



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

Honorable Rick Melmer
Secretary
Department of Education
700 Governors Drive
Pierre, South Dakota 57501-2291

NOV 16 2006

Dear Secretary Melmer:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification visit to South Dakota. As indicated in the OSEP letter dated January 19, 2005, we are conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with, and improving performance under, Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to South Dakota during the week of July 24, 2006.

The purpose of our verification reviews of States is to determine how they use their general supervision, State-reported data collection, and statewide assessment systems (under Part B), to assess and improve State performance, and to protect child and family rights. The data collected through verification visits will help OSEP: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify and correct noncompliance.

As part of the verification visit to the South Dakota Department of Education (SDDOE), OSEP staff met with Ann Larson, the State Special Education Director, Sherrie Fines, the Part C Coordinator (Birth to 3 Connections), and staff from the Office of Educational Services and Support responsible for: (1) the oversight of general supervision activities (including monitoring, mediation, complaint resolution, impartial due process hearings, and statewide assessment); (2) the collection and analysis of State-reported data; and (3) ensuring participation in, and the reporting of, student performance on, statewide assessments. Prior to and during the visit, OSEP staff reviewed a number of documents¹, including the following: (1) the State's Parts B and C Federal Fiscal Year (FFY) 2003 Annual Performance Reports; (2) an overview of SDDOE's Monitoring Process; (3) South Dakota's Part B and Part C State Performance Plans (SPP); (4) Parts B and C dispute resolution data; (5) Part C Family Rights Document; and (6) information from the State's website.

OSEP conducted conference calls on June 22, 2006 with the State Interagency Coordinating Council (ICC) and on June 27, 2006 with the South Dakota Special Education Advisory Panel (SEAP) to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and statewide assessment.

The information that Ann Larson, Sherrie Fines and their staff provided during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for and during the visit, greatly enhanced our understanding of South Dakota's systems for general supervision, data collection and reporting, and statewide assessment.

¹ Documents reviewed as part of the verification process were not reviewed for legal sufficiency but rather to inform OSEP's understanding of your State's systems.

General Supervision

In reviewing the State's general supervision systems for Part B and Part C of the IDEA, OSEP collected information regarding a number of elements, including whether the State: (1) has identified any barriers, (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede its ability to identify and correct noncompliance; (2) has systemic, data-based, and reasonable approaches to the identification and correction of noncompliance; (3) utilizes guidance, technical assistance, follow-up, and -- if necessary -- sanctions, to ensure timely correction of noncompliance; (4) has dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) has mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.

State Administrative Rules (Part B and Part C): SDDOE staff informed OSEP that the State has in effect the South Dakota Administrative Rules to govern implementation of Part B (ARSD 24:05) and Part C (ARSD 24:14). The administrative rules apply to the provision of special education and related services for children with disabilities age three to twenty² enrolled in public or non-public schools or in State-operated education programs, and the provision of early intervention services to eligible infants and toddlers, birth through age two, and their families.

Interagency Agreements (IA)/Memoranda of Understanding (MOU): OSEP learned through interviews with SDDOE staff that, as part of its general supervision system under Part B of the IDEA, SDDOE implements interagency agreements or memoranda of understanding with the following entities: (1) Transition Services Liaison Project³ (IA); (2) South Dakota School for the Deaf (IA); (3) South Dakota School for the Blind and Visually Impaired (IA); (4) South Dakota Department of Corrections (IA); and (5) South Dakota Department of Social Services (MOU). A joint meeting between the SEAP and these agencies is conducted annually to review responsibilities, goals, and objectives and to determine if the IA and MOU are being implemented as written.

Birth to 3 Connections entered into and implements interagency agreements with the Department of Education, Department of Health, Department of Human Services, and the Department of Social Services in order to define roles and responsibilities under Part C of the IDEA. Each agency reviews their agreement annually and revisions, if necessary, are negotiated between the State agencies. Birth to 3 Connections also has entered into an agreement with the Early Head Start program and the tribes/tribal organizations funded by the Bureau of Indian Affairs (BIA) to facilitate collaboration efforts with the local implementation of Part C on reservations.

Part B Monitoring: Since 2002, SDDOE has used its Continuous Improvement Monitoring Process (CIMP) for monitoring its 168 school districts and 29 other entities⁴ for IDEA compliance. SDDOE reported that it monitors its local educational agencies (LEAs) over a five-year cycle focusing on procedural compliance and continuous improvement. The CIMP is built around seven components:

² Students can complete the school year during the fiscal year in which he or she turns 21. The State's fiscal year begins July 1.

