



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

THE ASSISTANT SECRETARY

JUN 21 2000

Dr. Alice Parker
Assistant Superintendent of Public Instruction
California State Department of Education
721 Capitol Mall
Sacramento, California 95814

Dear Dr. Parker:

During the week of April 24, 2000, the Office of Special Education Programs (OSEP) conducted a follow-up monitoring review to help us to evaluate the California Department of Education's (CDE's) efforts and effectiveness in implementing the February 25, 2000 corrective action plan, and—more generally—in correcting the State's long-standing noncompliance with the requirements of Part B of the Individuals with Disabilities Education Act (Part B).

I want to thank you and your staff for the cordial, professional and collaborative way in which they and you worked with OSEP staff throughout the visit. You made staff and documentation readily available to OSEP. By answering our questions in a candid and problem-solving manner, CDE helped OSEP to better understand the changes you are implementing and promoted a sense of partnership in identifying needs and possible strategies for strengthening the design and implementation of CDE's new Quality Assurance Process. The organization of a file for each of the eight school districts that OSEP visited, containing information from a variety of data sources, further facilitated the discussion regarding the status of compliance in each district and will be an important facet of developing an integrated Quality Assurance Process.

In our 1988, 1992, 1996, and 1999 California Monitoring Reports, we found that CDE had not implemented an effective system for identifying and correcting noncompliance with the requirements of Part B, with very serious consequences for children with disabilities. For example, we repeatedly found that children with disabilities were not receiving the speech, occupational therapy, and psychological counseling services that they needed to benefit from special education; that they were not being educated in the least restrictive environment, that they did not have current individualized education programs (IEPs) and reevaluations, and that they were not receiving needed transition services. The February 25, 2000 corrective action plan requires CDE to demonstrate, by June 30, 2000 that: (1) CDE has implemented an integrated system that ensures that systemic noncompliance is consistently identified and corrected; (2) all of the districts in which OSEP found noncompliance in its 1992, 1996, and 1999 monitoring reports have corrected the noncompliance; (3) public agencies with long-standing systemic noncompliance are in compliance with the areas identified in OSEP's 1996 and 1999 monitoring reports; and (4) CDE takes effective enforcement actions to ensure compliance when prior corrective measures have not ensured compliance.

As part of our monitoring review during the week of April 24, 2000, my staff reviewed a number of CDE documents and interviewed CDE staff responsible for implementing the Quality Assurance Process. In addition, members of my staff met with Chief Deputy Superintendents Leslie Fausset and Scott Hill, Deputy Superintendent Henry Der, you, and several members of your staff. They also collected data in eight local educational agencies (LEAs): Antelope Valley, Fairfield-Suisun, Los Angeles, Sacramento City, Saddleback Valley, San Diego, San Francisco, and Santa Barbara Elementary.

CDE's efforts to design and implement a system for special education compliance were apparent during our April 2000 visit. CDE has been working hard to develop and implement a compliance system that will integrate information from several different data sources to make accurate compliance determinations and focus on improving results for students. CDE cannot yet demonstrate that it is consistently and effectively identifying and correcting noncompliance, but staff have been working tirelessly to build and implement a system that CDE believes eventually will be not only successful but also a model. Given the current size of CDE's staff, the State's size, the large number of school districts, the history of noncompliance, and the need to integrate the many facets of the Quality Assurance Process to identify and correct noncompliance, this is and could continue to be a very challenging task.

CDE has designed the Quality Assurance Process as comprising four components, all of which it intends to integrate to examine compliance and results for students. Those four components are: (1) complaint management; (2) focused monitoring; (3) coordinated compliance review/self-review; and (4) local plan review. As part of the April visit, OSEP reviewed efforts and effectiveness in designing and implementing each of the four components, as well as the extent to which CDE has integrated them to create an effective system for ensuring compliance.

