the State reported to OSEP that CDE conducts visits to AUs once a year, or more often as necessary, to review and discuss the evidence documenting correction of identified noncompliance.

In OSEP's review of the State's data and information regarding the status of CAPs for 17 AUs monitored during school years 2004-2005 and 2005-2006, OSEP noted the following: (1) the State verified timely correction of noncompliance in two out of 17 AUs; and (2) the State verified that 13 out of 17 AUs corrected noncompliance within 15 to 28 months after written notification of identified noncompliance. The State imposed sanctions on the two remaining AUs for findings of noncompliance identified in July and November 2005. Accordingly, OSEP finds that the State is not ensuring the timely correction of noncompliance.

Special Conditions

OSEP's July 2, 2007 grant award letter continued to impose Special Conditions on the State regarding the failure to correct longstanding noncompliance with the requirements to provide: (a) services and supports to meet the needs of children with disabilities (34 CFR §300.101); (b) needed psychological counseling services (34 CFR §300.34(c)(10); and (c) adequate supports for children with behavior disorders (34 CFR §300.324(a)(2)(i)). Although the State had reported correction of this noncompliance, OSEP concluded that the State was not using the proper standard for correction. OSEP directed the State to provide two Progress Reports, the first due November 30, 2007, and the second due June 1, 2008. According to the State's November 30, 2007 progress report, CDE reviewed data and information from the relevant AUs under the proper standard of correction to ensure that the AUs had corrected the longstanding noncompliance. As a result, CDE concluded that six of the eight AUs had corrected the noncompliance, and CDE imposed sanctions upon the remaining two AUs. CDE issued

sanction letters, dated November 27, 2007, to the local school boards and superintendents requiring the submission of an improvement plan by December 21, 2007, additional actions to be taken by the AU, and a status report submission date. CDE's letter reported that it used a standard of 95% correction. However, CDE provided additional information to OSEP indicating that 100% of noncompliance had been corrected in those AUs where the State found correction. Based upon OSEP's review of Colorado's November 30, 2007 progress report demonstrating activities conducted by the State to document correction of noncompliance and/or the implementation of sanctions where appropriate, and the additional information provided to OSEP, OSEP is removing the State's Special Conditions regarding the above requirements, and no further reporting is required.

District-wide Assessments

OSEP's June 15, 2007 APR response letter also required the State to report on the status of the two AUs that continue to demonstrate noncompliance with the requirements of 34 CFR §300.160 regarding district-wide assessments. The State verified correction of the noncompliance cited for this requirement in one AU and imposed sanctions on the remaining AU. However, during the period of 2005-2007, CDE found noncompliance with this requirement in other AUs. Therefore, Colorado continues to demonstrate noncompliance with the requirement at 34 CFR §300.160. In order to determine the status of AUs' development and implementation of a district-wide alternate assessment, CDE conducted a survey of the 180 districts during the spring of 2007. The survey showed that of the 153 district respondents, 143 administered a district-wide assessment. Of those 143 reporting districts, 22% had implemented and administered one; 19% were developing one; 16% will implement one during the 2007/2008 school year; and 43% had not developed a district-wide alternate assessment and did not have plans to implement one in the 2007/2008 school year.

Colorado has developed an action plan to: (1) determine the status of the remaining 27 districts that did not respond; (2) follow-up with the 86 districts that do not have a district-wide alternate assessment to determine needed technical assistance from CDE; (3) identify which of the 59 districts that do not have district-wide alternate assessments to see which have been cited for noncompliance regarding the requirements at 34 CFR §300.160, the status of correction, and the development of the district-wide alternate assessment; and (4) design a process for assisting districts in determining if they need or want to develop a district-wide assessment. Colorado reported that it will include in the FFY 2006 APR submission, due February 1, 2008, a description of the progress made by the State in ensuring compliance with the requirements at 34 CFR §300.160. OSEP will provide a determination of the State's compliance with these requirements in its response to Colorado's FFY 2007 APR submission.