³ Transition Services Liaison Project (TSLP) is a state initiated project offered through the Division of Rehabilitation Services (DRS), Service to the Blind and Visually Impaired (SBVI), and SDDOE.

⁴ The other entities include alternative schools, adjustments training centers, behavior programs, and State hospitals/schools for the severely disabled populations.

(1) continuity; (2) partnership with stakeholders; (3) district and agency accountability; (4) self-assessment; (5) data-driven process; (6) public process; and (7) technical assistance. The State identifies 13.3% of its students for placement in Part B and monitors approximately 40 districts/agencies each year. SDDOE monitoring staff consists of six State employees and 11-13 contract employees (educational specialist and transition liaisons).

South Dakota reported that it uses self-assessments as a framework for addressing how well a district/agency is meeting the needs of students with disabilities and to establish a baseline for the measurement of progress. Prior to an on-site monitoring visit, districts receive training from SDDOE staff on how to collect and report data. In preparation for the visit, districts collaborate with stakeholders to design and implement an ongoing self-assessment process for the five-year monitoring cycle that is focused on improving results for children with disabilities. Self-assessments and data related to the monitoring components are submitted to SDDOE staff for review prior to the on-site visit.

As reported, the State's on-site monitoring may include up to two validation visits: 1) an on-site visit to validate data submitted in the self-assessment; and, if necessary, 2) a follow-up visit to ensure correction of identified noncompliance. During the initial on-site visit, the SDDOE monitoring team conducts file reviews, conducts interviews with administration and staff, and provides technical assistance for teachers. Additional interviews are conducted with teachers, service providers, students, paraprofessionals, principals, program directors, and/or administrator(s). To verify how decisions are made and implemented, individual records are selected and the individualized education program (IEP) team member responsible for developing the IEP and a member of SDDOE monitoring team complete a joint review of the student's file. The SDDOE monitoring team also reviews State data tables and corrective action plans from previous monitoring activities.

The State reported that upon completion of the on-site review, an exit conference is held to discuss the results of the visit. SDDOE issues a preliminary report to the district at which time the district/agency has two weeks to appeal any findings of noncompliance. If the district is able to provide documentation demonstrating compliance, the report will be amended and further technical assistance is outlined in the final report. Districts with any remaining noncompliance issues must develop an Improvement Plan/Progress Report (IPPR) and submit the IPPR for approval. Progress is submitted to SDDOE three times a year. The districts must correct all noncompliance within one year. During the verification visit, SDDOE informed OSEP that State policies and procedures were revised to require correction of all noncompliance within one-year of the final report date, instead of the approval date of the IPPR.

During the verification visit, SDDOE informed OSEP that surveys were sent to LEAs to identify strengths and weaknesses of the CIMP monitoring process in each of its first two years of implementation. This information was used to make changes and improvements in the monitoring process. Each summer the monitoring coordinator provides an update to the SEAP, regarding the results of the monitoring activities from the past year and receives input from the panel on compliance issues and concerns. The SEAP reviews monitoring data to verify child count data and to develop the State's SPP and APR. An analysis of the monitoring data is also used by the State to determine systemic issues, training needs, and technical assistance needs throughout the State.

Part C Monitoring: SDDOE's Birth to 3 Connections program includes thirteen regions across 66 counties. The State reported that every three years a Request for Proposal (RFP) is made for interested organizations to provide early intervention services. The regional area programs must

submit an application on an annual basis for review and approval by the Birth to 3 Connections staff. There are currently nine applicants providing service coordination activities for the thirteen regional area programs. The State indicated that regional area programs are monitored every three years by the Birth to 3 Connections staff. This process includes record review, interviews with parents and local service providers, and review of parent survey data. Any noncompliance identified in a preliminary report is reviewed with participants at the exit meeting. Following the visit, the preliminary report is sent to the regional office. Within 15 days, the regional office staff must respond and/or accept the report. Within 30 days the State provides the region with a final report that includes the corrective action plan with required timelines for correction. The State also requires the region to develop and submit an improvement plan with activities designed to correct any noncompliance. The Birth to 3 Connections staff reviews and approves the improvement plan and on-going technical assistance is provided to ensure correction within one year. Programs submit quarterly progress reports on correction of identified noncompliance. Birth to 3 Connections staff review the improvement activities, and required evidence of change, submitted by regional area programs to correct the noncompliance, and monitor established timelines. The State indicated that it tracks and ensures that noncompliance is corrected within one year of identification. The State also reported that improvement plans are closed within one year based on data submitted by the program demonstrating compliance. Data submission may include service coordination logs, file reviews, new or revised forms.