COMPLAINT MANAGEMENT: Part B requires each State to resolve (within 60 calendar days unless the timeline is extended due to exceptional circumstances) complaints alleging a violation of Part B, and to ensure that any identified noncompliance is corrected. Based upon the findings in our 1996 and 1999 California Monitoring Reports regarding deficiencies in CDE's complaint management system, California's Fiscal Year 1999 Part B Grant Award included special conditions requiring CDE to submit documentation to demonstrate the effectiveness of its complaint management system in the timely resolution of complaints and correction of noncompliance identified in resolving complaints.

Based upon the documentation that CDE has submitted to date to meet the special conditions, and our further review during our January and April visits to CDE, it appears that CDE has made significant progress in the timeliness of complaint decisions, and that it has implemented a process for following up on corrective actions. When we receive, on or before June 20, 2000, and review the final report that the special conditions require, we will determine whether CDE has fully met the special conditions.

FOCUSED MONITORING: As described by CDE, focused monitoring reviews are intended as one of four major methods for ensuring compliance. Focused monitoring consists of two types of subcomponents: (1) the Facilitated, Collaborative and Preferred-practices reviews; and (2) the Verification Reviews. Key Performance Indicator data are used to identify districts that will

participate in Facilitated, Collaborative and Preferred-practices Reviews. Facilitated Reviews occur when a district's data frequently place it in the lowest 15th percentile of districts in their statewide enrollment category. This is a two to three year process. Collaborative Reviews occur when a district's data place it in the lowest 15th percentile of districts in their statewide enrollment category, although not as frequently as data points for districts in Facilitated Reviews. This is a two-year process. For both Facilitated and Collaborative Reviews, Key Performance Indicator data for the district are verified under the supervision of CDE staff and a district leadership team. The team is under the general direction of the superintendent, who conducts an intensive self-review of compliance and student outcomes and develops a plan for district and individual student results. Preferred-practices Reviews occur when districts are selected from the top 15th percentile of districts in their statewide enrollment category. The top 15 percent exhibit exemplary results, i.e., meeting CDE goals as evidenced by Key Performance Indicator data. Once the verification of the data for a Preferred-practices district is completed, that district will be referred as a mentor for districts needing assistance in achieving quality outcomes for children. It is our understanding that CDE has not yet conducted any Preferred-practices Reviews.

Verification Reviews are drawn from the districts identified for participation in the Coordinated Compliance Review process for the year. The Verification Reviews consist of a review of 30-50 student records to verify CASEMIS data, examine compliance with State and Federal laws and regulations, review Federal and State frequent noncompliance items and follow-up to prior corrective actions. For all focused monitoring districts listed above—Facilitated, Collaborative, and Preferred-practices districts—CDE conducts and supervises a Verification Review of district compliance and student level data submitted to the CASEMIS system.

During the week of April 24, 2000, OSEP staff spoke with 14 CDE consultants and managers responsible for implementing the Focused Monitoring process. Specific discussions were held around Quality Assurance Process activities in each of the eight districts visited by OSEP during the week of April 24th. Within the Focused Monitoring process, Los Angeles (Hamilton-Pallisades Cluster), San Diego and San Francisco are participating in Collaborative Reviews and Antelope Valley is participating in a Facilitated review. All of these four districts have constituted a Leadership Team that will be responsible for developing a Quality Assurance Plan, including an Effective Practices Plan and a Procedural Guarantees Plan. The Procedural Guarantees Plan is designed to correct identified noncompliance. According to the CDE consultants designated as contacts for these districts, districts were in varying stages in developing a Quality Assurance Plan, but none had yet completed one.