Critical Element 4: Has the State 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 in a timely manner? If barriers have been identified, what mechanisms has the State put in place to address those barriers?

CDE identified several barriers that impede the State's ability to identify and correct noncompliance in a timely manner, including issues related to data collection, staffing, time and resources. CDE identified an inadequate data collection system as one barrier to its ability to identify and correct noncompliance in a timely manner. As a result, the State has undertaken a major overhaul of all of its data systems. All major data systems used to collect 618 and SPP/APR Indicator data have been or are in a stage of re-development for the period of spring 2006 through the fall 2008.

CDE reported that it has increased its staff to address the additional time and resources needed to implement the SPP, specifically around the verification of correction of identified noncompliance. With 40% of its staff hired between 2003 and 2005, CDE reported that it has committed resources to build capacity through training on identifying and ensuring the timely correction of noncompliance, and providing a mentoring program.

Critical Element 5: Does the State have dispute resolution systems that ensure the timely resolution of complaints and due process hearings?

The State reported that it has dispute resolution systems in place to ensure timely resolution of complaints and due process hearings. Colorado reported that it made the following changes to its dispute resolution system: (1) updated its procedural safeguards and mediation brochure to reflect the IDEA 2004 reauthorization and regulations; (2) aligned ECEA Rule 6.02(7)(b) with the IDEA 2004 regulations; (3) included suggested remedies in the revised and updated State complaints procedure; (4) implemented the 30-day resolution process, including forms, to document the resolution activities to meet the requirements at 34 CFR 300.506(a); and (5) established a system for tracking the implementation of decisions.

Staff reported that prior to 2007, Colorado did not verify the AUs' implementation of complaint and due process hearing decisions because there had not been any reported issues regarding AUs' ability to meet the terms of the decisions. During 2007, CDE developed a process for tracking the implementation of complaint and due process hearing decisions, making the regional liaisons responsible for providing CDE with the evidence.

OSEP found through its review of complaint and due process hearing logs located on CDE's website for a three-year period (2004-2007) that 63 complaints and 72 due process hearings were filed, and all but one due process hearing and two complaints were resolved within timelines. The overdue due process hearing decision documented orders granting continuance, but the orders did not specify dates for the extensions. To ensure that the State is addressing these issues, CDE has purchased case management legal software that allows the State to capture the reassignment of complaint officers to cases. CDE reported that its case management staff is currently being trained on the use of the software program that is projected for online use beginning February 2008.

In the June 15, 2007 APR response letter to CDE, OSEP noted that the State reported that there was one complaint still pending “due to exceptional circumstances related to the case.” The State was directed that if the timeline for this complaint was properly extended pursuant to 34 CFR §300.152(b)(1), the State should not report this complaint in its FFY 2005 APR. As explained above, OSEP’s review showed that the decision was not issued within the extended timelines pursuant to this requirement.

Critical Element 6: Does the State have mechanisms that focus on improving educational results and functional outcomes for all children with disabilities?

Colorado’s mechanisms that focus on improving educational results and functional outcomes for all children with disabilities include the work of the Colorado Special Education Advisory Committee (CSEAC) and CDE’s Indicator Teams. The CSEAC and its subcommittees meet quarterly or more frequently when needed to address SPP/APR issues related to graduation rates, dropout rates, transition planning, and other issues related to improved educational results. The State reported that CSEAC and CDE staff ensure that data collected through the SPP/APR process impact decisions on improvement activities that will result in effective services to children with disabilities.

Staff reported that CDE’s Indicator Teams examine data for SPP/APR indicator clusters to determine what is needed to improve results. The teams recommend the types of technical assistance and resources AUs need. Some of the improvement activities that have impacted education results and functional outcomes for children with disabilities include positive behavioral supports through a State improvement grant (SIG), accountability for all children with disabilities through alternate assessment and accommodations in statewide testing, inclusive preschool environments and quality services, and secondary services and post school outcomes. A specific example of improvement activities that have impacted education results and functional outcomes for children with disabilities is the use of Colorado’s SIG for its statewide Positive Behavior Supports initiatives. The State reported that these initiatives have led to decreased suspension/expulsions rates among children with disabilities. The State further reported that these initiatives have led to improvement in the overall school climate and learning environment, and the State expects that these results will ultimately lead to fewer dropouts, and an increase in the percentage of disabled students graduating with a regular diploma and an increase in positive post-school outcomes.