The State indicated that each regional area program that is delinquent in meeting corrective action timelines is notified by letter that specifies: (1) the failure to voluntarily correct an identified deficiency constitutes a failure on the program's part to administer the program in compliance with Federal law; (2) the actions the Office of Educational Services and Support (OESS) intends to take in order to enforce compliance with the State and Federal law; (3) the right to a hearing prior to OESS enforcement; and (4) the consequences that the enforcement action would have on continued and future State and Federal funding of that agency's special education program.

Based on the information provided to OSEP during the verification visit, OSEP believes that the State's Part C general supervision system constitutes a reasonable approach to identifying and correcting noncompliance; however, OSEP cannot, without also collecting data at the local level, determine whether the State's procedures are fully effective in identifying and correcting noncompliance.

Complaints, Mediation, and Due Process Hearings

Part B: SDDOE staff reported that the State ensures parents of children with disabilities are aware of all dispute resolutions options under Part B through various avenues: (1) South Dakota Parent Connection, which is the State's Parent Training and Information (PTI) Center; (2) SDDOE's website; and (3) publications and documents developed by SDDOE. During the verification visit, SDDOE also reported that it has a system in place for voluntary mediation. SDDOE encourages school staff to informally resolve disputes with parents. If parents are not satisfied with those efforts, they can request formal mediation. From July 2005 to June 2006, SDDOE received five requests for mediation; all but one, which was withdrawn, resulted in mediation agreements. Mediators receive training from the Justice Center of Atlanta and participate in the Mountain Plains Regional Resource Center (MPRRC) due process hearing officer and complaint investigation workgroups.

The Part B regulations require that SDDOE issue a written decision within 60 days of the receipt of a State complaint, unless the timeline is extended due to exceptional circumstances (See 34 CFR

§§300.151-300.153 (effective October 13, 2006); see also 34 CFR §300.661(a) and (b)(1) (1999)). From School Year (SY) 2003 through SY 2005, SDDOE reported that it received 16 written complaints. OSEP reviewed the complaints and found that 10 of 16 (62.5%) reports were issued within the 60-day timeline or within an extended timeline due to exceptional circumstances. SDDOE informed OSEP the primary reason for not meeting the timelines was a shortage of personnel to investigate complaints, which led to a backlog. SDDOE reported that it has contracted with MPRRC to assist it with complaint investigation. Three of the four complaints received in SY 2005-2006 were issued within the 60-day timeline. The remaining complaint was pending, and as of the date of the verification visit, still within the 60-day timeline. State staff attributed the low number of complaints received by the State to the work of the South Dakota Peer Navigator⁵ Program and to SDDOE staff, who are accessible to parents and local districts.

During the verification visit, OSEP raised a concern regarding a provision, on page 15 of the State's Procedural Safeguards document, regarding the right to administratively appeal the State complaint decision. As stated therein, the final decision for a complaint that is appealed generally would exceed the 60-day timeline. The State agreed to discontinue this practice and amend its Procedural Safeguards document to remove this provision. In an email dated July 31, 2006, SDDOE confirmed to OSEP that there is no longer an administrative appeal process for State complaint decisions.

South Dakota reported that it has two hearing officers trained to conduct special education due process hearings. Hearing officers participate in various trainings, including special education law conferences and a bi-monthly due process hearing officers' teleconference workgroup. The IDEA, as amended in 2004, provides for resolution sessions as an intermediate step between the filing of a due process hearing complaint and the hearing, unless the parties agree in writing to waive the meeting or agree to use the mediation process. (See Section 615(f)(1)(B); 20 U.S.C. 1415(f)(1)(B) (2004) and 34 CFR §300.510 (effective October 13, 2006)). SDDOE reported including resolution sessions as part of its Procedural Safeguards document. From July 2005 to June 2006, SDDOE reported that it received two due process hearing complaints. No resolution sessions were held, but mediation agreements were reached in both cases. SDDOE and the SEAP review dispute resolution data for decision-making and to determine training needs for teachers and other staff.