OSEP views the Verification Review process as a critical component of the Quality Assurance Process. It is the one component where CDE has the opportunity to look at implementation of federal and State special education requirements in a comprehensive way. During OSEP's interviews with CDE staff, they noted considerable variation in how the Verification Review process is being implemented. Although variation can be appropriate if it is purposeful, the variation noted in OSEP's interviews seemed to be due to a lack of consistent understanding of how the process is to be implemented. Local district staff voiced their perception to OSEP monitors that "CDE seems to be making it up as they go along." The use of data collection forms was inconsistent as was the level of training provided to local district staff who carry out

much of the record review process. For example, there was great variance in determinations of whether certain Federal requirements were or were not applicable to certain student records. Since, in many cases, there was no annotation as to why a reviewer determined that the requirements were not applicable, it was impossible for CDE, in its compilations, to determine the accuracy of the determinations.¹ CDE staff also acknowledged their concerns about inter-rater reliability and the validity of certain determinations. Parts of the Verification Review process, “IEP Implementation” and “Follow-Up on Prior Noncompliance,” were still being developed at the time of OSEP’s visit. In addition, OSEP staff was concerned that the Verification Review process seemed to consist primarily of record reviews. Although record reviews are an important part of evaluating compliance at the local level, much of the decision-making process can only be evaluated through in-depth, probing interviews. CDE administrators recognized the need to include such interviews as part of the review process, but indicated that they would need considerable more staff in order to conduct this type of in-depth interviewing.

In the February 25, 2000 corrective action plan, CDE committed to completing a Verification Review by June 30, 2000 of each of the following districts: (1) the 15 “FED CAP” districts (i.e., the districts in which OSEP found noncompliance in its 1992, 1996, and 1999 monitoring reports; (2) four districts with long-standing systemic noncompliance identified in the February 2000 corrective action plan; (3) the eight districts in which CDE was conducting a facilitated review and the 11 districts in which it was conducting a collaborative review; and (3) 18 randomly-selected districts from the CCR district pool. As of April 28, 2000, CDE had not yet issued a report for any of these districts. Further, CDE administrators explained during OSEP’s visit that the Verification Review process is still very much in a “transition phase” and that it will be necessary to make significant revisions to the process in order to make it effective in identifying all areas of systemic noncompliance. For example, CDE will need to develop effective procedures for conducting interviews and selecting the student records that it will review. It is important to note that OSEP would not have been able to collect the data needed to make the findings described below in the discussion of “LEA Data Collected By OSEP,” had it not conducted extensive interviews with teachers, related service providers, administrators, parents, and students.

CCR/SELF-REVIEW: As described by CDE, the CCR self-review process is one of the more widely used probes of compliance in CDE’s Quality Assurance Process because it is implemented yearly in approximately 250 public agencies and is intended to look at compliance with *all* special education requirements under both federal and State law. The CCR process combines a self-review of compliance by approximately one quarter of the State’s public agencies each year, with on-site Verification Reviews in a subset of those agencies the following school year (Verification Reviews are further addressed above in the discussion of focused monitoring). Based upon our review and upon CDE’s candid assessment, we believe that the CCR self-review, as designed and implemented during the 1999-2000 school year, is not an effective tool for identifying and correcting noncompliance with all federal requirements and that it will take significant revisions in both design and implementation for this component to be

¹ OSEP noted, for example, that the working papers for a number of student record reviews indicated “N/A” for the prior written notice requirements of 34 CFR §300.503. CDE staff could not explain how it was possible that an agency would make no proposal or refusal, requiring such notice to the parents of a child with a disability, regarding identification, evaluation, placement or the provision of FAPE.

effective. The current checklist, developed in February, 1999 and not revised after OSEP issued the Part B final regulations in March of 1999, does not probe all Part B requirements applicable to public agencies. In addition, numerous items on the current checklist are so unclear or so vague that they cannot be said to accurately reflect the relevant federal requirement. CDE staff responsible for CCR self-review acknowledged that their checklist is incomplete and that numerous items were poorly written or difficult to understand.

In addition to the inadequacies in the checklist itself, CDE staff were candid in their concern about the implementation of the process—in particular about whether some special education directors would provide an accurate and complete self-assessment. CDE staff indicated that CDE's training of district staff was neither in-depth nor comprehensive. There was also some confusion among different CDE staff members regarding whether and which districts were required to participate in a CCR self-review. For example, one staff member indicated that self-reviews are always optional but strongly encouraged. Another staff member indicated that every district undergoing a Verification Review had to conduct a self-review. As of the time of OSEP's April 2000 visit, San Diego Unified and San Francisco Unified, two focused monitoring, Verification Review districts, had not submitted self-reviews. CDE staff indicated that San Diego would be submitting its self-review in early May and that this document would be forwarded to OSEP.² CDE staff indicated that because San Francisco had conducted a different type of self-review, the CCR self-review was not required.

