



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Veronica C. Garcia  
Secretary of Education  
New Mexico Public Education Department  
3200 Don Gaspar Avenue  
Santa Fe, New Mexico 87501-2786

APR 21 2008

Dear Secretary Garcia:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP) recent verification visit to New Mexico. As indicated in the letter to you on August 17, 2007, 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). IDEA, as reauthorized in 2004, requires the Department to monitor States with a focus on: (1) improving educational results and functional outcomes for infants, toddlers, 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. We conducted a verification visit to your State during the week of September 24, 2007.

The purpose of our verification visit was to evaluate the State's general supervision and data systems in order to assess and improve State compliance and performance, child outcomes, and the protection of child and parent rights and to review the State's procedures for distribution and use of IDEA funds and the timely obligation and liquidation of those funds. During the verification 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 compliance and results issues identified in our June 15, 2007 letter responding to New Mexico's Federal Fiscal Year (FFY) 2005 Annual Performance Report (APR)/State Performance Plan (SPP).

As part of the verification visit to New Mexico, OSEP staff met with Denise Koscielniak, Director of Special Education, and State personnel responsible for: (1) the oversight of general supervision and financial systems for special education (including monitoring, mediation, complaint resolution, and impartial due process hearings); and (2) the collection and analysis of State reported data. Prior to and during the visit, OSEP staff reviewed a number of documents, including the following: (1) New Mexico's Federal Fiscal Year (FFY) 2005 Annual Performance Report (APR) submitted to OSEP in

February 2007<sup>1</sup>; (2) New Mexico's State Performance Plan (SPP) submitted to OSEP in December 2005; (3) New Mexico's grant applications eligibility document submissions under Part B of the IDEA for FFYs 2006 and 2007; (4) OSEP's Verification Visit letter for New Mexico dated February 24, 2004; (5) the New Mexico Department of Education's website; and (6) other pertinent data sources. Listed below is OSEP's discussion, conclusions, and next steps relative to each of the critical elements OSEP developed to guide our review of each State's general supervision, data, and finance systems.

#### General Supervision – Discussion

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

As part of its visit, OSEP interviewed staff and reviewed documentation to determine if the New Mexico Public Education Department (NMPED) and its Special Education Bureau (SEB) has implemented a system of reasonable and data-based approaches for identifying noncompliance. NMPED reported that because of the reauthorization of IDEA, increased accountability at the State and local levels, and changes in OSEP's Monitoring Priorities, NMPED has moved from a Focused Monitoring System to a Special Education Accountability System (SEAS). NMPED reported that all activities and initiatives in its SPP have been integrated into the revised system.

NMPED reported that its new SEAS was piloted in 2006-2007 and will be fully implemented in 2007-2008. The SEAS focuses on student performance outcomes and the compliance requirements of IDEA. NMPED indicated that during the 2007-2008 school year all local educational agencies (LEAs), Regional Educational Cooperatives (RECs) and State Supported Educational Programs (SSEPs) will participate in Phase I of its three phase system.<sup>2</sup> Phase I of the SEAS consists of a desk audit by SEB staff. The State reported that the desk audit will include the following: (1) a review of the annual self-assessment (conducted by each LEA and SSEP); (2) a review of the LEA or SSEP profile, which includes both compliance and performance data on APR Indicators; (3) consideration of the programs' submission of timely, valid and reliable data; (4) examination of IDEA audit findings as determined by NMPED's Inspector General; (5) review of uncorrected noncompliance from other sources (e.g. dispute resolution); and (6) consideration of any other information as determined by the State.

NMPED told OSEP that it has made determinations for all its LEAs based on their compliance with the SPP compliance indicators and the submission of timely and accurate data. Each LEA was notified of its determination by letter. The State reported that the performance of each LEA on the SPP targets and their performance compared to

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<sup>1</sup> NMPED submitted its FFY 2006 Annual Performance Report on February 1, 2008. OSEP is currently reviewing this document and will provide its analysis of the FFY 2006 APR data under separate cover.

<sup>2</sup> There are two State Supported Educational Programs in New Mexico - the School for the Deaf and the School for the Blind.

the State's performance on those targets can be located on NMPED's website.<sup>3</sup> The staff reported that a press release was sent to the media indicating where the public could locate the information.

