

## **Enclosure A**

### **District of Columbia Part B 2009 Verification Visit Enclosure**

#### **Background:**

##### **Establishment of OSSE as the SEA for the District of Columbia**

The District of Columbia Public Education Reform Act of 2007 signed into law by Mayor Adrian Fenty on April 23, 2007, transferred authority to the Mayor's Office for the purpose of administering Federal grants, the functions of the State Educational Agency (SEA). The role of the previously established Office of the State Superintendent (OSSE) was expanded to assume responsibility for carrying out the SEA functions required under the Individuals with Disabilities Education Act (IDEA). In October 2007, OSSE assumed full responsibility for the administration and general supervision of educational programs for children with disabilities in the District of Columbia. Prior to that time, the District of Columbia Public Schools (DCPS) was responsible for both State-level oversight and local-level operation of educational programs for children with disabilities in the District. Thus, the activities undertaken by the SEA for the District of Columbia during Federal fiscal year (FFY) 2005 and FFY 2006 referenced within this document were carried out by the DCPS in its capacity as the SEA.

During its first year as a new State agency (FFY 2007), OSSE placed its efforts on identifying the root causes for the District of Columbia's inability to achieve compliance with IDEA requirements and strategies for improving the performance and results of children with disabilities. The State reported that as a result of this analysis, OSSE determined the State did not have an effective system for collecting valid and reliable data required by the U.S. Department of Education (Department). OSSE decided that establishing a data system that could provide accurate information in a timely manner was a top priority.

OSSE reported that its review of existing systems in FFY 2007 also revealed that the State did not have policies, procedures, and guidance in place that clearly identified local educational agency (LEA) responsibilities for implementing IDEA requirements. OSSE set as a high priority, the establishment of policies and procedures pertaining to key IDEA requirements and the promulgation of regulations applicable to charter schools. During FFY 2008 and FFY 2009, OSSE revised several of its policies and procedures; distributed written guidance; amended the State regulations to detail charter schools' obligations for the education of children with disabilities; and conducted training for LEAs on IDEA implementation requirements and expectations. This work continues, with several proposed policies and procedures in process at the time of OSEP's verification visit.

##### **The District's History of Noncompliance with IDEA Part B Requirements**

Prior to and continuing through OSSE's role as the SEA, the State has demonstrated noncompliance with certain IDEA requirements. As a result, the Department has imposed Special Conditions on the District of Columbia's IDEA, Part B grant awards since 2001 related to the State's failure to: (1) provide timely initial evaluations and reevaluations (IDEA section 612(a)(7) and 614(a) through (c) and 34 CFR §§300.301(c)(1) and 300.303); (2) implement due process hearing decisions in a timely manner (IDEA section 615(f) and (i)); (3) ensure placement in the least restrictive environment (LRE) (IDEA section 612(a)(5)(A) and 34 CFR §§300.114 through 300.120); and (4) identify and correct noncompliance with the requirements of Part B of

the IDEA (IDEA sections 612(a)(11) and 616(a), 20 U.S.C. 1232d(b)(3), and 34 CFR §§300.149 and 300.600).

On June 1, 2009, the Department determined that the District of Columbia “needs intervention” in implementing IDEA requirements for the third consecutive year. This determination was based on the totality of the State’s data and information, including the State’s FFY 2007 Annual Performance Report (APR) and revised State Performance Plan (SPP), other State-reported data, and other publicly-available information. The Department took enforcement action under section 616 of the IDEA, withholding twenty percent of State-level funds under section 611 of the State’s FFY 2009 IDEA, Part B grant award. On December 7, 2009, the Department and OSSE entered into a Memorandum of Agreement (MOA) whereby OSSE agreed to dismiss its request for an administrative hearing challenging the Department’s decision to withhold funds<sup>1</sup>. OSSE also agreed to take corrective actions under specific timelines with the Department releasing portions of the withheld funds as OSSE meets the benchmarks established in the MOA. The benchmarks and reporting requirements correspond to the areas and requirements that were cited as the bases for the Department’s withholding action, which include untimely initial evaluations and reevaluations; failure to comply with secondary transition requirements; failure to implement hearing officer decisions in a timely manner; failure to provide required data; and failure to identify and correct noncompliance. OSSE is required to provide reports approximately every three months detailing its progress toward meeting the benchmark targets. The first report was provided to the Department on January 11, 2010 and the second report was provided on April 1, 2010. The final report under the MOA is due on March 1, 2011, unless OSSE meets the benchmarks prior to that time.

### **Designation as a High-Risk Grantee**

In April 2006, under the authority of the Education Department General Administrative Regulations (EDGAR), 34 CFR §80.12, the Department designated the District of Columbia Public Schools (DCPS) a “high-risk” grantee. Special Conditions were placed on all Department grants awarded to DCPS because of problems in DCPS’ fiscal and program accountability, management systems, and related areas. The Department continues to designate the District of Columbia (now OSSE), as a “high-risk” grantee, with Special Conditions placed on all Department grants. This designation will continue until OSSE demonstrates significant progress toward fully implementing sustainable financial, record-keeping, and internal control systems and procedures that are sufficient to satisfy the accountability requirements for administering Federal education grants.

### **Overview of the LEA Structure in the State**

The District of Columbia, for the 2009-2010 school year, is comprised of 42 LEAs – DCPS and 41 charter schools that, for the purposes of IDEA, operate as LEAs. There are 16 charter schools that, for the purposes of IDEA, have chosen to be public schools of DCPS. The State also reported that the school program at the Division of Youth Rehabilitation Services is considered a State-operated program for the purposes of IDEA.

The number of LEAs in the State varies from year to year, depending on whether a charter school changes its election of whether it will operate as an LEA or as a public school of DCPS. It is also common that from year to year, new charter schools are established, while others are

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<sup>1</sup> See <http://www2.ed.gov/fund/data/award/idea/2009partb/memorandumofagreement.doc>

closed due to insufficient enrollment, financial issues, or other reasons. The closure of charter LEAs during the school year presents particular challenges, requiring OSSE's immediate intervention to ensure that children with disabilities continue to receive appropriate services and that parents are afforded the procedural safeguards and protections of the IDEA. OSSE reported that the dynamic nature of the LEA structure in the State poses special challenges to the SEA in carrying out its general supervisory, data collection and reporting, and fiscal accountability responsibilities.

In addition to its oversight and monitoring responsibilities of LEAs in the District, OSSE's Department of Special Education (DSE) is charged with monitoring approximately 85 nonpublic schools that are educating, or are available to educate, children with disabilities who are residents of the District of Columbia as well as approximately 30 residential treatment centers. Under District of Columbia regulation, OSSE must conduct an on-site visit to these facilities at least once every three years. A primary purpose for conducting the visit is to ensure the program meets State standards and qualifies for certification as a placement option for the education of the District's children with disabilities.

### **OSSE-Identified Systemic Barriers**

OSSE identified a number of barriers that impede the State's ability to effectively carry out its responsibilities under IDEA. The State reported that one-third of the children in the District of Columbia are reading on grade level and the State, system-wide, lacks a sufficient number of high-quality teachers. The State reported these are underlying issues that affect the State's ability to improve outcomes for children and youth with disabilities and ensure compliance with IDEA requirements.

The State also reported as challenges, the scope and depth of noncompliance with IDEA requirements and the need to identify strategies that will have the greatest impact, without overwhelming a newly-developing SEA system. The State reported it experiences difficulties with recruiting and retaining qualified State-level staff, stating that attracting and retaining experienced, knowledgeable staff is particularly difficult given the competing employment opportunities offered by neighboring States and the Federal government.

## **I. General Supervision System**

### ***Critical Element 1: Identification of Noncompliance***

*Does the State have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components?*

### **Verification Visit Details and Analysis**

#### ***The State's Monitoring System: Identification of Noncompliance in FFY 2005 and FFY 2006***

Since OSEP's last verification visit (2003), the State made multiple revisions to its monitoring system. In FFY 2005 and FFY 2006, the State's system of general supervision consisted primarily of on-site monitoring visits and dispute resolution (State complaints and due process hearings). OSEP notes that based on a review of the State's written monitoring reports issued during that period, the State did not consistently apply the appropriate standard when determining whether an LEA demonstrated noncompliance with IDEA requirements. For example, the State highlighted as "significant compliance" areas that should have been identified as noncompliance under the IDEA (e.g., 84% of the records reviewed indicated that

reevaluations were completed in a timely manner,” or the State noted as a “promising practice” that “87% of the records indicated that services needed are included in Individualized Education Programs (IEPs”).

We also observed that the State’s monitoring reports issued during FFY 2005 and FFY 2006 included conclusions that were not supported by the reported data.<sup>2</sup> For example, OSEP observed that the State issued commendations to an LEA for performance in areas that were not applicable to the student population served (e.g., commendation for early childhood transition issued to an LEA that does not serve children under five years of age) and an LEA was cited for failure to comply with early childhood transition requirements at 34 CFR §300.124(c) but the LEA did not serve children under four years of age. In other cases, the State’s findings did not accurately reflect the legal requirements being monitored.<sup>3</sup>

We noted that the State’s monitoring reports issued in FFY 2006 included the statement that “quantitative noncompliance is indicated if any finding is greater than 10% for negative responses, excluding any non-applicable items.” In the FFY 2006 SPP/APR Response Table, OSEP reminded the State that while it may take into account the extent of the noncompliance in determining what corrective action is needed, the State must ensure the correction of any noncompliance, notwithstanding the extent of the noncompliance.<sup>3</sup>

*The State’s Monitoring System: Identification of Noncompliance in FFY 2007 to Present*

OSSE, when assuming responsibility as the SEA during FFY 2007, did not conduct on-site monitoring and reported that the State relied heavily on its dispute resolution systems to identify noncompliance. The State acknowledged that the data collected through the State’s data systems at that time were not reliable and thus, could not be used to identify noncompliance.

Noncompliance with respect to certain IDEA requirements, such as timely initial evaluations and timely implementation of hearing officer decisions was identified and addressed through the Blackman/Jones case.<sup>4</sup> Pursuant to the Blackman/Jones case, OSSE developed an “implementation plan” that holds OSSE, DCPS, and LEA charter schools in the State accountable for revising policies, procedures, and practices in these areas.

The State included in its FFY 2007 SPP/APR, data that reflect 86 findings of noncompliance were identified during FFY 2006 (July 1, 2006 through June 30, 2007). These data include nine findings of noncompliance identified through the State’s dispute resolution system. OSSE acknowledged that the State has been unable to fully report the number of findings of identified noncompliance, including findings identified through its due process system. The State reported it has since taken steps to develop procedures necessary to collect, analyze, and report data on

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<sup>2</sup> See OSEP Response Table for the District of Columbia’s FFY 2005 SPP/APR submission: <http://www.ed.gov/fund/data/report/idea/partbspap/2007/dc-aprtbl-2007b.pdf>

<sup>3</sup> See OSEP Response Table for the District of Columbia’s FFY 2006 SPP/APR submission: <http://www.ed.gov/fund/data/report/idea/partbspap/2008/dc-4response-2008b.pdf>

<sup>4</sup> The Blackman/Jones Consent Decree, approved on August 24, 2006, addresses special education issues presented in two consolidated class action cases. Blackman v. District of Columbia (Civil Action No. 97-1629) addresses the District of Columbia’s failure to timely adjudicate due process hearing requests filed under the IDEA. The second case, Jones vs. District of Columbia (Civil Action No. 97-2402) challenged that the District of Columbia failed to timely implement hearing officer decisions and settlement agreements between parties to due process complaints. OSSE is required to report data to the U.S. District Court demonstrating the State’s progress toward achieving specified benchmarks in the Blackman/Jones Consent Decree on measures such as compliance with timelines for completing evaluations and implementing hearing officer decisions and settlement agreements.

the number of findings of noncompliance identified through the State’s general supervision system in FFY 2008 and subsequent years.