General Supervision System – Conclusions and Required Actions

Based on OSEP’s review of Colorado’s Part B’s general supervision system, OSEP determined that CDE: (1) has mechanisms in place to compile and integrate data across systems to identify systemic noncompliance issues; and (2) has dispute resolution systems in place to ensure timely resolution of complaints and due process hearings. OSEP also finds that, although the State has a system of general supervision that is reasonably designed to identify noncompliance as required in IDEA, CDE’s 95% threshold for making findings and identifying noncompliance in AUs is inconsistent with Part B monitoring and correction requirements in IDEA sections 612(a)(11) and 616, 34

CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E). Using a specific percentage threshold does not take into account the magnitude of the noncompliance. While a State may determine when a noncompliance is systemic and the level of noncompliance that requires a corrective action plan or other corrective action measures, and the levels the State may use to conduct local determinations under IDEA section 616, the State must ensure that its standard for compliance is 100%. Therefore, CDE must remove the 95% threshold for identifying noncompliance.

In addition, the State's general supervision system is not reasonably designed to ensure correction of noncompliance as soon as possible and within one year from the date on which the noncompliance is identified. In addition to all other information and data required to be reported in Indicator 15, Colorado must include in Indicator 15 in its FFY 2007 APR, due February 1, 2009, (1) specific information documenting the correction of noncompliance for the two AUs identified with noncompliance in July and November 2005; and (2) data and information demonstrating the State timely corrects noncompliance.

Data System – Discussion

Critical Element 1: Does the State have a data system that is reasonably designed to collect and report to the Department and the public, timely, valid and reliable data and information?

Starting with the 2007 school year, CDE utilizes an Automated Data Exchange (ADE) system to collect most of the data and information required to be reported annually to the Department and the public under IDEA sections 616 and 618. The ADE system collects the following 618 data: child count, educational environments, and the exiting reasons for children with disabilities. Student discipline data is collected through an online form accessed through ADE. CDE uses the ADE system to collect the following data under 616: graduation and drop out rates (Indicators 1 and 2), educational environments (Indicators 5 and 6), disproportionality data (Indicators 9 and 10), evaluation timelines (Indicator 11), transition (Indicators 12 and 13) and student and parental contacts for survey purposes (Indicators 8 and 14).

The Colorado Student Assessment Program provides data for Indicator 3; the data for Indicator 7 are provided through a separate early childhood assessment and progress monitoring system entitled, "Results Matter;" and Indicators 15 through 19 are compiled through internal CDE data compilations.

The State reported that its ADE data system includes the following components to ensure that data are valid and reliable:

- 1) State Assigned Student Identifiers (SASID) for all students within the State. This prevents students from being counted multiple times.
- 2) Multiple automated error checks. The initial error check ensures that data cells are formatted appropriately, while subsequent checks will identify input errors or errors that create conflicts among the data.
- 3) Internal program checks. This feature produces error messages that must be

corrected before the AU is able to submit its data to CDE.

In addition, CDE posts data submission timelines and requirements on its website that show how State data collection processes correlate to Federal reporting requirements.

However, AUs collect data in a myriad of ways, ranging from manually entering data from all records of students with disabilities into a single spreadsheet file, to web-based systems where student data is entered and updated throughout the year and reports are generated and submitted to CDE. An additional challenge exists for some AUs, typically BOCES, that provide special education services to multiple school districts and is considered the LEA under Colorado law. BOCES staff is required to collect data from multiple school districts and potentially multiple student data systems that may or may not be compatible with each other, and combine them into a single file for submission, which has to be entered manually and is more prone to error. Further, CDE reported that some of the larger AUs have reported erroneous data to the CDE. In one case data had to be re-entered manually and in another, data were reported publicly with a footnote indicating that the data were not accurate.