Part B SPP Indicator Data for General Supervision: In the Part B SPP, the State reported 80% compliance for SPP Indicator 15 (general supervision system identifies and corrects noncompliance as soon as possible but in no case later than one year from identification). However, the State had used the date that the IPPR was approved by SDDOE as the starting point for the one-year timeline instead of the date the districts received formal notice of the State's noncompliance findings. As set out in OSEP's February 26, 2006 response to the SPP, OSEP could not determine if all identified noncompliance was corrected within one year of identification. Because of the timeframe used by the State, the percentage of noncompliance findings that were corrected within one year of identification is most likely lower than the reported 80%. To address OSEP's letter, the State reported that, for the current monitoring cycle, the one-year timeline for correction begins on the date that the district receives the SDDOE report identifying the areas of noncompliance, if any. OSEP looks forward to reviewing data demonstrating compliance with this requirement in the State's APR due February 2007.

⁵ The South Dakota Peer Navigator Program is administered and directed through the South Dakota Parent Connection. The program provides individualized technical assistance, information, and support services to families and educators caring for children with special education needs.

For Part B SPP Indicator 4, OSEP concluded that the State did not demonstrate that it conducts reviews of policies, procedures and practices in agencies with significant discrepancies in the rates of long-term suspensions and expulsions as required by Section 612(a)(22). 20 U.S.C. 1412(a)(22). The State must provide documentation of compliance by February 1, 2007. In a follow-up call after the verification visit, South Dakota informed OSEP that the State revised its policies and procedures to include the required reviews when significant discrepancies are identified. OSEP looks forward to reviewing data demonstrating compliance with this requirement in the State's APR due February 2007.

Part C: South Dakota's Birth to Three Program offers several ways to resolve differences: (1) informal mediations (no due process hearings requested); (2) mediations, when a hearing is requested; (3) filing State complaints under Part B of the IDEA at 34 CFR §§300.660 through 300.662 and Part C of the IDEA at 34 CFR §§303.510 through 303.512; (4) due process hearings; and (5) resolution facilitator process. OSEP learned through interviews with SDDOE staff and document reviews that the Part C program has adopted the Part B due process procedures under 34 CFR §303.420.

SDDOE has a system in place for voluntary mediation, available at all levels of dispute resolution. Birth to 3 Connections service providers attended the mediation training provided by the Justice Center of Atlanta and the MPRRC. SDDOE is in the process of updating its mediation procedures and mediation guide. Part C State staff under the guidance of the MPRRC and with the assistance of the South Dakota Parent Connection will be developing a set of brochures to assist with the mediation process. The State reported that there were no requests for mediation in Part C for 2005-2006. The State also reported no formal complaints were filed and no due process hearings were requested in 2004-2005 or in 2005-2006. If the Birth to 3 Connections program received a formal complaint, the complaint would be forwarded to the MPRRC complaint investigator who investigates all complaints. A report is sent to the Birth to 3 Connections director and appropriate individuals. All complaints are maintained in the district file for five years and are shared with monitors prior to each visit to the respective regional area. Redacted complaint logs are shared with the ICC and placed on the State's website.

The Part C State staff and service coordinators collaborate closely to resolve issues that arise in a timely manner and to ensure families understand rights and formal dispute resolution options. The State indicated that SDDOE's Infant/Toddler and Family Rights: Birth to 3 Connections in South Dakota brochure, which contains information regarding procedures for filing a complaint, requesting mediation, and initiating a due process hearing under IDEA, is provided to all Part C families and is widely available throughout the State and on the State's website. OSEP will provide further comments regarding SDDOE's brochure under separate cover.

Part C SPP Indicator Data for General Supervision: As part of its FFY 2006 Part C grant application, the State provided a written assurance confirming that it will revise by June 30, 2007 its due process and mediation procedures to be consistent with Sections 632, 639(a)(8) and 615 of IDEA.

Based on the information provided to OSEP during the verification visit, OSEP believes that the State's general supervision system constitutes a reasonable approach to identifying noncompliance; however, OSEP cannot, without also collecting data at the local level, determine whether the system is fully effective in identifying noncompliance. In addition, OSEP cannot

determine the effectiveness of the State's procedures to ensure the correction of all State-identified noncompliance.