OSSE reported that for FFY 2008 and continuing in FFY 2009, it is working to develop a system of general supervision that uses information from multiple sources. These include LEA self-assessments, on-site focused monitoring, LEA applications for IDEA, Part B funds, dispute resolution activities, and the State’s databases to identify noncompliance with IDEA requirements.

The State reported that findings of noncompliance are made when an LEA has violated an IDEA requirement or State law related to the education of children with disabilities. Any individual instance of noncompliance found in focused monitoring or State complaint investigations results in a written finding of noncompliance. OSSE staff also reported that the identification of a “pattern” or nature of the violation (e.g., the situation was particularly egregious or violated a civil right), could be potential factors in making findings of noncompliance. OSEP reminded the State that there may be instances where the State may choose not to make a finding of noncompliance if the LEA immediately (i.e., before the State issues a finding) corrects the noncompliance and provides documentation of such correction. For example, isolated or a small number of occurrences of noncompliance may be corrected prior to the State’s issuance of a formal written finding to the LEA. However, if the noncompliance is not corrected immediately, the State remains responsible for notifying the LEA in writing of the noncompliance and the requirement that the noncompliance be corrected in a timely manner, regardless of the nature or extent of the noncompliance.<sup>5</sup>

The State reported as barriers, difficulties with recruiting and retaining qualified staff to carry out monitoring responsibilities. Although OSSE has budgeted for additional staff, at the time of OSEP’s visit, multiple monitoring positions were vacant. OSSE also reported as a challenge, ensuring inter-rater reliability among its staff charged with detecting noncompliance with IDEA requirements. OSSE stated its commitment to hire additional staff, assess the professional development needs of its current staff, and collaborate with OSEP-funded technical assistance providers to address these issues.

#### LEA Self-Assessments

Beginning in FFY 2008, the State required each LEA to complete a self-assessment that includes three priority areas: (1) LRE; (2) evaluations and reevaluations; and (3) implementation of hearing officer determinations. The LEAs were required to examine their current practices related to these three areas and to develop an action plan that was submitted to OSSE in April 2009. State-level staff was assigned to each LEA to provide technical assistance in the development of the self-assessment. OSSE reported that the LEAs continue to work toward implementation of action plans designed to improve performance and compliance in these areas with support provided by their designated State-level OSSE contacts. OSSE has not yet developed a process to formally issue findings and require correction when the LEA-reported information in self-assessments reflects noncompliance.

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<sup>5</sup> For further information, see response to questions 3 and 4 of OSEP’s FAQ document, dated September 3, 2008 at: <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/530>

On-site Focused Monitoring

During FFY 2008, OSSE designed its process for conducting focused monitoring, developed monitoring procedures, and issued a written monitoring manual. The State conducted an orientation for LEAs that explained how the State would utilize self-assessments and on-site focused monitoring to carry out its general supervisory responsibilities.

Using the self-assessment and other available data, OSSE selected ten LEAs for focused monitoring visits. OSSE's established "business rules" for the selection of LEAs state that every year the LEA with the largest number of students with disabilities will be monitored. Also, LEAs placed on probation by the DC Public Charter School Board will be monitored. Other factors included: the LEA's compliance with timely implementing hearing officer decisions and settlement agreements; the number of State complaints filed against the LEA in the previous and current school year; LRE performance (as measured by the number of changes of placement as a proportion to the total student body to a more restrictive setting in the current school year); and the LEA's compliance with submitting accurate, reliable, and timely financial and Part B section 618 data.

The on-site visits were conducted in May and June 2009 and consisted of student record reviews, classroom observations, school tours, and staff, student, and family interviews. OSSE issued the results of the on-site monitoring activities to LEAs within approximately 60 days of the visits. OSSE issued monitoring reports to one LEA in FFY 2008 (June 30, 2009) and issued monitoring reports to nine LEAs in FFY 2009 (July 31, 2009). Each LEA with identified noncompliance was required to develop and submit a corrective action plan (CAP) to OSSE within 90 days of receiving the written monitoring findings.

The State reported that it is developing a three-year cycle for focused monitoring of LEAs and plans to continuously monitor all LEAs by using the grant application process, conducting quarterly checks of the statewide database, and carrying out monitoring activities to address disproportionality as required for annual reporting under the SPP/APR (i.e., Indicators 9 and 10).

LEA Application for IDEA, Part B Funds

In FFY 2008, OSSE instituted a revised application process to determine an LEA's eligibility to receive IDEA, Part B funds. When applying for these funds, an LEA must provide assurances that it will meet key fiscal and programmatic requirements of IDEA. The LEA must also provide a detailed description of its process for carrying out the following:

- child find;
- parent consent;
- evaluation and reevaluation timelines;
- IEP development;
- management of IEPs for students transferring from other LEAs;
- LRE;
- post-school transition;
- adequate training of teaching personnel;
- tiered intervention for struggling learners;
- utilization of positive behavior strategies;
- timely implementation of due process hearing decisions; and
- coordinated early intervening services (CEIS).

OSSE reported that State-level staff review each LEA's application to determine whether the LEA's description is sufficiently detailed and the content provided is consistent with IDEA requirements. OSSE reported that staff work with LEAs to address any issues identified as a result of that review and to ensure any discrepancies, omissions, and noncompliance with IDEA requirements are addressed timely - generally, within two weeks of the LEA's submission.

#### Dispute Resolution Activities

OSSE, as reflected in its FFY 2007 SPP/APR and verified through OSEP's interviews and document reviews, makes findings through the State's dispute resolution system. The State has reported a large volume of fully adjudicated due process hearings consistently over the past several years, with many hearings resulting in orders for the LEA to take action with respect to the individual child to redress violations of IDEA requirements. During FFY 2007 and 2008, the State investigated a relatively small number of State complaints but did frequently identify noncompliance as a result of those investigations. During OSEP's visit, the State acknowledged the deficits in administration of its State complaint procedures related to appropriately identifying and correcting noncompliance. For a discussion of these issues, see *Critical Element 3* of this section. The State has not properly tracked and accounted for the correction of all findings of noncompliance identified through its dispute resolution systems. This issue is detailed further in Section II - Data, *Critical Element 1*.

#### Database Systems

With the development and expansion of its database systems, OSSE has access to information that could be used to identify noncompliance. Beginning with the 2009-2010 school year, OSSE began collecting information from each of its LEAs through the Special Education Data System (SEDS), a statewide database. SEDS is designed to serve as the central repository for all special education data in the District of Columbia. SEDS includes the "EasyIEP" module that provides detailed reports of children whose evaluations and reevaluations were not completed within required timelines and whether those evaluations and reevaluations were completed, albeit late. SEDS also provides detailed reports of children who were not provided certain special education and related services required by their IEPs. OSSE reported it has not yet developed a process to utilize the information it receives in the statewide database and formally issue findings and require correction when the data reflect noncompliance.

#### OSSE and the District of Columbia Public Charter School Board

OSSE reported that in FFY 2009, the State initiated contact with the Public Charter School Board (PCSB) to obtain the results of the PCSB's monitoring of charter schools in areas related to the provision of special education and related services to children with disabilities. OSSE reported it plans to use this information as a source of data that informs the State's monitoring of charter schools and to identify areas that require further guidance and technical assistance.

OSEP appreciates the steps OSSE has taken to obtain information from the PCSB as it relates to the implementation of IDEA requirements. We encourage OSSE and PCSB to continue to exchange information in this manner.

#### Use of Identified Noncompliance to Inform Technical Assistance and Policy Development

The State reported that the information obtained through LEA self-assessments, dispute resolution activities, LEA grant applications, and on-site monitoring is used to identify LEA technical assistance needs and areas that require further clarification and guidance. As a result of

the information gathered through these processes, the State developed a training calendar that includes an array of professional development opportunities for LEAs.<sup>6</sup> During FFY 2009, OSSE began to implement quarterly meetings with LEAs that provide an opportunity for the State to clarify expectations and provide technical assistance on issues related to implementation of IDEA requirements. The State reported it is challenged with responding to LEAs' technical assistance needs with the current level of staffing designated for this function and that recruiting and retaining qualified staff is a barrier to providing effective technical assistance. Although the State has budgeted for eleven positions with varying technical assistance responsibilities, at the time of OSEP's visit only three positions were filled.

### **OSEP Conclusions**

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the State must monitor the improvement of educational results and functional outcomes for all children with disabilities, and must ensure compliance with the IDEA, Part B requirements. The State must also identify noncompliance by issuing findings when the State obtains data reflecting noncompliance. The State must account for all noncompliance, including noncompliance identified: (a) through the State's on-site monitoring system or other monitoring procedures such as self-assessment; (b) through the review of data collected by the State, including compliance data collected through a State data system; and (c) by the Department.<sup>7</sup>

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined that the State did not, during the reporting periods for the FFY 2006 and 2007 APRs, have a general supervision system that monitored LEAs in the District of Columbia for improvement of educational results and functional outcomes and compliance with program requirements as required. In particular, although the State conducted monitoring during FFY 2005 and FFY 2006, for the reasons explained above, the State's monitoring did not effectively identify noncompliance with IDEA requirements. For FFY 2007, the State's method for ensuring compliance with IDEA requirements was limited to its dispute resolution system and as a result, the State did not effectively identify noncompliance with IDEA requirements.

OSEP acknowledges the steps the State has taken to ensure that it collects and analyzes information from its LEAs through annual self-assessments, LEA applications for IDEA, Part B funds, on-site focused monitoring, dispute resolution activities, and beginning in FFY 2009, required use of SEDS, to carry out its general supervisory responsibilities. The State, as it moves forward in implementing its revised general supervision system, must ensure that it identifies noncompliance by issuing findings of noncompliance when the data it receives from LEAs via self-assessments and SEDS reflect noncompliance with Part B requirements.

The State is continuing to revise its general supervision system to more effectively use the components it has in place to monitor implementation of IDEA and to develop and implement additional monitoring tools. However, at this time, OSEP cannot determine whether the

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<sup>6</sup> See OSSE's 2009-2010 calendar of professional development opportunities at: [http://www.osse.dc.gov/seoframes.asp?doc=/seo/lib/seo/OSSE\\_DSE\\_Professional\\_Development\\_Calendar\\_09\\_10.pdf](http://www.osse.dc.gov/seoframes.asp?doc=/seo/lib/seo/OSSE_DSE_Professional_Development_Calendar_09_10.pdf).

<sup>7</sup> OSEP Memorandum to Chief State School Officers and Lead Agency Directors, dated October 17, 2008 (OSEP Memo 09-02) <http://www.ed.gov/policy/speced/guid/idea/letters/2008-4/correction-noncompliance101708apr4q2008.pdf>



proposed changes to the State’s general supervision system will result in a system that is reasonably designed to identify noncompliance in a timely manner.

**Required Actions/Next Steps**

- (1) Within 60 days of the date of this letter, OSSE must provide a plan that ensures that the State uses all the components of its general supervision system, including data the State receives through its LEA self-assessments, statewide database, State complaints, and due process hearings, to timely identify and notify LEAs of noncompliance and the responsibility to ensure that all such noncompliance is corrected as soon as possible and in no case later than one year after the date of the State’s identification of the noncompliance (i.e., written notification to the LEA of the noncompliance).
- (2) OSSE must continue to provide progress reports to the Department under the terms of the MOA, on the State’s efforts to monitor LEAs’ compliance with IDEA requirements (see Section C of the MOA).