CDE reported to OSEP the following barriers that impede its ability to collect timely, valid and reliable data:

- 1) Lack of internal capacity to submit reports in a timely manner. CDE reported that its Information Management Services (IMS) department was understaffed and often had competing reports that needed programming and completion from other units within CDE. Section 618 data reports due February 1, 2007, November 1, 2007, and February 1, 2008 have not been submitted in a timely manner. As CDE continues migrating its data collection system into the ADE platform, CDE anticipates reporting section 618 data this year earlier than it did last year. For example, in 2007, CDE reported section 618 data due February 1 on June 1. In 2008, CDE expects to report section 618 data due February 1 by the end of March.
- 2) Incomplete data collection. For the FFY 2004 and FFY 2005 SPP and APR reporting cycles, CDE has not provided data for Indicator 12, "Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthday," Fifteen of 57 AUs in Colorado did not provide these data during the 2005-2006 school year. CDE reported that local determinations based on performance on APR Indicators have resulted in a substantial increase in the number of AUs that provided the required data. CDE further reported that it expected to be able to provide data from all but one AU in its FFY 2006 APR.
- 3) Incomplete error checking. As noted above, CDE performs error checks on the data that are submitted from school districts and AUs. However, based on OSEP's partial review of an AU's data submissions from the 2005-2006 Child Count data, due February 1, 2007, OSEP found that an AU inaccurately reported a 12th grade student with a disability at an elementary school. CDE responded that this type of data discrepancy is not currently identified as an error by CDE's data system but that it could be added as an error check in future reports.

- 4) Local data collection systems. CDE reported that it has tried to create a more uniform system for school districts and AUs to report their data, but that some school systems have resisted CDE's efforts.

Critical Element 2: Does the State provide clear guidance and ongoing training to local educational agencies regarding requirements and procedures for reporting data under section 618 of IDEA and the SPP/APR?

CDE's website contains multiple presentations, templates and instructions on collecting and reporting section 618 and SPP/APR data. Within the past 12 months, CDE has taken additional steps to ensure that data are reported accurately. These steps include: (1) offering ongoing training sessions to AU staff who are responsible for entering data; (2) emphasizing the importance of data collection to AU directors and how poor data reporting impacts local determinations; and (3) developing a new technical assistance document that provides scenarios about children with disabilities and how they should be coded (e.g., a child with a disability lives in one AU but attends school in a different AU because of a parental placement) to ensure that they are counted correctly.

Critical Element 3: Does the State have 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 IDEA sections 616 and 618, OSEP guidance, and State procedures?

The State's procedures regarding this Critical Element include: (1) CDE's data collection instructions, including definitions and protocols that are consistent with IDEA sections 616 and 618; (2) the file layout and edit specifications for each data element on the State's website assist local staff in understanding the requirements for entering data accurately at the school and AU levels; (3) the new data submission system has error reports built in that alert staff of errors that are to be corrected before reports are sent to CDE; and (4) before data are considered 'final and locked', AUs are required to print, review, and approve their data summary reports prior to submission to the State. Furthermore, as part of the submission process, the data summary reports are approved and signed by the AU's director of special education certifying the accuracy of the data. After the signed data summary report is received, CDE compares the summary data to the previous year's submission and completes a reasonability check. Each AU is given the opportunity to provide data notes to CDE regarding significant changes in the data reported from the previous year; and (5) data edit checks' instructions and directions, and real-time technical assistance are provided to State and local staff through CDE's website

CDE staff reported that while CDE sets the requirements regarding the content of data submission fields (e.g., whether a field is numeric or how many characters may be entered into a field) the actual process for gathering and entering data at the AU level is locally controlled. As explained below, this has resulted in erroneous data being entered and submitted by AUs.