Collection of Data Under Section 618 of the IDEA

In reviewing the State's system for data collection and reporting under section 618 of the IDEA, OSEP collected information regarding a number of elements, including whether the State: (1) provides clear guidance and ongoing training to local programs/public agencies regarding requirements and procedures for reporting data under section 618 of the IDEA; (2) implements procedures to determine whether the individuals who enter and report data at the local and/or regional level do so accurately and in a manner that is consistent with the State's procedures, OSEP guidance, and section 618; (3) implements procedures for identifying anomalies in data that are reported, and correcting any inaccuracies; and (4) has identified any barriers, (e.g., limitations on authority, insufficient staff or other resources, etc.) that impeded the State's ability to accurately, reliably and validly collect and report data under section 618 of IDEA.

Part B: State staff described the web-based Student Information Management System (SIMS), South Dakota's system for collecting, storing, managing, and disseminating data, and reported that SIMS provides the following data for each student: an assigned unique student ID number, student demographics (name, birth date, gender, race/ethnicity), enrollment (school assignment, grade level, date of enrollment, exit date, exit reason), special education (primary disability, services provided, placement setting, start date) and assessment. Personnel Record Forms (PRF), available through a web-based data collection system, contain staffing data that are submitted by all schools. Schools that do not submit PRF through the web data collection are contacted by SDDOE staff and are required to submit the data manually. Discipline Data (by disability, race and ethnicity) are submitted by district personnel through an online website secured by password. Discipline data are compiled at the end of the school year and distributed to the districts in the fall of each year for verification. All students who receive special education services and are enrolled in Head Start are included in SIMS. The Department of Corrections and the South Dakota Department of Social Services also are able to enter information into SIMS.

During the verification visit, SDDOE informed OSEP that SIMS incorporates edit checks within the system to ensure the reliability of the data by identifying inaccuracies, such as overlapping enrollment reports and invalid data. School districts flagged for data errors are included in the post-submission audit of child count data until the audit finds all reported data to be accurate and complete. If a district either fails to voluntarily take steps to correct an identified deficiency or fails to take any of the corrective actions specified by SDDOE, the district is notified of the following: (1) the failure to voluntarily correct an identified deficiency constitutes a failure on its part to administer its special education program in compliance with Federal law; (2) enforcement actions; (3) the right to a hearing; and (4) the consequence the State's enforcement action would have on continued and future State and Federal funding of the agency's special education program.

Since SIMS data fields are entered at the student level, i.e., are student-specific, they can be aggregated and disaggregated as needed, by school, district, grade level, ethnicity, gender, disability type, etc. Security features that include logins and passwords are built into the SIMS. Security levels are assigned depending on staff responsibilities. For example, special education staff review, enter, and edit special education data for their students, but they cannot enroll or modify the demographic data of a student because that is the responsibility of the school secretary or administrator.

SDDOE informed OSEP that instructions and guidance are provided to each school district. Training documents are available on the SDDOE and Office of Data Collection (ODC) websites. Vendors for SIMS also assist in training at the school and district levels. SDDOE and ODC staff are preparing for statewide training for all special education staff of the LEAs. This training will focus on the web-based data systems used for OSEP reporting. Staff from the National Center for Special Education Accountability Monitoring (NCSEAM) met with SDDOE staff in July 2006 to review the State's data, both for section 618 reporting and for the data indicators in the SPP and APR, in order to improve methods of reviewing data and methods of utilizing data for better outcomes.

Part C: South Dakota's Bureau of Information and Telecommunications developed the information management system for the Birth to 3 Connections program that provides data regarding the Federal requirements in section 618 of the IDEA. The information management system also serves as a billing system. All completed IFSPs (initial and reviewed) are submitted to the State by the service coordinator within 30 days of the IFSP meeting. The State indicated that State staff verify the accuracy and completeness, and follow-up with the service coordinator if inaccuracies are found, before entering data into the system. Additional data verification is incorporated through error code pop-ups when incorrect or invalid data are entered. State Birth to 3 staff review and analyze data to ensure reliability. Reports are generated to cross check the data for accuracy and edit checks are conducted to ensure reliability. Child and service data are also captured when service providers submit Payor of Last Resort (PLR) forms to obtain payment for services provided. Exit data are entered for each child upon exit from the Part C program.