***Critical Element 2: Correction of Noncompliance***

*Does the State have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner?*

**Verification Visit Details and Analysis**

*Correction of Noncompliance Identified in FFY 2006*

In its FFY 2007 APR, the State reported that 13 of 86 findings of noncompliance identified in FFY 2006 were corrected in a timely manner. An additional 57 findings were reported as corrected, but beyond the one-year timeline. At the time of the verification visit, OSSE was not able to report on the status of the 16 remaining findings of noncompliance identified in FFY 2006.

OSEP reviewed documentation related to on-site monitoring conducted in FFY 2006 for five LEAs, including each LEA’s CAP. Based on a review of that information, OSEP concluded that the State did not ensure that the LEAs consistently addressed each of the findings of noncompliance documented in the State’s monitoring reports. Notwithstanding, each of the five LEAs were notified that the identified noncompliance had been corrected “and appropriate evidence of change” had been verified by OSSE, albeit beyond the one-year timeline for correction.

*Correction of Noncompliance Identified in FFY 2007 to Present*

As noted above, during FFY 2007, the State reported that its method for identifying noncompliance was limited to dispute resolution activities. As part of our visit, OSEP reviewed the processes the State has in place to ensure correction of noncompliance identified through State complaints and due process hearings. OSEP noted the following based on a review of the State’s documentation and interviews with OSSE personnel:

*The State was unable to provide evidence that the findings of noncompliance identified through State complaints were corrected.* OSEP reviewed the State’s written decisions in which the State ordered the LEA to take specific actions to correct identified noncompliance, including steps to remediate the denial of appropriate services to the child. The State was unable to provide evidence that the required corrective actions were implemented. OSEP also found that the

required timelines for taking corrective action were not consistently identified in the written decisions. For example, in one decision a timeline of “by Christmas” was indicated for one of several required actions but timelines for the remaining actions were not stated.

*The State has a mechanism in place to ensure the correction of individual child-specific noncompliance identified in hearing officer decisions but has not reviewed each hearing decision to determine if the hearing officer found systemic noncompliance.* OSSE staff reported that it ensures correction of noncompliance identified through due process hearings by ensuring implementation of the hearing officer’s order.<sup>8</sup> The State has established a system that tracks implementation of hearing officer decisions to ensure actions ordered with respect to the individual child are taken. However, the State has not, as a matter of practice, reviewed each hearing decision to determine whether the hearing officer found that the LEA has a policy, procedure, or practice that is inconsistent with IDEA (i.e., systemic noncompliance) and thus, implementation of the order for the individual child would not be sufficient to ensure correction of the identified noncompliance.<sup>9</sup>

*The State is considering revising its procedures to ensure CAPs are reasonably designed to correct noncompliance.* OSSE reported that the LEAs with noncompliance identified in FFY 2008 and FFY 2009 submitted CAPs within 90 days of receiving the written monitoring findings. The State expressed concern about the content of the CAPs and reported the LEAs did not consistently examine what caused the noncompliance to occur or indicate how they would evaluate whether corrective measures taken were effective in resolving the noncompliance. In cases where OSSE believed the CAP was not reasonably designed to correct the identified noncompliance, the State negotiated revisions to the CAP with the LEA. Based on this experience, OSSE is considering revising its procedures to require State approval of each LEA’s CAP.

*The State is developing mechanisms to track correction of noncompliance identified in FFY 2008 and subsequent years.* The State acknowledged that it must implement procedures consistent with the guidance in OSEP Memo 09-02 when determining whether an LEA has satisfactorily demonstrated that noncompliance identified in FFY 2008 and FFY 2009 has been corrected (i.e., that the LEA: (1) is correctly implementing the specific regulatory requirements; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA). OSSE reported that each LEA has been assigned a State-level contact who is responsible for following up to ensure noncompliance identified through on-site monitoring is corrected in a timely manner. The State-level contact reviews each LEA’s CAP, tracks the implementation of corrective actions, and identifies and links the LEA with technical assistance.

OSSE reported that staff is designated to track implementation of hearing decisions. Going forward, State complaint staff will monitoring implementation of corrective actions required by State complaint decisions. The State reported that it is currently developing a monitoring database which will be used to follow up and track correction of noncompliance. OSSE reported

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<sup>8</sup> Timely implementation of hearing officer decisions is an area addressed in the MOA. During FFY 2009 and FFY 2010, OSSE is required to submit data to OSEP until such time the State has demonstrated substantial compliance with the requirement.

<sup>9</sup> For further information, see response to questions 6 and 14 of OSEP’s FAQ document, dated September 3, 2008 at:

<http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/530>

it will use quarterly meetings with LEAs as a forum to address any outstanding issues that impact multiple LEAs.

*The State has developed a system of sanctions and enforcement options to address uncorrected noncompliance.* The State reported that it has at its disposal a range of enforcement actions. The State's system of progressive sanctions and enforcement options includes providing technical assistance; developing and implementing corrective action plans; directing the use of or withholding funds to an LEA; and making a referral to law enforcement, if necessary. The State reported it also may make unannounced visits, require more frequent reporting, and conduct intensive monitoring activities, as appropriate, to help oversee and facilitate the correction of noncompliance. LEAs were notified of the State's system of sanctions and enforcement options at a meeting in February 2009 when OSSE's monitoring system was introduced and in written communications (e.g., monitoring manual, LEA determination letters, policy and procedures, written guidance documents, etc.).

### **OSEP Conclusions**

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the State must ensure that identified noncompliance is corrected in a timely manner.

*Standard for Verifying Correction of Noncompliance:* The Part B regulations in 34 CFR §300.600(e) require that, in exercising its monitoring responsibilities under §300.600(d), the State must ensure that when it identifies noncompliance with the requirements of Part B by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. As explained in OSEP Memo 09-02, and previously noted in OSEP's monitoring reports and verification letters, in order to demonstrate that previously identified noncompliance has been corrected, a State must verify that each LEA with noncompliance is: (1) correctly implementing the specific regulatory requirements; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA.

*State's Practices for Verifying Correction:* When notifying LEAs of identified noncompliance via written monitoring reports, OSSE did not specifically inform the LEAs that all individual instances of noncompliance must be corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance (i.e., written notification to the LEA of the noncompliance). It is unclear to OSEP whether OSSE's process for conducting follow up activities will ensure that each of the LEAs with identified noncompliance: (1) is correctly implementing the specific regulatory requirements; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA. In addition, OSEP reminds the State that when deciding whether an LEA is correctly implementing the specific regulatory requirements, it must review updated data, which may be from subsequent on-site monitoring or data collected through a State data system. See OSEP Memo 09-02. Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined that the State did not have a system that was reasonably designed to ensure the timely correction of noncompliance identified in FFY 2006 and FFY 2007.

Interview information indicates that the State does not have a process in place to: (1) review each hearing decision to determine whether a hearing officer identified noncompliance of a systemic nature; and (2) follow up and ensure any such systemic noncompliance is corrected. As

the State moves forward, it must ensure the timely correction of any systemic noncompliance identified by a hearing officer. The State is continuing to revise its general supervision system to more effectively track correction of noncompliance identified in FFY 2008 and subsequent years, including the development of a database to track all findings of noncompliance and the status of correction of those findings. However, at this time, OSEP cannot determine whether the proposed changes to the State's general supervision system will result in a system that is reasonably designed to ensure correction of noncompliance in a timely manner.

### **Required Actions/Next Steps**

- (1) Within 60 days of the date of this letter, the State must provide a plan that ensures it will:
  - (a) determine the correction of noncompliance by verifying that each LEA with noncompliance is: (i) correctly implementing the specific regulatory requirements; and (ii) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA; and (b) review updated data, which may be from subsequent on-site monitoring or data collected through a State data system, when determining whether an LEA is correctly implementing the specific regulatory requirements.
- (2) Within 60 days of the date of this letter, the State must provide a plan that ensures that it will: (a) examine each hearing decision (beginning with hearing decisions issued in FFY 2008 and in subsequent years) to determine if the hearing officer identified any systemic findings of noncompliance; and (b) ensure any systemic noncompliance identified by the hearing officer is corrected as soon as possible and in no case later than one year after the date the LEA is notified of the noncompliance.
- (3) OSSE must continue to provide reports to the Department under the terms of the MOA related to the timely correction of noncompliance (see Section C of the MOA).

### ***Critical Element 3: Dispute Resolution***

*Does the State have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA?*

### **Verification Visit Details and Analysis**

#### *State Complaints*

In November 2009, the State adopted revised State complaint procedures, including a model form, consistent with IDEA requirements. These documents are posted on the State's web site and also made available to the State's Parent Training and Information Center (PTI), Advocates for Justice and Education. OSSE staff reported that additional outreach efforts are underway to publicize the revised procedures and availability of the model form.

OSEP examined the State's records for 12 State complaints that were filed during FFY 2007 and FFY 2008. The purpose of this activity was to review the procedures OSSE followed when it received the State complaints. Based on our review, supplemented with information provided through interviews with OSSE staff, OSEP noted the following deficiencies in the State's investigation of the complaints:

*None of the complaints were investigated and written decisions issued within the required timelines.* The State did not complete its investigation and issue a written decision within the 60-day timeline or a timeline that was extended due to exceptional circumstances with respect to a

particular complaint or because the parent (or individual or organization) and public agency involved agreed to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State.

*All alleged violations of IDEA were not addressed.* In some cases, the State's written final decision did not address each of the complainant's allegations. OSSE staff reported this could have been due to changed circumstances since the complaint was filed or that the issues investigated were determined as a result of discussions with the complainant. However, the State's written decisions did not contain an explanation as to why the allegations in the written complaint filed with the SEA were not investigated and therefore did not address each of the allegations in the complaint in accordance with 34 CFR §300.152(a)(5).

*The State's conclusions were not clearly stated.* The State did not consistently document its conclusion as to whether the public agency had violated a requirement of the IDEA with respect to the complainant's allegation in accordance with 34 CFR §300.152(a)(5).

OSSE acknowledged the issues OSEP identified with the State's administration of State complaints. OSSE stated its commitment to develop and implement procedures for resolving IDEA State complaints consistent with IDEA requirements.

#### *Due Process Hearings*

OSSE provided OSEP with an overview of the Student Hearing Office (SHO) docketing system, including information about the procedures OSSE has put in place to facilitate the timely resolution of due process complaints. We were given a tour of the SHO building and informed of steps that have been taken to improve the timeliness and quality of hearing officer decisions. We were also informed of actions taken to improve customer service at the SHO, such as renovating the waiting area that includes a telephone, television, and toys for children and offering the parties a private space to meet with counsel and hold confidential discussions. Surveys are available for parties to voluntarily and anonymously provide feedback on their experiences with the SHO and the performance of hearing officers. The surveys are available at the SHO and are posted on OSSE's web site. Information gathered through the survey process is used to identify improvements needed to the SHO operations.

The State uses a one-tier due process hearing system. OSSE contracts with private attorneys with at least five years of legal experience to serve as hearing officers. The State's Standard Operating Procedures (SOPs) outline the qualifications and impartiality requirements for hearing officers. Due process cases are assigned to hearing officers on a rotating basis. The State also contracts with an individual who serves as the Independent Chief Hearing Officer. This position is responsible for monitoring and supervising the quality of special education hearings; providing continuing education to the hearing officers, including technical assistance; conducting evaluations of hearing officer performance; and ruling on requests for continuances, as required under the terms of the Blackman/Jones case. The Chief Hearing Officer may also serve as a hearing officer.