Critical Element 4: Does the State have procedures for identifying anomalies in data that are reported to the State and correcting any inaccuracies?

CDE's exceptional student leadership unit staff demonstrated to OSEP that CDE has the ability to identify anomalies through a combination of error checks embedded within ADE and the review of AU data through the CIMP, APR and local reporting processes. However, as noted above, OSEP staff found a data error that was not identified through the above processes and thus not corrected by CDE. Further, because of the large size of Colorado's AUs (the ten largest AUs average enrollment is more than 43,000 students), CDE has reported logistical challenges when working with large AUs in correcting data anomalies. For example, CDE found that Colorado's largest AU incorrectly entered the graduation and drop out data at the high school level. The error was caused by incorrect programming at the AU level, and resulted in the manual correction of thousands of records at the AU level.

Data System – Conclusions and Required Actions

OSEP concludes that the State's data system is not reasonably designed to collect and report to the Department and the public, timely, valid and reliable data and information. During the verification visit, CDE acknowledged its data limitations and was able to identify barriers that impede CDE from collecting and reporting valid and reliable data. CDE also informed OSEP that data collection and reporting is being examined department-wide through a "Data Infrastructure Review" that was funded through legislation and performed by an independent consulting firm. The review was provided to OSEP and the report has nearly 30 pages of organizational and technological recommendations for CDE.

Therefore, in order to make certain that data submitted to OSEP in the State's SPP and APR are timely, valid and reliable, consistent with sections 616 and 618 of IDEA, Colorado must provide to OSEP within 60 days from the date of this letter, a plan demonstrating what actions the State is taking to ensure that the State is able to collect, and timely report, valid and reliable data. OSEP encourages CDE to incorporate into its plan, the recommendations included in the Data Infrastructure Review.

Fiscal System – Discussion

Critical Element 1: Does the State have procedures that are reasonably designed to ensure appropriate distribution and use of IDEA funds at the State level?

CDE reported that Colorado's policies and procedures are designed to ensure the appropriate use of IDEA funds at the State level. Documents governing the use of IDEA funds include Colorado's *Public School Finance Act*, *Rules for the Administration of the Public School Finance Act*, *Financial Policies and Procedures Handbook*, and *Exceptional Children's Education Act*. These documents address policies and procedures regarding CDE's budget process, the State funding formula and use of funds to ensure that the use of Part B funds is consistent with the Office of Management and Budget's

Circular (OMB) A-87 (Cost Principles for State, Local and Indian Tribal Governments). To ensure consistency with OMB Circular A-87, the President of an AU school board certifies that the AU meets the administrative requirements under the Education Department General Administrative Regulations, OMB Accounting Circulars, and the General Education Provision Act. The State reviews and approves all proposed expenditures to ensure that they are all allowable under OMB A-87.

The State demonstrated its database system for OSEP and walked OSEP through the State's FFY 2005, 2006, and 2007 Part B section 611 distribution to school districts and Part B section 619 distributions to sites and districts, which showed that the State is distributing section 611 and section 619 funds in a manner that is consistent with Part B requirements. The State confirmed that the base amount under section 611 was the amount the LEA would have received under section 611 for fiscal year 1999 if the State had distributed 75% of the grant award for fiscal year 1999, and that the base amount under section 619 was the amount the LEA would have received under section 619 for fiscal year 1997 if it had distributed 75% of the grant award for fiscal year 1997. As required, 85% of the remaining funds are allocated to LEAs on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the jurisdiction of the LEA, and 15% in accordance with their relative numbers of children living in poverty (based on free and reduced lunch), as determined by the State.

Critical Element 2: Does the State have procedures reasonably designed to ensure appropriate use of IDEA funds at the LEA level?