*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, large-scale assessments, previous monitoring results, etc.) to identify systemic noncompliance issues?*

NMPED reported that it has multiple systems for compiling data in order to identify systemic noncompliance. There is a financial accountability system operated by the Administrative Services Division, a Student Teacher Accountability Reporting System (STARS) used to collect 618 and SPP/APR data, a large-scale assessment data system, and a data-based system for due process hearings. NMPED indicated that it also has a system for entering data regarding complaints, mediations, and dispute resolution methods required by IDEA as well as other methods the State is using to promote the early resolution of disagreements including facilitated individualized education program (IEP) team meetings, and information from parent telephone inquiries.

NMPED told OSEP that all SEB staff are assigned to work with LEAs and SSEPs as part of the State's general supervision system. The Data/Fiscal Manager communicates concerns about noncompliance to the staff assigned to those entities. SEB attorneys provide SEB staff data regarding dispute resolution activity, and the Parent Liaisons report regularly to the staff on calls made about their assigned LEAs and SSEPs. SEB staff review the STARS reports for both random and scheduled general supervision reviews. For the LEAs and SSEPs for which they are assigned, SEB staff maintain notebooks containing information related to noncompliance identified through due process and complaint decisions, as well as through other processes. Monthly meetings are held by SEB staff to discuss progress or slippage in the LEAs and SSEPs which have been found to be in noncompliance, regardless of the component in the State's general supervision system used to identify the noncompliance. Staff also reported that during these monthly meetings, they identify and discuss systemic issues and problems across the State.

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

NMPED explained that its Special Education Accountability System (SEAS) consists of three phases. The first phase was described above in the discussion of the first critical element. Any LEA or SSEP determined to Meets Requirement in Phase I will be considered to have met the requirements for one year, receive a certificate from the NMPED and the State Advisory Panel and be identified as Meets Requirements on the SEB's website and in a press release sent to the media by NMPED. Any program receiving a determination of Meets Requirements will not proceed to Phase II

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<sup>3</sup> For compliance indicators, the State clarifies that targets must be 100%.

(Verification) or Phase III (Interventions).

NMPED reported that any LEA or SSEP not determined to Meet Requirements must participate in Phase II activities, including working with the State to ensure correction of all noncompliance as soon as possible but in no case later than one year. The State may require these programs to submit additional data, access technical assistance or training, and receive on-site visits. Any program that does not correct its noncompliance within one year is determined to be Needs Intervention or Needs Substantial Intervention and proceeds to Phase III.

NMPED told OSEP that Phase III interventions include a wide range of mandatory technical assistance activities, possible on-site visits, and sanctions such as redirecting, withholding, or recovering IDEA funds. These programs will be considered high risk, special conditions are imposed and the State prohibits the program from reducing its Maintenance of Effort under 34 CFR §300.204.

With regard to noncompliance identified through its previous monitoring system, NMPED reported that all but one LEA with noncompliance identified during the 2004-05 school year has corrected its noncompliance. As of July 2007, when the State made its local determinations, the LEA had two areas of noncompliance which remained uncorrected: IEP development for the least restrictive environment (Indicator 5) and initial identification (Indicator 11). The uncorrected noncompliance was considered in the LEA's Determination. The LEA was placed on a Corrective Action Plan designed by the State. A Special Education Technical Assistance Team (SETAT), assigned through the Mountain Plains Regional Resource Center, will work with the LEA. In addition, the State Director and another SEB staff member have been assigned to work directly with that LEA.

The State reported that four LEAs for which noncompliance was identified during 2005-2006 had not corrected their noncompliance within one year. One of the LEAs which had findings in two areas has been assigned the determination of Needs Substantial Intervention and the areas of noncompliance are being addressed through a mandatory Corrective Action Plan (CAP). Two of the LEAs have been assigned the determination of Needs Intervention and have been mandated to participate in the Leadership Development Project (LDP) or another research-based leadership program approved by the Public Education Department. Staff reported that they are making corrections through the Educational Plan for Student Success (EPSS) process and are being closely monitored by an SEB employee. The remaining LEA has been assigned the determination of Needs Assistance and is addressing the remaining area of noncompliance through the district's EPSS. This LEA is being monitored by a SEB employee. OSEP did not determine the effects of these actions on the uncorrected noncompliance in these LEAs.