As part of our review of the State's due process hearing system we conducted interviews with OSSE staff and the Chief Hearing Officer and reviewed files for 25 due process complaints filed in FFY 2008. Based on our review of these files, OSEP noted the following:

*The SHO has developed and implemented processes to support documentation of extensions to the 45-day timeline (i.e., continuances) and to ensure that the timeline extension is appropriate*

*and for a specified period of time.* The SHO has developed procedures that require hearing officers to specify the basis for the extension, the party who requested the extension, the length of any extension granted, and the date the hearing decision is due.

*The SHO has developed and implemented procedures to ensure hearing decision timelines are tracked and non-adherence with timelines is addressed.* OSEP reviewed guidance and directives the SHO issued to hearing officers stressing the importance of compliance with timelines and specifying the sanctions imposed on hearing officers who fail to meet required timelines. OSSE reported it has levied fines and discontinued contracts for certain hearing officers for continued failure to issue timely hearing decisions.

*Due process complaints were not consistently resolved within the required timeline and in accordance with IDEA procedures.* Through our review of 25 due process cases, we found two instances in which the hearing decision was not issued within the required timeline. This includes one case that was extended at the request of a party in order to file post-hearing briefs and the hearing officer failed to specify the length of the extension. In the other case, the decision was issued three days beyond the 45-day timeline.

OSSE has been unable to report valid and reliable data on the timeliness of due process hearing decisions for FFY 2006 and FFY 2007. For the FFY 2008 period, OSSE reported section 618 data covering the period from August 11, 2008 (the date the SHO docketing system became effective) through June 30, 2009 that reflect 774 of 867 fully adjudicated hearings were resolved within required timelines (89.27%). The State expects to have valid and reliable data covering the full period of the FFY 2009 reporting period (July 1, 2009 through June 30, 2009).

*Due process hearing decisions are not transmitted to State Advisory Panel (SAP) members in a timely manner.* The State reported that it transmits hearing officer decisions and findings to the SAP by notifying the members that the decisions are posted on the OSSE web site. OSEP noted that at the time of the November 2009 visit, the State's posting of hearing decisions was delayed by more than a year. OSSE provided OSEP with a proposed schedule for bringing its postings up-to-date. The schedule reflects, for example, that the decisions issued by the end of October 2008 would be posted by December 2009 and that the delay in posting decisions would decrease over the next several months. OSEP encouraged the State to consider ways to accelerate its proposed schedule so that SAP members have more timely access to due process hearing decisions.

The State reported as a substantial accomplishment, the establishment and full implementation of procedures designed to ensure the SHO manages due process complaints in a timely, responsive, and professional manner. The State also reported its concern about the reliance on the due process system to resolve disagreements and mistrust of the State complaint system as challenges to administering effective systems of dispute resolution in the State.

Pursuant to the terms of an agreement with the plaintiffs in the Blackman/Jones case, until April 2009 DCPS had agreed to waive the resolution meeting required under 34 CFR §300.510 in any due process complaint when the parent wished to proceed directly to a hearing. OSSE reported that since that waiver provision was lifted, there has been limited use of resolution meetings. As a result, many due process complaints continue to proceed to a due process hearing.

The State has developed a model form to assist parents and public agencies in filing a due process complaint as required by 34 CFR §300.509. Subsequent to the verification visit, OSSE

finalized revisions to the State regulations<sup>10</sup> and the SOPs for due process hearings. OSSE has provided guidance to hearing officers and posted the updated information on its web site.

### Mediation

The State reported that although readily available to the parties to resolve IDEA disputes, mediation is not widely used. The Chief Hearing Officer reported that he serves as the primary individual responsible for conducting mediation sessions and stated that at the time of the November 2009 visit, mediation not related to the filing of a due process complaint, had been used in only one instance. Hearing officers, under their contracts with OSSE, are also trained and qualified to serve as mediators, if needed. OSSE staff reported it is exploring ways to promote the use of mediation to resolve IDEA disputes, including the possibility of contracting with an entity outside of OSSE and the SHO to further demonstrate that mediation is conducted in an impartial manner and done independently from the SEA.

### *Procedural Safeguards Notice - Dispute Resolution*

As part of the verification process, OSEP reviewed the procedural safeguards notice on OSSE's web site. OSEP found that the notice does not include all of the content required in IDEA section 615(d) and 34 CFR §300.504(b), including a full explanation of all of the procedural safeguards available under 34 CFR §§300.151 through 300.153 relating to State complaint procedures. For example, the State's Procedural Safeguards document indicates that the investigation of a State complaint is set aside if mediation is requested. The regulations at 34 CFR §300.152(b) permit an extension of the 60-day timeline if the complainant and the public agency agree to extend the time to engage in mediation. OSSE staff acknowledged that the document needs to be revised to accurately reflect content required under 34 CFR §300.504(b) and the State's revised State complaint and due process procedures.

### Early Dispute Resolution Opportunities

OSSE reported that pursuant to the Blackman/Jones case, the State has provided funds to the District of Columbia's PTI to: (1) provide training for parents of children with disabilities and advocates; (2) serve as advocates on behalf of parents in the special education decision making process; (3) provide IEP meeting facilitation services; and (4) develop resources for parents in understanding and navigating the special education process. The PTI operates two Parent Centers and has bilingual staff available to provide assistance to parents in the District of Columbia.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined the State has not demonstrated that it has procedures and practices that are reasonably designed to implement all dispute resolution requirements of IDEA. Specifically, OSEP finds that the State does not have procedures in place and properly implemented to ensure that State complaints are investigated and a written decision issued consistent with the requirements of 34 CFR §§300.151 through 300.153. This includes ensuring that: (1) each State complaint is resolved within the 60-day timeline or an appropriately extended timeline due to the

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<sup>10</sup> See Chapter 30 (Special Education Policy) of Title 5-E (Education, original Title 5) of the District of Columbia Municipal Regulations section E-3030, at: [http://www.osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/Resolution\\_Meeting\\_Due\\_Process\\_Hearing\\_and\\_Final\\_Decision\\_Procedure.pdf](http://www.osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/Resolution_Meeting_Due_Process_Hearing_and_Final_Decision_Procedure.pdf)

exceptional circumstances with respect to the particular complaint or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State; (2) each of the allegations in the complaint is addressed in the written decision; and (3) the State issues a written decision that clearly states the State's conclusion as to whether the public agency had violated a requirement of IDEA.

Because the State has not been able to provide valid and reliable data on the timeliness of due process hearing decisions (SPP/APR Indicator 17), OSEP cannot determine whether the State's system is reasonably designed to ensure the timely adjudication of due process complaints. Based on our limited review of due process complaint files, we found that the hearing decisions in two of 25 due process files were not issued within the 45-day timeline or within a specific extension of the timeline consistent with 34 CFR §300.515.

The regulations at 34 CFR §300.513(d)(1) state that the public agency, after deleting any personally identifiable information, must transmit the findings and decisions to the SAP. OSEP concludes that the State did not make the due process findings and decisions available to its SAP members in a timely manner.

#### **Required Actions/Next Steps**

With its FFY 2009 APR, due February 1, 2011, the State must provide documentation that demonstrates:

- (1) The State complies with the 60-day time limit for issuing a written decision for a State complaint or an extended timeline if exceptional circumstances exist with respect to the particular complaint or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State. (34 CFR §300.152(a) and (b))
- (2) The State issues written decisions to each complainant that address each allegation in the State complaint. (34 CFR §300.152(a)(5))
- (3) The State issues written decisions to each complainant that clearly state the State's conclusions as to whether the public agency violated a requirement of IDEA. (34 CFR §300.152(a)(5))
- (4) The State timely transmits due process findings and decisions to the SAP. (34 CFR §300.513(d))
- (5) The State has revised its Procedural Safeguards Notice document to ensure the information is consistent with IDEA, its implementing regulations, and OSSE's revised State complaint and due process procedures. (34 CFR §300.504(b))

#### ***Critical Element 4: Improving Educational Results***

*Does the State have procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities?*

#### **Verification Visit Details and Analysis**

*Secondary Transition:* OSSE leads a number of initiatives designed to decrease dropout rates and increase graduation rates for students with disabilities, as well as to assist them in achieving their desired postsecondary outcomes. The State described a technical assistance initiative that



involves approximately 15 LEAs, each having a transition coordinator. A train-the-trainer model is being implemented to build the capacity of special education coordinators and teachers in each of the LEAs to ensure compliance with transition requirements and to facilitate the successful transition of students with disabilities from school to postsecondary education and employment.

OSSE is sponsoring professional development activities addressing secondary transition and related data reporting requirements during the 2009-2010 school year. The training series includes topics such as: (1) developing appropriate, measurable postsecondary transition goals; (2) gathering exit data; and (3) implementing evidence-based practices for students participating in the Life Centered Career Education curriculum. The State is developing a secondary transition manual for use by students, parents, and educators and through a workgroup that includes the State's PTI, has created a resource map identifying the services available within the District of Columbia for exiting students. During FFY 2009, the State developed and disseminated policy and procedures that clarify the State's expectations for LEAs' implementation of secondary transition requirements.

*Response to Intervention (RTI) and Improving Achievement:* The State established a technical assistance project that involves four of its LEAs in analyzing and using data to develop plans for improved student achievement. Using the District of Columbia Comprehensive Assessment System (DC-CAS) scores and Dynamic Indicators of Basic Early Literacy Skills (DIBELS) data, the State's technical assistance staff helps the LEA to isolate the specific skill(s) the student lacks and then helps the LEA to develop instruction targeted to the skill area (e.g., phonological weakness). OSSE is receiving technical assistance from OSEP-funded technical assistance resources for support in expanding this initiative beyond the four LEAs. An "RTI Toolkit" and guidance have been distributed to all LEAs and the State offers multiple opportunities for professional development with a focus on RTI. Although the State has allocated funding for Positive Behavioral Support Specialists and RTI Specialists to implement these efforts, OSSE reported staff retention and recruitment challenges have impeded its progress.

*Least Restrictive Environment:* The State is engaged in a number of initiatives that are designed to ensure that students with disabilities are educated in the LRE and are provided access to the general curriculum. During FFY 2008, the State released policy and procedures to clarify the State's expectations for implementation of LRE requirements and issued guidance to its LEAs related to nondiscrimination in the charter school admissions process.

The State also issued its "Policy and Procedures for Placement Review" and created a unit of staff dedicated to ensure proper implementation of the policy. The unit provides technical assistance to LEAs when an IEP team or LEA is considering a change in the child's placement to a more restrictive environment. OSSE staff provides technical assistance and coaching to support the LEA in examining whether the child could continue to be educated in his or her current placement with added supports and services for the child and school staff. OSSE reported that in approximately 46% of the cases, the school has been able to develop and implement a plan that enables the child to remain in his or her placement and avoids movement to a more restrictive environment.

The State requires each LEA to report annually on the strategies it uses to ensure children are educated in the LRE appropriate to their individual needs. Each LEA, with key stakeholders in its school community (parents, special education staff, regular education staff, students, and school-based partners) is required to assess the quality of the LEA's practices with respect to the

LEA's leadership and vision for promoting an inclusive culture, engaging parents in the educational decision-making process, and providing positive behavioral support and academic strategies. OSSE's Training and Technical Assistance Unit offers professional development and technical assistance geared toward building LEA capacity to educate children in inclusive settings.

*Early Childhood Outcomes:* The State is collaborating with OSEP-funded technical assistance providers, National Early Childhood Technical Assistance Center (NECTAC) and Early Childhood Outcomes Center (ECO), to develop a system for collecting early childhood outcomes data. OSSE provided guidance and training to all affected LEAs and purchased the Battelle Developmental Inventory for charter LEAs. OSSE's Training and Technical Assistance Unit offers LEA staff multiple opportunities for professional development that focus on early childhood topics.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes that the State has procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities.