Finally, the design of the self-review process appears to lack incentives for accuracy and thoroughness. Every item identified in the self-review requires a corrective action plan, but there appear to be no incentives, e.g. additional resources, for districts that are accurate and thorough, and no specific consequences for districts that are not. While the site-level instructions call for the review of student records, there is no requirement that these "samples" be either random or representative. In fact, only 10% of schools must be part of the site-level review and there appears to be nothing that prevents the selection of specific schools and specific student records within those schools. Equally important, a review of documents through a checklist is not likely to identify actual practices or decision-making that could be inconsistent with federal requirements. This is especially significant given OSEP's historical findings of violations that stem from such practices, i.e., not ensuring that students who require psychological counseling services as part of a free appropriate public education receive them. OSEP believes that for the CCR self-review to demonstrate effectiveness, CDE would need to address the issues discussed above.

LOCAL PLANS: Each Special Education Local Plan Area (SELPA) is required to submit a local plan to CDE on a four-year staggered submission cycle. For the last several years, SELPAs have been required to submit only revisions to their local plans rather than full plans. At the time of OSEP's visit, this component of the quality assurance process was not being used extensively to identify systemic noncompliance. Although CDE could provide documentation that SELPAs were required to change language in a policy or procedure, it was not clear how this related to practice at the local level. CDE staff informed OSEP that prior to Verification Review visits,

² We note that submission of the self-review information for San Diego is also part of the agreed upon corrective action plan between CDE and OSEP, but was not part of the March 1, 2000 report or the May 15, 2000 supplemental report.

CDE contacts are provided a list of issues identified in the local plans. Various CDE staff described how this information was used, but their descriptions of the use of this information were inconsistent. Some indicated that they followed up with local directors to determine how the issue impacted in their district, while others indicated that they used the information as background. CDE staff did not identify any instances of information from a local plan leading to identification of systemic noncompliance as part of a Verification Review or leading to any type of enforcement action.

OSEP reviewed the checklist used by CDE staff to review the policies and procedures and noted that many required components were missing. A copy of OSEP's review was provided to CDE staff and a request was made for any additional checklists or procedures used in review of local plans. At this time no further documents have been provided. These issues will need to be addressed in order to demonstrate the effectiveness of this process.

INTEGRATION OF THE COMPONENTS: CDE currently does not have an integrated data system to access and utilize information from the four Quality Assurance Process components. Currently, the onus is on each individual staff member to access and integrate information from the components for each of the districts for which they are responsible. At the time of OSEP's April visit, CDE staff indicated their intent to centralize their filing system so that the data for each district (i.e., the data from CCR/Self-review, the Local Plan, complaint resolution, Verification Review, etc.) would be accessible in a common and secure storage area. CDE first centralized the data for those districts that OSEP visited in April 2000, but had not yet centralized the data for other districts. Although CDE has computerized some of the different data components (e.g., data from complaints, the Procedural Safeguards Referral System, Key Performance Indicators, etc.), each appears to run on a different system or software, making centralized access difficult. Although it is CDE's intent to electronically integrate its data systems, it was unclear how long it will take to achieve this goal. In addition, once the information is integrated and centrally accessible, it is not clear how the data from the different components will be used to ensure compliance.

ENFORCEMENT: The February 25, 2000 corrective action plan required CDE to provide, on or before March 31 and June 30, 2000, a description of each enforcement action that CDE has taken since June 1, 1998, in any public agency in the State. CDE has sought a "writ of mandate" from a State court to require a public agency to comply with a corrective action plan that was the result of CDE's findings in resolving a Part B complaint. State law now authorizes CDE to require public agencies in which CDE finds systemic noncompliance in resolving a complaint to address, as part of a regularly-scheduled school board meeting, the findings of noncompliance and the actions the agency has taken or will take to correct the noncompliance. CDE refers to such hearings as "Brulte Hearings." In the first four months of 2000, public agencies conducted "Brulte hearings" regarding approximately 50 complaints.