*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?*

NMPED reported that since OSEP's last verification visit the State identified insufficient SEB staff and the manner in which staff were assigned as barriers that impeded the State's ability to correct noncompliance in a timely manner. Subsequently more SEB staff have been hired and there has been a reorganization, with all staff being assigned to work with designated LEAs and SSEPs. The assigned staff members are responsible for coordinating professional development activities, monitoring the LEAs' or SSEPs' progress in meeting the State targets, progress in fulfilling EPSS or CAP requirements, and providing technical assistance and support. The staff reported that the reorganization has resulted in better communication among SEB staff.

As discussed above, since the last verification visit the State has also moved from a focused monitoring system to the three phase Special Education Accountability System (SEAS). NMPED staff reported that regular and special education State staff both participate in onsite visits and that findings of noncompliance in both regular and special education must be addressed in the LEA's or SSEP's EPSS. The State has improved local district accountability by requiring that the superintendent, the special education director and the school board president sign the EPSS or CAP prior to its submission to the State. Staff reported that the reorganization of the SEB and the implementation of SEAS has resulted in improved integration of SEB's system into the State's general accountability system and increased sharing of information and coordination between SEB and other NMPED programs.

The Director reported that transition of children from Part C to Part B remains challenging. She explained that the two programs operate different systems for collecting data which makes the sharing of data difficult. Both programs are working actively towards resolving this issue.

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

NMPED reported that it utilizes a database system to track State complaints from receipt to resolution. This process ensures timely investigation, issuance of decisions, and correction of any identified noncompliance. The State also utilizes a database to track the progress of due process complaints to ensure written decisions are issued within the applicable timelines. The State provides training to its hearing officers and reviews written hearing decisions to ensure that timelines are met and that any extensions to the 45-day timeline are properly documented.

In its FFY 2005 APR, the State reported that it met its compliance target of 100% for Indicator 16. The State reported that a total of 41 formal complaints were filed during the FFY 2005. Twenty-one of the complaints were resolved within the 60-day timeline and for the remaining complaints, the State reported various reasons describing why they were excluded. As part of the verification visit, OSEP reviewed a sample of State complaints received during the 2005-2006 and 2006-2007 reporting periods. Based upon that review, OSEP verified that the decisions were issued within the 60-day timeline and

that extensions to that timeline were properly documented and made in accordance with the State's procedures. In addition, OSEP provided formal guidance and technical assistance to further clarify the definition of complaints and the appropriate application of that definition to correspondence received by the State. OSEP expects that this clarification will be properly reflected in the FFY 2006 APR submission, currently under review.

In its FFY 2005 APR, the State reported that it received a total of five due process hearing requests. Three of the due process hearing requests were fully adjudicated within a timeline that was properly extended by the hearing officer at the request of either party. One of the due process hearing requests was settled through mediation and the remaining request was withdrawn. OSEP reviewed a sample of due process hearing decisions issued during the 2005-2006 and 2006-2007 reporting periods. Based upon that review, OSEP verified that each decision was issued within the 45-day timeline or a timeline that was extended by the hearing officer at the request of either party.

NMPED told OSEP that, in addition to the dispute resolution methods required by the IDEA (i.e., State complaints, mediation and due process complaints), the State has invested resources in promoting early resolution of disagreements. Initiatives include: (1) facilitated IEP team meetings; (2) use of Parent Liaisons, who speak English and Spanish, to respond to telephone inquiries and work toward resolving parent concerns; and (3) training provided to LEAs and community groups to build skills and demonstrate techniques of conflict prevention and effective ways to resolve disputes. The State reported that these added measures help to promote early resolution of disagreements and have contributed to the State's effectiveness in meeting the required timelines for resolving State complaints and due process complaints.

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

The State reported that the eight components of SEB's general supervision system are designed to improve educational and functional outcomes for all children with disabilities. These components are: (1) the State Performance Plan; (2) policies, procedures and practices; (3) integrated accountability activities; (4) fiscal management; (5) State data systems; (6) activities related to improvement, correction, incentives and sanctions; (7) the dispute resolution process; and (8) and targeted technical assistance and professional development

The State reported that the IDEA Advisory Panel serves as a stakeholder group for the general supervision processes, including the SPP/APR development and reporting process. The group meets four times a year to receive updates and provide input. The State also reported that parents are involved when a LEA or an SSEP develops its EPSS to address noncompliance and/or to improve performance. The staff reported that the State's Parent Training and Information center (PTI) is involved in training families to be a part of a professional learning community in order to participate in data-based decision making at the student, district, and State levels.