### **Required Actions/Next Steps**

No further action is required.

### ***Critical Element 5: Implementation of Grant Assurances***

*Does the State have procedures and practices that are reasonably designed to implement selected grant assurances (i.e., monitoring and enforcement, significant disproportionality, private schools, CEIS, NIMAS, and assessment)?*

### **Verification Visit Details and Analysis**

#### **Reporting on the Performance of Each LEA**

As a part of its monitoring and enforcement responsibilities under section 616 of the IDEA and 34 CFR §300.600(a), the State must annually report to the public on the performance of each LEA against the State's SPP/APR targets. OSSE meets this reporting requirement by posting a PDF document on its web site, in which the State reports each LEA's performance against targets in the State's SPP.

The State reported that the change in the number and legal status of charter schools from year to year, as well as the small number of children with disabilities attending some charter LEAs presents a challenge to completing this activity. OSEP notes that although the State has posted FFY 2007 local data, there are still a number of indicators for which the State is continuing to address data validity issues. When reporting to the public on these indicators, the State has included a notation that valid data are not available and that OSSE will establish accurate data in the FFY 2008 APR.

#### **Local Determinations and Enforcement**

IDEA section 616(a) and 34 CFR §300.600(a) require the State to make an annual determination for each LEA. OSSE issued local determinations for the first time in November 2009 based on FFY 2007 data. OSSE acknowledged that the State's failure to make determinations of each LEA's performance based on FFY 2006 data constitutes noncompliance with section 616 of the

IDEA and 34 CFR §§300.600(a), 300.603 and 300.604. OSSE reported that going forward, it will strive to issue local determinations on or about June 1 so that identified concerns can be addressed in the LEA's planning for the upcoming school year.

OSSE's local determinations are made based on a rubric with point values assigned to the LEA's demonstrated performance on four elements: (1) performance on SPP compliance Indicators 9 through 13; (2) uncorrected noncompliance; (3) providing timely, valid, and reliable data to the State; and (4) other data available to OSSE about the LEA's compliance with the IDEA, including "financial data." The State's documentation of its determinations process does not clearly indicate that the State considers any audit findings against an LEA when making local determinations, but rather, whether "financial data" are submitted in a valid and timely manner and if those data are submitted in a "substandard" fashion.

OSSE sent correspondence to each LEA that identified the LEA's determination and the criteria used to make the determination. OSSE also included a chart that summarized each required element and the LEA's corresponding rating. OSSE reported that none of its LEAs were determined to "meet requirements" or "need substantial intervention" in implementing the requirements of the IDEA. Subsequent to the verification visit, OSSE reported that as a result of LEA appeals, three LEAs were determined to "meet requirements." According to OSSE staff, all LEAs will be provided technical assistance in improving the areas that affected their determinations.

The State reported enforcement actions to address each determination level. The document that describes the State's enforcement actions does not fully align with the requirements in 34 CFR §300.604(a)(1). Although OSSE indicates it will provide technical assistance to its LEAs determined to "need assistance" for two consecutive years, the IDEA requires the SEA to *advise* the LEA of available sources of technical assistance that may help the LEA address the areas in which the LEA needs assistance and *require* the LEA to work with appropriate entities to access the assistance.

#### Significant Disproportionality

OSSE has not, pursuant to IDEA section 618(d) and 34 CFR §§300.173 and 300.646, developed policies and procedures or collected and analyzed data to determine if significant disproportionality based on race and ethnicity is occurring in the State and LEAs of the State with respect to: (1) the identification of children as children with disabilities; (2) the identification of children as children with a specific disability; (3) the placement of children with disabilities in particular educational settings; (4) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. As a result, the State has not identified any LEA as having significant disproportionality. OSSE reported that it intends to use a 2.5% weighted risk ratio and expects to complete the required analysis and determination based on FFY 2007 data. LEAs determined to have significant disproportionality will be required to reserve 15% of their FFY 2009 IDEA, Part B funds for coordinated early intervening services (CEIS).

The State expressed concern that some charter LEAs could be identified with significant disproportionality and be required to use IDEA, Part B funds for CEIS but that the amount of funds required would be small. The State indicated that providing guidance to LEAs about how those funds could best be used to impact the significant disproportionality would be a challenge.

Coordinated Early Intervening Services (CEIS)

OSSE reported that for FFY 2008, 15 LEAs voluntarily requested to use up to 15% of their IDEA, Part B funds for the provision of CEIS. As stated above, the State has not conducted the analysis required to determine if any of its LEAs have significant disproportionality; therefore, no LEA has been required to reserve Part B funds for CEIS.

The State's application for IDEA, Part B funds requires that LEAs specify the amount of Part B funds they wish to use for CEIS. The State's instruction manual for the grant application process provides guidance to LEAs on the allowable uses of funds for CEIS. LEAs develop a separate budget and spending plan for CEIS. The State has not yet fully developed a mechanism to track the number of students receiving services under CEIS and the number of those students who subsequently receive special education services. OSSE reported it has concerns about the quality of general education instruction and an LEA's capacity to implement appropriate, effective interventions, including the ability to collect the data required for use of funds for CEIS.

The State reported that it has required LEAs that choose to use Part B funds for CEIS to use them solely from Part B section 611 funds. While the State can inform LEAs of considerations in, and advantages of, using only section 611 IDEA funds for CEIS, the LEA must be given the option of choosing the Part B funds it will use for CEIS (i.e., section 611, section 619, or a combination of the two). Absent an enforcement action taken by the State to direct the use of an LEA's funds, it is inconsistent with 34 CFR §300.226(a) to restrict an LEA's use of Part B funds for CEIS to only its section 611 funds.

Parentally-Placed Private School Children

The requirements in IDEA section 612(a)(10)(A) and 34 CFR §§300.130 through 300.144 related to LEA obligations to parentally-placed private school students are applicable to DCPS, the only LEA in the District of Columbia with specified jurisdictional boundaries. The State calculates the proportionate share for DCPS and identifies this amount in the grant application document DCPS uses when applying for its IDEA, Part B funds.

DCPS is required to provide assurances related to the provision of equitable services to parentally-placed private school children and to describe how it will conduct consultation with representatives of private school children in accordance with 34 CFR §300.134. The application for IDEA, Part B funds makes clear that DCPS must plan for and track separately, the use of the proportionate share of funds for parentally-placed private school students. DCPS is not able to seek reimbursement of costs related to equitable services until it submits its plan for providing these services. OSSE reported that it tracks DCPS' actual expenditures against the LEA's budget for equitable services and is developing monitoring procedures to review DCPS' compliance with requirements related to parentally-placed private school children.

NIMAS

OSSE reported that the State intends to, but has not yet, adopted the National Instructional Materials Accessibility Standards (NIMAS) in accordance with 34 CFR §300.172(a). The State is in discussion with the National Instructional Materials Accessibility Center (NIMAC) to coordinate the provision of materials for blind and print-disabled students. According to OSSE staff, DCPS has been working with the NIMAC, an arrangement established prior to OSSE being named the SEA for the District of Columbia. In applications for IDEA, Part B funds, all LEAs must provide assurances that children with visual impairments are provided materials in an

accessible format in a timely manner. The State reported that as it further develops its monitoring processes, it will include steps to verify LEA compliance with requirements to ensure that blind and print-disabled students receive instructional materials in a timely manner.

### Statewide Assessments

Statewide assessments are conducted through the District of Columbia Comprehensive Assessment System (DC-CAS). Students with significant cognitive disabilities, who, as determined by the IEP teams, cannot be appropriately assessed through the regular assessment, may be tested through the DC-CAS Alternate (DC-CAS Alt). The State's assessment system does not include an alternate assessment based on modified academic achievement standards.

To ensure LEA compliance with the requirements in IDEA section 612(a)(16) and 34 CFR §300.160 for statewide assessments, OSSE has developed guidance for use by the IEP team when developing IEPs (e.g., determining appropriate accommodations and how children will be assessed). During the administration of assessments in FFY 2008, OSSE placed monitors in public and nonpublic schools to check whether children were administered the version of the test determined appropriate by their IEP teams and that accommodations were provided (with a particular focus on monitoring for "read-aloud" modifications). In FFY 2009, the State issued additional guidance related to the participation of children with disabilities in alternate assessments and conducted a webinar to review the State's accommodations manual.

Currently, OSSE reports to the public on student participation and performance in assessments on the State's web site. OSEP could not locate assessment results reported for children with disabilities in the manner required by 34 CFR §300.160(f)(1) and (4). Specifically, the State reports results for children who participate in the alternate assessment at the school-level but does not report results at the LEA- and State- levels. In addition, public reporting of results at the school-, LEA-, and State- levels is not available on the number of students with disabilities that took the regular assessment with and without accommodations, or the number of students with disabilities that took the alternate assessment against alternate academic achievement standards, as set forth in 34 CFR §300.160(f).

### Revocation of Parent Consent

The State reported that as a part of the IDEA, Part B grant application, LEAs are required to provide assurances and to provide a description of how they ensure the requirements related to revocation of parent consent for services are implemented. The State has disseminated policy guidance to LEAs via memoranda regarding these requirements.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP has determined that the State does not have procedures and practices reasonably designed to implement each of the selected grant assurances reviewed. Specifically:

- (1) The State did not make determinations of each LEA's performance based on FFY 2006 data as required by section 616 of the IDEA and 34 CFR §§300.600(a), 300.603 and 300.604.

- (2) OSSE’s determinations criteria and enforcement actions are not fully aligned with the requirements in 34 CFR §300.604(a)(1) and OSEP guidance<sup>11</sup>. Specifically: (a) OSSE does not consider audit findings against the LEA, if any, when making determinations of the LEA’s performance; and (b) OSSE’s enforcement actions do not state that LEAs determined to “need assistance” for two consecutive years are *advised* of available sources of technical assistance and *required* to access assistance.
- (3) The State has not developed policies and procedures, as required by IDEA section 618(d) and 34 CFR §§300.173 and 300.646, for determining if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs with respect to the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular disability category; the placement in particular educational settings; the incidence, duration and type of disciplinary actions, including suspensions and expulsions. The State must have policies and procedures for ensuring that if the State determines an LEA has significant disproportionality in one or more of these areas based on its examination of the LEA’s data, the State: (a) provides for the review and, if appropriate revision of the policies, procedures and practices used in the identification, placement, or discipline of children with disabilities to ensure compliance with the requirements of IDEA; (b) requires the LEA to reserve 15 percent of its Part B funds for CEIS; and (c) requires the LEA to publicly report on the revision of policies, practices and procedures.
- (4) The State has not conducted an annual examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs with respect to the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular disability category; the placement in particular educational settings; the incidence, duration and type of disciplinary actions, including suspensions and expulsions as required by IDEA section 618(d) and 34 CFR §300.646.
- (5) The State has not developed procedures to ensure CEIS reporting requirements are met (34 CFR §300.226(d)). In addition, the State is impermissibly restricting LEAs from using any portion of their section 619 funds for CEIS.
- (6) The State has not reported to the public on the participation and performance of students with disabilities in statewide assessments in a manner consistent with 34 CFR §300.160(f)(1) and (4).
- (7) The State has not adopted the NIMAS standard and established procedures to ensure that instructional materials for blind persons or other persons with print disabilities are provided in a timely manner and consistent with 34 CFR §300.172.

With respect to revocation of parent consent for services, OSEP concludes the State has taken steps to issue guidance and understands that OSSE plans to revise State regulations and the State’s Procedural Safeguards document for consistency with 34 CFR §300.300. (See discussion

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<sup>11</sup> See Questions and Answers on Monitoring, Technical Assistance, and Enforcement (revised June 2009) <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C4%2C>.

of Procedural Safeguards notice in *General Supervision - Critical Element 3*). OSEP concludes that the State has procedures and practices designed to implement the grant assurances pertaining to parentally-placed private school children.