Colorado reported that AUs must follow procedures outlined in the CDE's "Federal Applications for Flow Through Funds Under Part B: IDEA and Part B: Preschool Services" manual to receive a subgrant. Each AU is required to submit a completed application through Colorado's subgrant award web-based application system. As demonstrated by CDE staff, the system allows for each AU to document fiscal responsibilities related to contracts, staff, and budgeting. AUs perform a series of requirements when completing the application that include the resolution of any issues concerning the previous year's expenditure and performance reports, and the use of Federal funds when purchasing equipment. CDE staff reported that an assigned staff member from each AU receives training on the grant application process and accounting procedures. In addition, technical assistance is provided on an as-needed basis.

AUs are required to submit a single or an independent audit to CDE each year and CDE reviews these for any findings. AUs submit corrective action plans for current year findings and the AUs must provide evidence that they have corrected any findings. Four auditors are scheduled to conduct the audits for 2007/2008 SY in 81 AUs and nine facilities.

Critical Element 3: Does the State have procedures reasonably designed to ensure the timely obligation and liquidation of IDEA funds?

The State reported that it has mechanisms in place to ensure the timely obligation and liquidation of Part B funds. The State notifies AUs yearly of their 27-month allocation

and of the obligation period for those allocations. The State reported that it follows the fiscal principle of “first in-first out” for expending Part B funds within the respective Federal grant period. CDE flows the current year’s allocations after all carryover funds are disbursed. CDE staff reported that if the budget for the second year of the grant period is not sufficient to use all the carryover funds, the AU will be notified and asked to submit a revised budget. In addition, the State monitors remaining balances in each AU’s account, and notifies them if there are any concerns about the possibility of funds not being spent within the first 24 months of the grant award.

Each AU’s yearly grant fund account details the use of funds for administration, state-level activities, distribution and early intervening services. Colorado’s Grants Fiscal Management division monitors the accounts to ensure that all funds are liquidated within 90 days of the end of the grant award.

Fiscal Management System - Conclusion

It appears from OSEP’s discussions with CDE, and a review of the State’s written policies and procedures, that the State has policies and procedures that are reasonably designed to ensure that the State appropriately distributes Part B funds to LEAs; LEAs properly use Part B funds; and IDEA funds are timely obligated and liquidated. However, without conducting audits at the State and local levels, OSEP cannot determine whether all public agencies in the State implement the State’s fiscal procedures in a manner that is consistent with Part B and other relevant federal fiscal requirements.

Summary

1. With respect to the identification of noncompliance, OSEP finds that CDE’s 95% threshold for making findings and identifying noncompliance in AUs is inconsistent with Part B monitoring and correction requirements in IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E). In its FFY 2007 APR, due February 1, 2009, CDE must clarify that it has removed the 95% threshold for identifying noncompliance.
2. OSEP finds that the State has not ensured the timely correction of noncompliance. In addition to all other information and data required to be reported in Indicator 15, Colorado must include in Indicator 15 in its FFY 2007 APR, due February 1, 2009, (1) specific information documenting the correction of noncompliance for the two AUs identified with noncompliance in July and November 2005; and (2) data and information demonstrating the State timely corrects noncompliance.
3. OSEP finds that CDE’s data system is not reasonably designed to collect and report to the Department and the public, timely, valid and reliable data and information. Colorado must provide to OSEP, within 60 days from the date of this letter, a plan demonstrating what actions the State is taking to ensure that the State is able to collect, and timely report, valid and reliable data. OSEP encourages CDE to incorporate into its plan, the recommendations included in the Data Infrastructure

Review.

4. Based upon OSEP's review of Colorado's November 30, 2007 progress report and subsequent conversations with the State, OSEP is removing the State's Special Conditions regarding the failure to correct longstanding noncompliance with the requirements to provide: (a) services and supports to meet the needs of children with disabilities (34 CFR §300.101); (b) needed psychological counseling services (34 CFR §300.34); and (c) adequate supports for children with behavior disorders (34 CFR §300.324(a)(2)(i)).

We appreciate the cooperation and assistance provided by your staff during our visit to review the State's general supervision, data and fiscal management systems. We look forward to collaborating with Colorado as it continues to work to improve results for children with disabilities and their families.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education Programs

cc: Ed Steinberg