The State reported that its data system is designed to aggregate and disaggregate data as queries are generated. To ensure the validity of the data, State reports are reviewed for accuracy by individual program service coordinators prior to submission of 618 data. Each service coordinator signs off on a card to verify data accuracy. Local programs and State Birth to 3 staff have locked file cabinets for all confidential documents and computer access is password protected. Data are available to the public through the APR and SPP on the website. The Educational Program Specialists for Birth to 3 Connections provide one-to-one technical assistance to service coordinators, providers and schools. The State provides an annual training for service coordinators to specifically address data collection. Information is communicated statewide through daily technical assistance, conference calls, service coordination meetings and Birth to 3 Connections program website. State Birth to 3 Connections staff also receive ongoing technical assistance and support from the State's Bureau of Information and Telecommunications.

The State indicated that it uses 618 data to compare the individual programs to analyze changes in the data. The trend data that identify areas of concern that surface in multiple local programs are addressed at the annual service coordinator conference and correction activities are implemented statewide. The Birth to 3 Connections data are not integrated into the Part B data system or any other data system in the department. Only Birth to 3 Connections staff have access to the data system. Part C collaborates with Part B to provide transition data, data requested by SDDOE, and data to schools regarding children receiving prolonged assistance. The State reported that all publicly reported data do not have child or family identifiers.

Based on the information provided to OSEP during the verification visit, OSEP believes that the State's Part C system for collecting and reporting data from EIS programs is a reasonable approach to ensuring the accuracy of the data the State is required to report to OSEP under IDEA Section 618.

Assessment

As part of its analysis of the State's system for statewide assessment under Part B⁶, OSEP collected information regarding a number of elements, including whether the State: (1) establishes procedures for statewide assessment that meet the participation, alternate assessment, and reporting requirements of Part B, including ensuring the participation of all students, including students with disabilities, and the provision of appropriate accommodations; (2) provides clear guidance and training to public agencies regarding those procedures and requirements; (3) monitors local implementation of those procedures and requirements; and (4) reports on the performance of children with disabilities on those assessments, in a manner consistent with those requirements.

South Dakota reported that its statewide assessments include the Dakota STEP (State Test of Educational Progress) and the Dakota STEP-A (Alternate Assessment). For accountability purposes, students in grades 3-8, and 11 are assessed in reading and math. In SY 2006-2007, the State reported that science would be added for grades 5, 8 and 11, following No Child Left Behind (NCLB) guidelines. Additionally, South Dakota has norm-referenced items for language arts, math, science and social studies from the Stanford 10 at grades 3-8 and 11. South Dakota has developed Alternate Academic Content and Achievement Descriptors for Reading, Math, and Science (Social Studies was to be developed during the summer of 2006).

The State reported that the alternate content standards are the basis for the Dakota STEP-A, which is used for accountability assessment for reading and math. The Statewide Team-Led Alternate Assessment and Reporting System (STAARS) has been used as the alternate assessment for norm-referenced subtests in writing, science, and social studies. As reported to OSEP, less than 1% percent of all children with disabilities participate in the South Dakota alternate assessment. As described, the Stanford 10, with the same allowable accommodations, is used by districts for testing those grades that do not take the Dakota STEP (i.e., K, 1, 2, 9, and 10). In addition, South Dakota reported that the STEP-A is available for those grades as well.

State staff reported that the South Dakota Codified Law 13-3-55 mandates that every public school district must administer the same assessment to all students in grades 3-8 and in grade 11. State law does not allow for the exclusion of students from the testing system or provisions to administer only portions of the assessment or at out-of-level grades. South Dakota expects all students to participate in statewide assessments, thus parents are not permitted to waive student participation in assessments. Currently, South Dakota does not have a high stakes testing program.

As described, IEP teams determine the participation of children with disabilities in the State and districtwide assessments, and whether accommodations and/or modifications are needed to participate. Children with disabilities who are unable to participate in the standard assessment participate in the South Dakota STEP-A or STAARS. Staff reported that during on-site monitoring visits, SDDOE verifies that an appropriate assessment decision has been documented.

During our verification visit, SDDOE informed OSEP that several assessment workshops are held throughout the year and at locations across the State prior to the administration of all statewide

⁶ Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with and without disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. This letter does not, and should not be interpreted to, address South Dakota's compliance with requirements of Title I.

assessments. Additional sessions are held to update test coordinators on relevant issues related to assessment of students with disabilities. As reported, presentations are posted on the State's website for those unable to attend and program representatives, via phone and e-mail correspondence, provide continuous technical assistance. Also, direct training is provided to staff on-site during IEP reviews.