### **Required Actions/Next Steps**

With its FFY 2009 APR, due February 1, 2011, the State must provide documentation that it has:

- (1) Revised its rubric for making local determinations to include consideration of any audit findings against an LEA consistent with IDEA section 616 and OSEP guidance.
- (2) Revised the document that describes the State's enforcement actions to state that LEAs determined to "need assistance" for two consecutive years are *advised* of available sources of technical assistance and *required* to access assistance consistent with 34 CFR §300.604(a)(1).
- (3) Established policies and procedures: (a) for determining if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs with respect to the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular disability category; the placement in particular educational settings; the incidence, duration and type of disciplinary actions, including suspensions and expulsions; and (b) for ensuring that if the State determines an LEA has significant disproportionality in one or more of these areas based on its examination of the LEA's data, the State: (i) provides for the review and, if appropriate revision of the policies, procedures and practices used in the identification, placement, or discipline of children with disabilities to ensure compliance with the requirements of IDEA; (ii) requires the LEA to reserve 15 percent of its Part B funds for CEIS; and (iii) requires the LEA to publicly report on the revisions of policies, practices, and procedures, consistent with IDEA section 618(d) and 34 CFR §§300.173 and 300.646.
- (4) Completed an examination of FFY 2007 data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs with respect to the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular disability category; the placement in particular educational settings; the incidence, duration and type of disciplinary actions, including suspensions and expulsions and for LEAs determined to have significant disproportionality based on FFY 2007 data, completed the required actions consistent with IDEA section 618(d) and 34 CFR §300.646(b).
- (5) Conducted an examination of FFY 2008 data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs with respect to the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular disability category; the placement in particular educational settings; the incidence, duration and type of disciplinary actions, including suspensions and expulsions and for LEAs determined to have significant disproportionality based on FFY 2008 data, completed the required actions consistent with IDEA section 618(d) and 34 CFR §300.646(b).

- (6) Informed LEAs that choose to use Part B funds for CEIS that they have the option of choosing which Part B funds (i.e., section 611, section 619, or a combination of the two) to use for CEIS consistent with 34 CFR §300.226(a).
- (7) Developed a mechanism to track the number of students receiving CEIS and the number of those students who subsequently receive special education services consistent with 34 CFR §300.226(d).
- (8) Reported to the public on the participation and performance of students with disabilities in statewide assessments in accordance with 34 CFR §300.160. The State must provide a link to the State's web site where the data have been posted.
- (9) Adopted the NIMAS standard and established procedures to ensure that instructional materials for blind persons or other persons with print disabilities are provided in a timely manner and consistent with 34 CFR §300.172.

## **II. Data System**

### ***Critical Element 1: Collecting and Reporting Valid and Reliable Data***

*Does the State have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner?*

### **Verification Visit Details and Analysis**

The State's methods for collecting data required for the SPP/APR and under section 618 are varied and have been revised each year over the past three fiscal years. For example, during FFY 2007, much of the data was collected from LEAs through spreadsheets provided by DCPS and the PCSB, supplemented with an Interim Collection Tool (ICT) developed by OSSE. FFY 2007 data were also collected through the ENCORE data system (educational environments, disproportionate representation, initial evaluations, and early childhood transition). The State manually collected its dispute resolution data. The State relies on the Online Attendance Management System (OLAMS), administered by the PCSB, and Student Tracking and Reporting System (STARS), the DCPS' student information system for enrollment information.

OSSE acknowledged in its FFY 2007 APR and during the verification visit, that the collection of valid and reliable data has been a significant challenge for the State. When OSSE assumed SEA responsibilities in October 2007, it recognized early on that ENCORE was inadequate to meet the State's data collection and reporting needs. OSSE took steps to replace ENCORE that included meeting with stakeholders, awarding a contract to a vendor to customize a data system to meet the State's specifications, and piloting use of SEDS in May 2008 before offering statewide implementation.

During the 2008-2009 school year, DCPS participated fully in the use of SEDS to collect and report data to OSSE. Charter LEAs, with the exception of two, agreed to use SEDS and 27 of 29 nonpublic schools also chose to participate. OSSE acknowledged there were challenges during the initial year of SEDS implementation, including technical problems with inputting and exporting enrollment data from OLAMS and STARS. As a result, LEAs were unable to access accurate student rosters for approximately two months. OSSE determined during Spring 2009 that in fact, only about 30% of charter schools were using SEDS. During Spring and Summer 2009, the State further engaged its stakeholders (e.g., DCPS, PCSB, etc.) and vendor, to resolve the identified SEDS problems and make improvements, including identification of modules that



will eventually be incorporated into the data system (e.g., early childhood transition, dispute resolution). At the time of OSEP's visit, OSSE reported it was working toward a final memorandum of understanding with the PCSB on data responsibilities.

Data for the FFY 2008 APR were collected primarily using SEDS, supplemental spreadsheets, the OSSE ED Facts Data Collection Tool, and the SHO docketing system. OSSE has continued to invest resources in SEDS and for the first time in FFY 2009, mandated the use of this system for all LEAs to meet State and Federal reporting requirements.<sup>12</sup>

*OSEP Review of State-Reported FFY 2007 APR Data:* The State was unable to report valid and reliable data for several SPP/APR indicators: Indicators 4A (suspension and expulsion); 7 (early childhood outcomes); 8 (parent involvement); 9 and 10 (disproportionate representation due to inappropriate identification); 17 (timeliness of due process hearings); and 18 (resolution meetings).

As part of OSEP's verification activities, we reviewed the State-reported FFY 2007 data for Indicator B-15 (general supervision – identification and correction of noncompliance). OSEP attempted to verify the data OSSE reported on the number of findings of noncompliance identified in FFY 2006 and whether those findings were corrected timely (i.e., within one year of the date the State identified the noncompliance). Based on a review of documentation and staff interviews, it is unclear to OSEP how OSSE determined the number of findings of noncompliance it reported on the Indicator B-15 worksheet. OSSE staff acknowledged the State needs to define its process for how it will count and report an accurate number of findings of noncompliance, including findings of noncompliance identified through dispute resolution (i.e., State complaints and due process hearings) in future SPP/APR submissions.

OSEP also compared the data OSSE reported under Indicator B-16 (State complaint timelines) in its FFY 2007 APR and under section 618 (Table 7) with the State's written decisions and found a discrepancy. On Table 7, the State had reported that three of the five State complaints investigated resulted in a finding of noncompliance. Based on a review of the written decisions, OSEP found that four of the five State complaints investigated resulted in a finding of noncompliance.

In its FFY 2007 APR under Indicator B-12 (early childhood transition), OSSE reported that 137 of 186 children referred from Part C to Part B did not have their eligibility for Part B services determined and an IEP implemented by the age of three due to delays caused by their parents' refusal to provide consent. As part of the focused monitoring activity for early childhood transition, OSEP reviewed documentation maintained in the educational records of children who transitioned from Part C to Part B during FFY 2007. Based on our review of the documentation and staff interviews, it is unclear to OSEP how the State determined that parent refusal to provide consent was the reason for untimely early childhood transition when reporting Indicator

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<sup>12</sup> The State's regulations requiring all charter schools, regardless of legal status, to use SEDS became effective December 4, 2009. Chapter 30 (Special Education Policy) of Title 5-E (education, original Title 5) of the District of Columbia Municipal Regulations is amended by adding a new Section E-3019. The specific provisions requiring SEDS use are found at E-3019.3(g) and E-3019.4(d). See: [http://www.osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/Title\\_5\\_Ch\\_30\\_Section\\_3019\\_Charter\\_Schools\\_FINAL.pdf](http://www.osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/Title_5_Ch_30_Section_3019_Charter_Schools_FINAL.pdf)

B-12 data since the records did not consistently document reasons for delay. (See Enclosure C on Focused Monitoring: Early Childhood Transition.)

As a part of the verification process, OSEP specifically inquired into the State's guidance and data collection methodology for SPP/APR indicators and data required under section 618. The State provided information demonstrating that it currently has methods and tools in place to collect the required data, including data for SPP/APR indicators 4A, 7, 8, 9, 10, 17, and 18. However, the State has not yet demonstrated that it is able to provide all required data in a valid and reliable manner. For example, the State began collecting for the first time, early childhood outcomes data (Indicator B-7) in FFY 2009. Also, FFY 2009 (July 1, 2009 through June 30, 2010) will be the first year that OSSE expects to report data on due process hearing decision timelines (Indicator B-17) for the full reporting period.

The State acknowledged difficulties with carrying out its responsibilities for collecting and reporting an accurate and unduplicated count of children receiving special education and related services (Child Count) in accordance with 34 CFR §§300.640 through 300.645. Noncompliance with this requirement has been cited as a recurring finding in the State's A-133 Single Audits. OSSE reported that additional procedures have been instituted to ensure an accurate Child Count for the 2009-2010 school year. The State issued written guidance and provided technical assistance to LEAs. The State indicated that on-site visits to validate LEA SEDS data, followed by manual checks of data would be completed. In addition, OSSE reported the State is requiring each LEA to certify, in writing, the accuracy of its December 1 Child Count.

Final regulations published on January 25, 2007 under 72 FR 3698 require that SEAs use the *EDFacts*<sup>13</sup> reporting system for submission of all data collected by *EDFacts* beginning with data collected for the 2008-09 school year. OSSE has recently been approved to submit one of its IDEA, Part B data collections through the *EDFacts* system only and is required to report all of its other IDEA, Part B data collections through both *EDFacts* and OSEP's Data Analysis System (DANS).<sup>14</sup>

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP has determined that the State did not have a data system that was reasonably designed to collect and report valid and reliable FFY 2007 data and information to the Department and public in a timely manner. OSEP acknowledges OSSE's efforts to develop a data system that: (1) ensures the data required to meet State and Federal reporting requirements are collected and reported in a valid and reliable manner; and (2) provides the State and LEAs with information that can be used for program evaluation and improvement purposes. However, since the State has not yet demonstrated that it can report all required data in a valid and reliable

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<sup>13</sup> *EDFacts* is a U.S. Department of Education (ED) initiative designed to collect and place State-reported K through 12 education performance data at the center of policy, management and budget decisions. *EDFacts* centralizes performance data supplied by K through 12 SEAs with other data assets within the Department, such as financial grant information, to encourage improved analysis and use of data. This initiative is targeted to improve State data capabilities by providing resources and technical assistance; reduce the burden of duplicative collections placed on States and districts; and streamline data practices at the Federal, State, and local levels. For an overview summarizing the *EDFacts* available data, see <http://www2.ed.gov/about/inits/ed/edfacts/edfacts-overview.pdf>

<sup>14</sup> Each State must receive Department approval in order to submit IDEA, Part B data to the *EDFacts* system only and to discontinue its reporting of the following data to DANS: children exiting special education; children served under IDEA-Part B (Child Count); educational environment; personnel; discipline; and assessments.

manner, OSEP cannot determine whether the revisions being made to the State's data system will result in a system that collects and reports valid data and information to the public and the Department in a timely manner.

### **Required Actions/Next Steps**

Within 60 days of the date of this letter, the State must provide a plan that ensures that it will collect and report valid and reliable data for the following:

- (1) Indicator B-12 (early childhood transition) – the plan must include a description of how the State will ensure that the reasons for any delay in developing and implementing an IEP for children referred by Part C and found eligible for Part B services are properly documented and accounted for when reporting on Indicator B-12.
- (2) Indicator B-15 (general supervision) – the plan must include a description of how the State will account for findings of noncompliance identified through all components of its general supervision system, including due process hearings.
- (3) Indicator B-16 and Table 7 (State complaint timelines) – the plan must include a description of how the State will ensure an accurate report of the number of State complaint reports issued with findings of noncompliance.