NMPED told OSEP that it has revised its State-level special education policies and procedures and has developed model LEA policies and procedures to reflect the requirements of IDEA 2004. The State reported that the policies have been distributed and that the adoption and review of the LEA policies and procedures was to occur by the end of December 2007. The State also reported that after the process is completed the State's policies and procedures, as well as those for each LEA, will be posted on the State's website.

NMPED reported that it has added more staff who speaks Spanish and the Tewa language (used by many American Indians living in the State) in an effort to better meet the needs of the children and the families. NMPED also indicated that it retained the requirement for transition services beginning at age 14 in order to align with regular education and improve the outcomes for students with disabilities.

#### General Supervision System - Conclusions and Required Actions

OSEP has determined that NMPED's general supervision system, including its new Special Education Accountability System, is reasonably designed to identify and correct noncompliance in a timely manner and to improve educational results and functional outcomes for children with disabilities. OSEP cannot, however, without also collecting data and conducting reviews at the local level, determine whether all public agencies in the State implement the State's policies and procedures in a manner that is consistent with Part B.

The State must continue to review its improvement activities in the State's SPP and revise the activities, if appropriate, to ensure these activities will enable the State to include data in the FFY 2007 APR, due February 1, 2009, that demonstrate substantial compliance with the requirements in IDEA sections 616(a)((1)(C)(ii).

#### Data Collection 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, complete and accurate (valid and reliable) data and information?*

NMPED reported that in 2006 it began implementing a new data system called STARS (Student Teacher Accountability Reporting System), a collaborative effort of the New Mexico Public Schools and NMPED. STARS is a comprehensive student and staff information system that provides a standard data set for each student served by New Mexico's preschool to grade 12 public education system. STARS reportedly serves many purposes. These are to:

- Meet the current State and Federal reporting requirements;
- Improve education decision-making through the use of high quality data and decision support tools;

- Provide longitudinal tracking of particular individual and subgroup education progress over time; and
- Report timely and accurate education data through standardized and ad hoc reporting capabilities.

Staff indicated that FFY 2006-07 was the first year for collecting and reporting data, including its 618 data, through this system. Based on a discussion with NMPED and a review of the *Student-Teacher Accountability Reporting System User Guide*, OSEP learned that STARS is used to collect the following data: graduation, dropout, assessment, discipline, child count, placement, preschool outcomes, and evaluation/reevaluation.

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

NMPED reported that it provides LEAs and SSEPs with validation, verification, and exceptions reports and a defined data submission and review process to assist the districts in assuring the quality of the data submitted to STARS. It was also reported that data collection and data quality training has been provided to the LEAs and the SSEPs and that a State-wide help desk has been established to assist them with data quality issues. The State reported that the training plan for the new system began with an introduction to STARS at the executive level. The next level of training, provided at the program level, included a more detailed discussion of the various processes and program specific data requirements. The third level consisted of very detailed, hands-on, training for users at the LEA and SSEP levels. The State reported that the third level of training will be continued at NMPED's Fall and Spring Data Conferences, during which 618 and SPP data submissions are also discussed through presentations made jointly by information technology and program staff. The State reported that the conference held in Spring 2007 also covered changes to OSEP's data criteria.

The State reported that its representatives attend the annual Data Managers conference and participate in the WESTAT teleconference calls and access its data blog. LEA and the SSEP special education directors also receive annual information technology training. In addition, the State conducted trainings with respect to the requirements of the Family Education Records Privacy Act (FERPA) to those employees with access to personally identifiable information.

*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 sections 616 and 618 of the IDEA, OSEP guidance, and the State's procedures?*

The State reported that the STARS collection process has resulted in a dramatic shift in the data collection, validation to identify errors, and verification to ensure accuracy. The State reported that in the past, LEAs and SSEPs submitted data to the SEA and the State-

level programs verified and validated the data. In STARS, the LEAs and the SSEPs are responsible for assuring the data reflect the actual membership and activities of the district.