In July 2006, State staff met with staff from NCSEAM to analyze statewide assessment data and to develop ways of using data to improve outcomes. One of the challenges identified by the State is developing an assessment program in compliance with NCLB peer review guidance. SDDOE is also concerned with the growing population of special education students and the small State staff. To address the challenge of a high turnover rate of teachers in some schools, the SDDOE, MPRRC, and the South Dakota Parent Connection developed a technical assistance guide to assist in training new teachers.

During our verification visit, South Dakota provided the following information regarding the participation and proficiency rates for students with IEPs from SY 2002-03 through SY 2004-05. These data are consistent with the data the State reported in its SPP and FFY 2003 APR. The State reports that students with disabilities have shown continuous improvement in participation in assessments and in proficiency rates for the math and reading assessments.

Special Education Students	2002-2003	2003-2004	2004-2005
Participation			
Reading	97.07%	97.23%	97.08%
Math	97.30%	97.69%	97.08%
Proficiency			
Reading	23.5%	34.1%	46.90%
Math	17.6%	29.5%	38.73%

Although reporting on the performance of students with disabilities is included as part of the State's accountability system, OSEP has determined that the State is not meeting the reporting requirements for statewide assessments and is not ensuring that districts meet these requirements for reporting on districtwide assessments. See section 612(a)(16)(D); 20 U.S.C. 1412(a)(16)(D) (2004). Under this provision, the State (or in the case of districtwide assessments, the school district) must report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children the following information: 1) the number of students with disabilities participating in regular assessments; 2) the number of students with disabilities participating in regular assessments with accommodations; 3) the number of students with disabilities participating in the alternate assessment aligned with the State's challenging academic content and student academic achievement standards; 4) the number of students with disabilities participating in the alternate assessment aligned with alternate achievement standards; and 5) the performance of students with disabilities on the regular and alternate assessments compared with the achievement of all children (where the information is statistically reliable and its reporting does not reveal personally identifiable information about an individual student).

OSEP reviewed the South Dakota reporting on the State's website and determined that the reports did not include the subgroups for participation rates that are required under Part B of the IDEA. OSEP concluded, and the State acknowledged, that although school districts are administering districtwide assessments, the State is not ensuring that the districts report the participation and performance of

students with disabilities consistent with Part B requirements. In addition, OSEP concluded, and the State acknowledged, that although school districts have alternate assessments available in districts administering district assessments, the State is not ensuring that the districts report the participation and performance of students with disabilities on alternate assessments consistent with Part B requirements. The State indicated that it would be addressing the State reporting issue by revising its reporting format and the districtwide reporting issue by addressing it in the State's monitoring procedures. It is important that the State ensure compliance with these requirements as soon as possible.

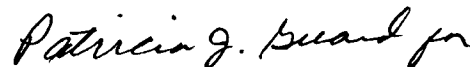
Conclusion

Part B: During the verification visit, OSEP found noncompliance with the assessment reporting requirements at 20 U.S.C. 1412(a)(16)(D). The State must correct these deficiencies as soon as possible. Failure to demonstrate correction and compliance on or before June 30, 2007 may result in the State's designation as a high-risk grantee and the imposition of special conditions on the State's fiscal year 2007 grant awards under Part B of the IDEA. Also, as noted above, South Dakota must provide documentation in the FFY 2005 APR, due to OSEP by February 1, 2007, demonstrating compliance with each area identified in OSEP's February 28, 2006 letter to the State (20 U.S.C. 1416(a)(3)(B) and 1412(a)(22)), including SPP Indicator 15 (general supervision system identifies and corrects noncompliance as soon as possible but in no case later than one year from identification) and SPP Indicator 4 (rates of suspension and expulsion). Failure to demonstrate compliance at that time may affect OSEP's determination of the State's status under section 616(d) of the IDEA. 20 U.S.C 1416(d) (2004).

Part C: Based on the information provided to OSEP during the verification visit, OSEP believes that the State's Part C general supervision system constitutes a reasonable approach to identifying and correcting noncompliance, and that the State's Part C system for collecting and reporting data from EIS programs is a reasonable approach to ensuring the accuracy of the data the State is required to report to OSEP under IDEA Section 618.

We appreciate the cooperation and assistance provided by your staff during and before our visit. The time that SDDOE and Birth to 3 Connections staff spent in preparing for our visit resulted in a smooth, informative and organized visit. We look forward to our continued collaboration with South Dakota to support your work to improve results for children with disabilities and their families.

Sincerely,



Alexa Posny, Ph.D.
Director
Office of Special
Education Programs

cc: Ann Larson
Sherrie Fines