### ***Critical Element 2: Data Reflect Actual Practice and Performance***

*Does the State have procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance?*

### **Verification Visit Details and Analysis**

The State reported that it ensures that data it collects and reports reflect actual practice and performance by using a variety of checks and providing extensive technical assistance and training to personnel at the school, LEA, and State levels.

LEAs are provided full usage of the SEDS system with training and support at no cost. LEAs have access and control of their data to ensure accuracy. Confidentiality is ensured through assigned user levels – an LEA is only permitted to view its own records and a school can view only its school records. Prior training is required before a user is permitted to use SEDS.

OSSE has produced multiple resources to support LEAs in using the State data collection systems to improve data quality and ensure the data reported reflect actual practice and performance. These resources include: (1) ongoing training; (2) an online user manual posted on OSSE's web site; (3) live help desk with multi-level tiers of support; (4) online message board; and (5) frequently asked questions documents.

During the 2009-2010 school year, OSSE delivered SEDS training using a train-the-trainer model. OSSE tracked the attendance of LEAs in training activities to ensure that each LEA was represented at a live training session. At the time of the verification visit, plans were underway to provide training for each charter school and nonpublic school by January 2010.

OSSE established a help desk for LEAs to access guidance, obtain answers to their specific questions, and troubleshoot data entry issues. As part of the focused monitoring activity, OSEP asked LEA personnel about the guidance and direction they receive from OSSE related to reporting data. Local school staff commended OSSE for its responsiveness to their technical

assistance and information needs related to use of SEDS and the State's data reporting requirements.

The State reported specific steps that were taken to ensure all LEAs have the same collection tools and are using the same technology platform. OSSE created a new data dictionary that is aligned with ED $F$ acts reporting requirements. The State conducted webinars and conference calls to help LEAs become familiar with the data dictionary and to respond to questions about its application to data collection and reporting processes. OSSE posted guidance and training materials on its web site, which is accessible to all users.

Each SEDS module has embedded business rules (based on State and Federal requirements) that are designed to prevent data errors and discrepancies. OSSE generates reports of LEA data to identify discrepancies. Depending on the type of data, the State may run a report on a weekly, monthly, or less frequent basis. The help desk follows up with LEAs to determine the reason for any discrepancies noted in the report and provides guidance to resolve the problem. However, the LEA is responsible for correcting the data. LEAs are provided access to their data and the ability to make corrections before the data are finalized to ensure both accuracy and the reflection of actual practice and performance.

The State noted as barriers, turnover of staff in LEAs and the need to continually re-train and re-orient staff to data collection and reporting requirements. OSSE noted difficulties with timely reporting capacities of some small LEAs that lack personnel dedicated to carry out data reporting responsibilities. In addition, OSSE noted that the unavailability of valid and reliable data from prior years hinders the State's ability to perform comparisons of progress or slippage. The State also indicated as a challenge, that LEAs have not necessarily experienced consequences for failing to comply with data reporting requirements in the past. OSSE has informed LEAs using multiple means of the requirement to provide valid and reliable data in a timely manner and that noncompliance with that requirement is considered in the State's local determinations process and failure to comply could result in sanctions.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP cannot determine if OSSE has a data system that is reasonably designed to verify that the data collected and reported reflect actual practice and performance. The State has not yet demonstrated that it can report all required data in a valid and reliable manner. While we acknowledge the State's efforts to improve its data collection and reporting system, OSEP cannot determine whether the State's revised procedures will result in a system that verifies that the data collected and reported reflect actual practice and performance.

### **Required Actions/Next Steps**

No action is required.

### ***Critical Element 3: Integrating Data Across Systems to Improve Compliance and Results***

*Does the State compile and integrate data across systems and use the data to inform and focus its improvement activities?*

### **Verification Visit Details and Analysis**

OSSE reported that it utilizes its data collection tools (SEDS, ED $F$ acts Data Collection Tool, SHO Docketing System, LEA self-assessments, OSSE-generated checklists and spreadsheets), to

determine areas that require policy guidance, technical assistance, and training. The State develops trainings and other technical assistance opportunities based on the needs identified through the analysis of data, including the LEAs' contacts with OSSE's call center. Using reports generated from help desk inquiries, the State examines user issues, targets needed revisions, and identifies areas for further training and support. OSSE's Technical Assistance and Training Unit provides LEAs with multiple professional development opportunities that focus on how to collect, analyze, and use data to improve programs for children with disabilities. The State reported that it is able to customize training and technical assistance to meet the needs of a particular LEA, group of LEAs, or to address issues statewide.

The EasyIEP module in SEDS allows the State and LEAs to access student record information and to monitor compliance with IDEA timelines and other requirements (e.g., evaluation timelines, provision of special education and related services). OSSE reported that the State and LEAs use this information to identify where resources could be reallocated and to make program improvements necessary to ensure compliance. OSSE also reviews statewide data, as well as each LEA's data when determining: (1) the areas that will be addressed as part of the State's focused on-site LEA monitoring visits; and (2) the specific LEAs that will receive on-site monitoring.

OSSE noted that in some areas, the lack of valid data at the LEA and State levels has driven development of new policy, guidance, and training. The State has incorporated specific data reporting requirements in new or revised policies and procedures and continues to coordinate policy, data, and professional development initiatives.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State compiles and integrates data across systems and uses the data to inform and focus its improvement activities.

### **Required Actions/Next Steps**

No action is required.

## **III. Fiscal System**

### ***Critical Element 1: Timely Obligation and Liquidation of Funds***

*Does the State have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds?*

### **Verification Visit Details and Analysis**

The State acknowledged difficulties in timely obligating and liquidating funds in prior years, and experienced challenges when State oversight of Federal funds transitioned from DCPS to OSSE. The State reported that for FFY 2008, OSSE replaced the "advance payment" system that had been in place for distributing funds to LEAs with a "reimbursement system." Under the reimbursement system, LEAs must provide a budget and spending plan to OSSE, based upon the LEA's projected allocations calculated by OSSE.

In FFY 2008, the State began using a payment tracking system which allows the State to access information from the time the LEA submits an invoice to OSSE for payment until the LEA receives its reimbursement. OSSE reported this system enables the State to track LEA

expenditures more closely to determine whether the LEA is on target to timely liquidate its IDEA, Part B funds. The State reported that it contacts any LEA with large balances of unexpended funds to ensure the LEA is aware of, and able to obligate and liquidate the funds in a timely manner.

During FFY 2008, OSSE conducted webinars and provided direct technical assistance to LEAs recommending that they operate on a “first in, first out” system (i.e., funds are used in the order in which they were received). The June 2009 webinars provided LEAs with an explanation of grant cycles, obligation periods, and allowable costs and stated the timeline (including specific dates) by which LEAs must obligate funds and submit their reimbursement requests to OSSE. The LEA grant award notification (GAN) provides written notice of the last date to obligate funds and the last date to liquidate funds, and notes that the LEA must submit all requests for reimbursement at a specified date so that OSSE can obligate all funds within the 27 month period and liquidate funds not later than 90 days after the funding period in accordance with 34 CFR §§76.709 and 80.23(b). The State expects that the reimbursement system will improve the State’s ability to manage and ensure the timely obligation and liquidation of funds. OSSE reported that the State will use quarterly meetings with LEAs, webinars, and targeted technical assistance to continue to emphasize the importance of the timely obligation and liquidation of funds.

OSEP confirmed through the U.S. Department of Education’s Grants Administration and Payment System (GAPS) that the State expended all of its FFY 2005 and FFY 2006 Part B funds in a timely manner. For FFY 2007, OSSE expended all Part B section 611 funds but did not liquidate \$15,641 of section 619 funds.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes the State has procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds. OSEP cannot, however, without collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures that ensure the timely obligation and liquidation of IDEA funds.

### **Required Actions/Next Steps**

No action is required.

### ***Critical Element 2: Appropriate Distribution of IDEA Funds***

*Does the State have procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State?*

### **Verification Visit Details and Analysis**

The State establishes each LEA’s eligibility to receive IDEA, Part B funds through an annual application process. All LEAs that receive IDEA, Part B funds, including LEA charter schools, must give assurances regarding maintenance of effort, excess costs, supplement not supplant, and other appropriate accounting procedures. OSSE calculates the proportionate share for students parentally-placed in private schools for DCPS, the one LEA with prescribed jurisdictional boundaries. The State has not established an LEA Risk Pool or High Cost Fund.

The application for IDEA, Part B funds, including instructions and a fiscal workbook, is distributed to LEAs and is posted on the State’s web site. An “application boot camp” was held

during FFY 2009 to assist LEAs in understanding the assurance requirements and other content required for an approvable application. The State reported that it collaborates with organizations that provide support to charter school LEAs to help reinforce requirements related to application for IDEA, Part B funds.

The State uses a two-phase application process. The first phase (“Phase I”) requires that the LEA provide assurances that it will comply with fiscal and programmatic requirements of IDEA. With a substantially approvable “Phase I” application the LEA can then begin to obligate IDEA, Part B funds. The second phase (“Phase II”) requires the LEA to provide detailed information about programmatic compliance issues and includes a fiscal section that requires a budget and spending plan. Once the LEA’s “Phase II” application is approved, the LEA can then be reimbursed for expenses incurred.

OSSE has created a rubric for rating LEA applications and determining whether an LEA is eligible to receive IDEA, Part B funds. State-level staff are designated to provide assistance to LEAs to ensure that any problems with applications are resolved quickly so as not to delay approval and to allow the LEA to begin to obligate funds.

The State described how it calculates LEA allocations using the formula required under the IDEA (i.e., base amount, population, and poverty). The State also provided a demonstration of its spreadsheets that reflect the section 611 and section 619 allocations for each LEA. The State reported these processes were in place for distribution of FFY 2008 and FFY 2009 funds.

The State aligns the Department of Special Education (DSE) budget with the Use of Funds form that OSSE submits to OSEP as part of the State’s application for IDEA, Part B funds. The DC System of Accounting and Reporting (SOAR) delineates Federal funds by grant year and enables the State to track expenditures by category and funds used to pay those expenditures. The State has checks in place to ensure that State-level expenditures paid with Federal funds are aligned with the DSE budget and require approval at multiple levels.

OSSE consults with the PSCB to ascertain the legal status of public charter schools in the State (i.e., whether they will operate as an LEA for special education purposes or not) and to obtain information about estimates for charter schools’ expansions, new charter schools that will be opening, and those that close. The State reported the frequent changes to the number of LEAs (legal status and populations served) present a challenge to the State in ensuring IDEA funds are properly distributed.

Pursuant to OSSE’s High Risk Corrective Action Plan (HRCAP), the State formed an internal “Grants Allocation Working Group.” This working group, comprised of staff from multiple program offices that receive Federal funds, including Special Education, is tasked with examining issues related to timely and appropriately allocating funds to LEAs across a broad range of programs. OSSE provides the Department with regularly scheduled progress reports that detail the working group’s efforts toward improving the State’s systems for distributing Federal funds to LEAs.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes the State has procedures and practices that are reasonably designed to ensure appropriate distribution of IDEA funds within the State. OSEP notes that these procedures have been in place for a short time (for FFY 2008 and FFY 2009 funds) and acknowledges the State’s

efforts to improve its processes. OSEP cannot, however, without collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures to ensure appropriate distribution of IDEA funds. We will continue to review the State's HRCAP progress reports to monitor the OSSE's improvement in this area.