Staff indicated that to assist the LEAs and the SSEPs in this process, NMPED has supplied validation, verification, and exceptions reports generated by STARS and a defined data submission and review process to assist the districts in assuring the quality of the data submitted. The State reported that during the design of STARS, NMPED programs were required to provide specific Federal instructions for data collection, and reporting. These were assembled into a requirements matrix that was used as the basis for the evaluation and selection of the new data system.

The State reported that with the implementation of STARS, the data collection process has been revised to provide the district with the local responsibility of data submission and validation, with a NMPED program review to verify data accuracy. The data collection process includes four opportunities for the LEAs and the SSEPs to review their data: (1) the first control point occurs when the LEAs and the SSEPs extract the required data from their source system, their individual Student Information System (SIS), ensuring these data are reliable; (2) the second control point, validating the data within the extracted data templates, occurs when the required data are exported into the appropriate STARS templates, in preparation for being uploaded into STARS; (3) the third control point occurs when the extracted files are loaded into the STARS data warehouse, at which point the data go through a series of validations to assure that key fields are formatted and submitted properly, and improper files are rejected. LEAs or SSEPs are required to correct errors in the appropriate fields and resubmit; and (4) the fourth control point occurs after the data have been accepted into STARS when a series of validation and verification reports are run.

The State reported that the STARS team tracks the LEAs and SSEPs through the data submission process. Once the STARS team has validated that submissions are complete, it notifies the State programs that the data have been submitted and that the State program staff may review the data for accuracy. If State program staff finds discrepancies or errors in the data, the State program staff work directly with the LEAs and SSEPs to address the issue and resubmit corrected data.

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

As noted earlier, the State reported that there are several control points where the LEAs, SSEPs and the State programs review submitted data and correct the data as required. The State reported that its strategy was to hold the LEAs, SSEPs and the State programs responsible for correcting the data errors. The State Information Technology Division has identified several major categories of errors: (1) incomplete submissions; (2) errors in the Source System; and (3) errors caused by incorrect vendor extracts. For each of these categories of errors, the STARS team works with the LEA, SSEPs, or State programs to address and correct any discrepancies in the source document by correcting the data error

in the base SIS.

*Critical Element 5: Does the State utilize the results of its analysis to target resources and systems improvement?*

The State reported that it has completed Phase 1 and 2 of the STARS implementation process which focused on the effective collection and validation of data and on addressing State and Federal reporting requirements. It reported that this year NMPED has an integrated longitudinal system that can connect student, staff, financial, and assessment data for longitudinal studies. The SEB utilizes its analysis of State, LEA and SSEP data to determine necessary program modifications such as aligning fiscal resources, restructuring the SEB, assigning SEB staff members to specific LEAs and SSEPs, and refining the SPP improvement activities. In addition, the IDEA Advisory Panel reviews and analyzes data generated through the State's data systems to determine the State priorities.

#### Data Collection System - Conclusions and Required Actions

OSEP did not identify concerns regarding the electronic database systems used by the State to collect information required under section 618 and through the SPP/APR process. OSEP cannot, however, without also conducting a review of data collection and reporting policies, procedures and practices at the local level, determine whether all public agencies in the State implement the State's data collection and reporting procedures in a manner that is consistent with Part B.

#### Fiscal Management – Discussion

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

#### Distribution of IDEA funds

The State reported that it utilizes its local application process as a mechanism to determine LEA eligibility for IDEA funds and to ensure timely distribution of subgrants. The State provided documentation of its FFY 2007 allocations for both Sections 611 and 619 that reflects the calculated entitlement base, population, and poverty amounts for each of the State's LEAs and State-operated programs. The State indicated that it uses the U.S. Department of Education's Section 611 Base Allocation (Table 1, Column B) which reflects the total amounts LEAs would have received under section 611 for fiscal year 1999 if the State had distributed 75% of the State's grant award for fiscal year 1999. The State reported that historical data on the December 1, 1998 child count is then applied to derive base payments. The State further reported that it uses the U.S. Department of Education's 619 Base Allocation (Table III, Column D), which reflects the total amount LEAs would have received under section 619 for fiscal year 1997 if the State had distributed 75% of the State's grant award for fiscal year 1997. Historical data on the December 1, 1996 child count is then applied to derive base payments. No base

payment adjustments have been made and there are currently no LEA charter schools for which the State must derive base payments.<sup>4</sup>

#### Maintenance of Effort

State Level Maintenance of Effort: The State reported that it has developed policies and procedures to ensure that Part B funds are not used to reduce the State level of expenditures for providing special education and related services for children with disabilities, or State funds otherwise made available to pay the excess cost of providing special education services for children with disabilities below the amount of support for the preceding year.