### **Required Actions/Next Steps**

The State must continue to provide progress reports as required under the HRCAP.

### ***Critical Element 3: Appropriate Use of IDEA Funds***

*Does the State have procedures that are reasonably designed to ensure appropriate use of IDEA funds?*

### **Verification Visit Details and Analysis**

The DSE has been given the responsibility for managing the IDEA budget and works closely with the Office of the Chief Financial Officer (OCFO) for OSSE to ensure appropriate use of IDEA funds. The State issues instructions and guidance to LEAs about the appropriate use of funds and posts this information on OSSE's web site. The State ensures that LEAs use Part B funds to supplement and not supplant State, local, and other Federal funds through review of the required LEA application assurances and review of LEA budgets. The State ensures LEAs comply with the fiscal requirements of IDEA (i.e., LEA maintenance of effort (MOE) calculations, CEIS spending, private school, and charter school spending) by requiring assurances in the annual application and is developing fiscal monitoring protocols to carry out its subrecipient monitoring responsibilities.

The State reported that no LEA has requested a reduction in MOE. The State reported it will be developing procedures to implement the requirements for ensuring any LEA-level MOE reductions are consistent with the requirements in 34 CFR §§300.204-300.205. OSSE is revising the fiscal workbooks for FFY 2008 and FFY 2009 funds to enable LEAs to clearly identify funds designated for CEIS in spending plans and any subsequent budget modifications. The State has not yet developed protocols for ensuring LEAs meet all requirements related to use of IDEA, Part B funds for CEIS.

The State uses its payment tracking system (a Quickbase program) to record and track LEA requests for reimbursement. Prior to approving the request for reimbursement, DSE staff conduct a review of the LEA's request to ensure the expenditure is consistent with the LEA spending plan, is charged to the appropriate category, and that funds are used for an allowable IDEA, Part B expense. The LEA does not submit documentation to support its reimbursement request; however, the LEA must maintain the documentation and the reimbursed expenditures are subject to future OSSE monitoring and audits. The State has not yet developed and implemented procedures to effectively monitor the LEAs' use of funds.

The State uses a separate coding system to delineate IDEA, Part B funds from other funds. OSSE identifies sources of State fiscal support and compares State expenditures for special education and related services with the prior year expenditure amounts. OSSE reported this is checked annually in preparation for the State's A-133 Single Audit and stated it plans to run periodic reports throughout the year to ensure the State is on track to maintain its level of fiscal support. The State reported that it has met IDEA's State-level maintenance of effort requirements, due to the consistent increases in State financial support for special education reform efforts.



The State cited as a challenge to ensuring the appropriate use of IDEA funds, the multiple sources of funds OSSE uses to support special education and the varying requirements associated with each funding source – in particular, funds expended in connection with the Blackman/Jones case, which involve multiple vendors, any restrictions on the carryover of funds, etc. OSSE also mentioned that because the number of LEAs in the State is different under IDEA than other programs receiving Federal grants (e.g., Title I), DSE often needs to identify its own process or solution and that using other States' systems as a model is not appropriate, given the unique structure of the District of Columbia's LEAs.

The State also noted as a barrier, that reports of independent audits conducted for charter schools do not provide sufficient detail about a school's compliance with IDEA's fiscal requirements. OSSE reported it is attempting to address this problem with the OCFO but expects it will not be able to impact the audit process in the immediate future. OSSE also indicated there are a number of small LEAs that lack the dedicated staff needed to address fiscal accountability issues and require additional guidance and support from OSSE in these matters.

OSEP is working with OSSE to resolve findings included in the State's Single Audits for FFYs 2006 and 2007. These audits include findings repeated over the course of several years related to: (1) reporting an accurate and unduplicated count of children receiving special education and related services (Child Count); (2) subrecipient monitoring; (3) indirect costs; (4) procurement; and (5) allowable costs, specifically, time and effort certifications. Each of these findings is included in the State's HRCAP and OSSE identified specific action steps to correct the noncompliance.

OSSE, as part of the State's HRCAP, formed an internal "Subrecipient Monitoring Working Group." This working group, comprised of staff from multiple program offices that receive Federal funds, including Special Education, is tasked with examining issues related to monitoring LEAs' use of Federal funds. The State provides the Department with regularly scheduled progress reports detailing actions taken to develop and implement effective subrecipient monitoring systems. With respect to IDEA, Part B funds, OSSE is developing a fiscal monitoring tool and monitoring policies and procedures that address subrecipient selection criteria, the scope of review, the monitoring cycle, and consequences for noncompliance. OSSE plans to submit final policies and procedures and supporting evidence to the Department by August 1, 2010.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP has determined the State has not fully developed and implemented procedures that are reasonably designed to ensure appropriate use of IDEA, Part B funds. As stated above, OSSE expects to finalize policies and procedures for monitoring LEAs' use of IDEA, Part B funds, within the next few months. OSEP acknowledges the processes the State has established to date and we will continue to review the State's HRCAP progress reports and supporting evidence to monitor the OSSE's improvement in this area.

### **Required Actions/Next Steps**

The State must continue to provide progress reports as required under the HRCAP.

## **Focused Monitoring Component of the Verification Visit: Least Restrictive Environment**

### **Background**

OSEP conducted focused monitoring of the State's efforts to ensure the education of children with disabilities in the least restrictive environment (LRE). The purpose of the activity was to gather information at the local level about practices that support the education of children with disabilities in the LRE and to identify challenges, from local educators' and administrators' perspectives, to carrying out the legal requirements of IDEA and the State's initiatives. In addition, the District of Columbia has had Special Conditions imposed on its IDEA, Part B grants for the last several years because the State has not been able to demonstrate that it is monitoring LEAs' compliance with the LRE requirements. Therefore, the local component of the focused monitoring activity was also designed to help OSEP learn about the actions OSSE has taken to ensure that LEAs comply with the LRE requirements; including the on-site focused monitoring OSSE conducted in May and June 2009.

OSSE's reported data in the FFY 2007 APR for Indicator B-5 (educational environments) reflect that 19.49% of children with disabilities are removed from the regular class greater than 60% of the day and 12.15% are served in public or private separate schools, residential placements, or homebound or hospital placements.<sup>15</sup>

### **Focused Monitoring Visit Details and Analysis**

When determining the LEAs to be included in focused monitoring, OSEP examined each LEA's data for SPP/APR Indicator B-5 and noted the LEAs that did not meet the State's SPP targets as reported on OSSE's web site. OSEP also consulted with OSSE staff and received their recommendations. As a result, OSEP selected DCPS, a public charter school of DCPS, and three LEA charter schools for on-site visits. OSEP staff reviewed between eight to 15 student records at each site and conducted interviews with regular education teachers, special education teachers, related services personnel, and administrators.

We used a student record review form that was developed specifically for this focused monitoring activity. The form and written interview questions were shared with OSSE staff at the time of the on-site visits. Student records were reviewed to determine compliance with IDEA requirements related to the development, review, and revision of the child's IEP, parent participation in the educational placement decision and procedural safeguards, and determination of the child's educational placement. LEA and State staff were available to provide assistance to OSEP related to the organization of student files and to answer questions when we were unable to locate information in a child's record.

OSEP summarized and shared our observations with OSSE personnel during the verification visit. The Mid-South Regional Resource Center staff facilitated a discussion that resulted in beginning the development of a technical assistance plan, aimed to improve the State's efforts in ensuring children with disabilities are educated in the LRE. OSEP appreciates the collaborative

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<sup>15</sup> OSEP shared concerns about the accuracy of these data – particularly with respect to the percent of children served in separate schools – and offered that children placed in nonpublic placements by a public agency may have been under-reported or inaccurately reported in another educational environment category. OSSE stated that it expects the FFY 2008 data will provide better information about the educational environments of children with disabilities in the State.

efforts of OSSE, Mid-South Regional Resource Center staff, and other OSEP-funded technical assistance providers in this process.

Based on the review of documents and interviews with State and local personnel, the following practices that support the education of children with disabilities in the LRE were identified:

- (1) top level leadership sets the tone – schools with administrators that have special education background or interests were credited by their colleagues for doing a good job with establishing the expectation that children with disabilities are welcomed members of the school community;
- (2) regular and special education teachers and related services providers have sufficient time for collaboration to help students prepare for successful participation in general education settings;
- (3) regular education teachers are actively involved in developing, reviewing, and revising IEPs;
- (4) parents are actively involved in the education decision-making process and just as important, in day-to-day school life – to encourage positive behavior and participation in academic and extracurricular activities;
- (5) IEPs clearly identify the child’s needs and include the necessary supports for the student to learn (academic and behavioral success) and supports for school personnel;
- (6) schools have access to technical assistance that provides support and another perspective to problem-solve what else might be tried to support the student in the LRE;
- (7) training and professional development opportunities are available through the LEA, OSSE, and other professional associations and groups; and,
- (8) a variety of extracurricular activities are available and expand the opportunities for children with disabilities to participate.

OSEP also observed challenges to ensuring children with disabilities are educated in the LRE including:

- (1) some staff feel resistant about including children with disabilities in the general education classroom and in some cases, parents of children with disabilities are also resistant to their children being educated in inclusive settings;
- (2) regular education staff feel unprepared to adequately support children with disabilities in their classrooms and are particularly challenged with providing appropriate instruction to children with varying levels of instructional needs within their classrooms;
- (3) special education personnel do not have sufficient tools to allow them to appropriately support students with disabilities and assist regular education teachers;
- (4) regular education teachers are unsure of their role in the education decision-making process for children with disabilities;
- (5) school personnel do not feel there is sufficient time and staff coverage to participate in professional development activities;

- (6) school personnel do not act to address in a timely manner, IEPs they believe are not appropriate when children enter the school from another school within the LEA or from another LEA; and,
- (7) school staff rely on the “EasyIEP” SEDS module for prompts to document certain required information when IEPs are developed or revised but since some required IEP content is not included, the IEP team’s consideration of all IDEA requirements is not consistently documented.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures in place to support the education of children with disabilities in the LRE in accordance with IDEA section 612(a)(5) and 34 CFR §§300.114 through 300.120. The State began to monitor LEAs for compliance with the LRE requirements in FFY 2008 and required LEAs with identified noncompliance to take corrective action. OSSE put into place policies, procedures, and guidance that identify Federal requirements and State expectations for implementation of the LRE provisions of IDEA. OSSE provides multiple professional development opportunities that focus on practices that support the education of children with disabilities in the LRE. Further, the State has designated personnel specifically to provide technical assistance and build LEA capacity to educate children with disabilities in inclusive settings.

Based upon our review of a selection of student records from the four LEAs selected for on-site visits, OSEP found the records did not consistently include sufficient documentation to demonstrate that:

- (1) Prior written notice was provided as required under 34 CFR §300.503;
- (2) IEP teams considered the factors required under 34 CFR §300.324(a)(1) and (2) when developing, reviewing, and revising each child’s IEP; and
- (3) IEP teams included the participants required under 34 CFR §300.321.

In addition, school staff reported difficulties with timely receipt of education records for students transferring to their schools from another LEA in the State and in the case of DCPS, when students move from one public school to another within the LEA.

### **Required Action/Next Steps**

Within 60 days of the date of this letter, the State must provide a plan that describes the actions the State will take to ensure:

- (1) LEAs are aware of and properly implement the prior written notice requirements (34 CFR §300.503);
- (2) IEP teams consider the factors required under 34 CFR §300.324(a)(1) and (2) when developing, reviewing, and revising each child’s IEP;
- (3) IEP teams include the required participants (34 CFR §300.321); and
- (4) LEAs timely transmit education records of children transferring within the LEA and from one LEA to another in the State (34 CFR §300.323(g)).