#### High Risk Pool

The State reported that it initiated a high cost fund pursuant to 34 CFR §300.704(c) and reserved the full amount (10%) allowed. The State also reported that it established procedures for implementing its high cost fund, Puente para los Ninos, and developed a manual that details the State's requirements. The State's High Cost Funds Manual: (1) outlines the State's plan for use of these funds, including the requirement that the funds are to pay costs of services for those "high needs" students (i.e., defined as a student whose cost to provide a free appropriate public education is three times greater than the average amount per student); (2) specifies application procedures to access High Risk Pool funds; (3) explains that the risk pool funds cannot be used to pay legal fees, court costs or other costs associated with legal actions; and (4) makes clear that the risk pool funds cannot be used to pay costs that would otherwise be reimbursed under the State's Medicaid program. The State also has established procedures allowing for the reallocation of unused risk pool funds to LEAs. The State reported that LEAs could apply for funds from the risk pool beginning with the 2006-2007 school year and to date, one application has been approved.

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

The State reported that it utilizes its local application process and related assurances as one mechanism to ensure LEAs use IDEA Part B funds in a manner consistent with the requirements. Staff indicated that the application provides notice of the allowable uses of IDEA funds and the required assurances from LEAs that State and Federal requirements will be met for receipt of IDEA funds. The State distributes IDEA Part B funds to the LEAs on a reimbursement basis. The State reported that it conducts reviews of approximately eight LEAs' reimbursement summary reports per reimbursement cycle and completes reviews of all LEAs' submissions for reimbursement at least twice yearly. As part of the reviews, the State examines whether the LEA's use of vendors is

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<sup>4</sup> The State recently approved the application for an LEA charter school that will open in Albuquerque for the 2008-2009 school year. New Mexico has included within its State rules, procedures related to newly-established or significantly expanding charter schools. The State rules went into effect on June 29, 2007.

reasonable and appropriate, checks for any discrepancies, and ensures unallowable costs are not paid.

The State has documentation of steps taken to ensure LEAs properly calculate the proportionate share of IDEA funds that must be expended for parentally-placed private school children. As part of the local application for IDEA funds, LEAs must explain how the proportionate share of funds will be used and submit documentation of the consultations conducted under 34 CFR §300.134.

The State reported that pursuant to the State Auditors Rule, State and LEA audits must be conducted in accordance with the requirements of OMB Circular A-133. The State's Office of Inspector General within the Public Education Department (PED) is responsible for resolving audit findings, with the assistance of PED's special education program staff. As part of the New Mexico Special Education Accountability System, the State reviews LEA audit findings and considers such findings when making determinations of LEA performance under 34 CFR §300.600.

Staff indicated that the State's local application for IDEA funds also provides notice of, and requires assurances for, the requirement that each LEA distribute funds to charter schools in the same manner and at the same time as it does for all other public schools in the district.<sup>5</sup> Further, the State reported that it established an accounting mechanism to verify that LEAs are allocating the required amount of funds, in a timely manner, for charter schools that are public schools of the LEA, consistent with the State's charter school law.

The State reported that in mid-September 2007, LEAs and State-operated programs received notification that the State approved their subgrant applications and were informed of the amount of IDEA funds available for each program.<sup>6</sup> The State reported it is making improvements to its internal procedures for processing grant applications that should result in the allocation of IDEA funds more promptly to LEAs and State-operated programs.

#### Early Intervening Services

The State has established procedures for its annual local IDEA application process for those LEAs that elect to utilize up to 15% of Part B funds to provide early intervening services as permitted under 34 CFR §300.226. Those procedures reportedly require the LEA to provide a budget and a plan that includes specific student measures and outcomes. The LEA may not spend IDEA funds on early intervening services until it receives written confirmation that the State has accepted the plan.

The State has established procedures for reviewing LEA data, pursuant to 34 CFR §300.646(a), to determine whether the LEA is considered significantly disproportionate

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<sup>5</sup> The State reported there are approximately 64 charter schools that are public schools of LEAs within the State.

<sup>6</sup> IDEA Part B flow-through funds to LEAS are paid out on a reimbursement basis for allowable costs.

based on race and ethnicity in the identification of children with disabilities, the placement of children with disabilities in particular educational settings, and in the incidence, duration, and type of disciplinary actions. The State reported that LEAs determined to have significantly disproportionality will be notified in writing of the State's determination and will be "directed to reserve not more than the maximum amount of funds in accordance with 34 CFR §300.646(b)(2))." The State further reported that, if after one year, the LEA is no longer considered significantly disproportionate based upon a data review, "the LEA will no longer be required to reserve not more than the maximum amount."<sup>7</sup>

The State reported that it examines LEA data to determine whether significant disproportionality based on race and ethnicity exists and identifies an LEA as having significant disproportionality under 34 CFR §300.646 only if the LEA's data meet the State's definition of significant disproportionality in all of the following areas: identification, including identification as children with disabilities in accordance with a particular impairment; placement in particular settings; and incidence, duration, and type of disciplinary actions, including suspensions and expulsions. The State reported that there are LEAs that have met the State's definition of significant disproportionality in at least one area, but because no LEA has met all three, the State has not identified any LEA as having significant disproportionality, and consequently, has not required any LEA to reserve funds under section 613(f) of IDEA to provide comprehensive, coordinating early intervening services to serve children in the LEA. This interpretation is inconsistent with the requirements of 34 CFR §300.646(b)(2) and constitutes noncompliance by the State.

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

The State indicated that it utilizes its local application process as a mechanism to ensure IDEA funds are obligated and liquidated in a timely manner. The State's local application states that funds must be obligated within the 15-month period. This requirement is reiterated in the State's letter approving an LEA's application for IDEA Part B funds. The local application also explains that LEAs have an additional 12-month carryover period to obligate funds. The State reported that it has established procedures that require LEAs to obligate funds on or prior to June 30 and to liquidate those funds by September 30. The State's procedures further require LEAs to report unliquidated obligations at the conclusion of the fiscal year and to submit an expenditure report by October 31, confirming that obligated IDEA funds have been liquidated. The State reported that LEAs disbursed FFY 2004 and FFY 2005 IDEA grant funds in a timely manner. OSEP's internal fiscal data collection confirms that the State has ensured timely obligation and liquidation of Part B funds.

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<sup>7</sup> See Fiscal Management Verification Desk Audit completed by the State, page 16.

Fiscal Management System - Conclusions and Required Actions

As a result of OSEP's review of the State's written procedures, documentation for fiscal management, and interview information, OSEP concludes that New Mexico has not properly implemented the requirements at 34 CFR §300.646, related to reviews for significant disproportionality in the LEAs. Further, the State's procedures do not require an LEA identified as having significant disproportionality under 34 CFR §300.646(a), to reserve the maximum amount (i.e., 15% of funds under section 613(f) of the Act) to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified, as required at 34 CFR §300.646(b)(2).

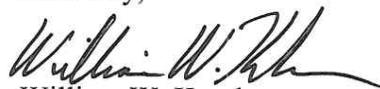
The State must develop and implement procedures to ensure FFY 2008 IDEA funds are properly disbursed to any LEA(s) identified as having significant disproportionality in any one of the areas specified in 34 CFR §300.646 (i.e., identification, including identification as children with disabilities in accordance with a particular impairment; placement in particular settings; and incidence, duration, and type of disciplinary actions, including suspensions and expulsions). These policies and procedures must be submitted within 60 days of receipt of this letter.

OSEP did not identify other concerns with New Mexico's mechanisms for ensuring fiscal accountability at the State level in the distribution and use of IDEA funds, that LEAs properly use Part B funds and that IDEA funds are timely obligated and liquidated. OSEP cannot, however, without collecting data at the local level, determine whether the local education agencies and State-operated programs in the State, implement the State's fiscal procedures in a manner consistent with Part B requirements.

The information provided by NMPED staff during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of the New Mexico systems for general supervision, data collection and reporting, and financial systems.

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to collaborating with you to continue to work to improve results for children with disabilities and their families.

Sincerely,



William W. Knudsen

Acting Director

Office of Special Education Programs

cc: Denise Koscielniak