In addition, on April 20, 2000, CDE sent a memorandum to all District and County Superintendents, Directors of Special Education Local Plan Areas, Special Education Administrators, and District Directors of Special Education. That memorandum informed the addressees that "prolonged and substantial noncompliance, determined through [individual complaint investigations, CCR, or the quality assurance process] will not be tolerated." The

memorandum further informed them of CDE's "intent to implement appropriate sanctions as a means to ensure compliance with required corrective actions" including: withholding of State and/or Federal special education funds; disapproving a local plan; and seeking court enforcement of corrective actions. A letter also went out to districts regarding the issue of compliance with the requirements for reevaluations and timely reviews of individualized education programs. As explained above, CDE has now taken some initial enforcement actions and has informed all public agencies in the State of its intent to take necessary enforcement action. However, long-standing noncompliance persists in a number of public agencies in the State, including some of the districts that OSEP visited in April, and it will be critical that CDE take effective action, including enforcement when necessary, to ensure the timely correction of noncompliance.

For example, CDE had findings of noncompliance in San Diego Unified School District from a prior complaint and from the prior comprehensive compliance review, as well as from OSEP's visits to the District as part of its prior monitoring reviews. The State's findings resulted in a corrective action plan. In late 1999, the State closed out the complaint, and, based upon the same corrective action, certified the correction of all the compliance review items. CDE's Verification Review, in April 2000, again identified noncompliance, including some of the same issues. In addition, San Francisco has a long history of noncompliance that led to a voluntary corrective action plan with specific timelines. As of our April visit, both CDE and the school district admitted that the timelines of the corrective action plan had not been met and that it would take approximately another year to meet them. In Los Angeles, where the school district remains under Court order, CDE also found serious continuing noncompliance. Therefore, it will be important for CDE to determine effective ways to correct persistent noncompliance, including whether additional measures are necessary.

SCHOOL DISTRICT DATA COLLECTED BY OSEP: In each of the eight school districts that OSEP visited as part of the April 2000 visit to California, OSEP staff reviewed student records and interviewed parents, students, regular education and special education teachers, related services providers and administrators. Based upon our data collection in those eight school districts, our interviews of CDE staff working with those districts, and our review of pertinent CDE documentation, we find that much of the noncompliance at the local level persists, with serious impact on services to children with disabilities. For example, in the majority of the districts we visited: (1) children with disabilities who need psychological counseling as a related service to benefit from special education do not receive that service as part of a free appropriate public education; (2) children with disabilities are educated in illegally restrictive placements because the districts do not make needed supplementary aids and services available to enable the children to be educated in regular education classes; (3) many children with disabilities do not have a current individualized education program (IEP) or reevaluation; and (4) students, aged 16 and older, do not receive needed transition services. OSEP had made similar findings: (1) regarding psychological counseling in its 1988, 1996, and 1999 reports; (2) regarding placement in the least restrictive placement in its 1988, 1996, and 1999 reports; (3) regarding reevaluations in its 1996 report; and (4) transition in its 1996 report.

District and building administrators, teachers, and psychologists in nearly all of the districts that OSEP visited informed OSEP that, with few exceptions, when an IEP team determines that a child with a disability needs psychological counseling services to benefit from special education,

the school district makes a "3632" (Assembly Bill 3632) referral to Community Mental Health. The IEP may or may not note that referral in the IEP, but does not indicate in the IEP that psychological counseling is a related service that the child will receive as a part of a free appropriate public education. Once Community Mental Health receives the referral from the school district, Community Mental Health conducts its own evaluation before it will agree to provide services to the child. The evaluation process is dependent upon the parent bringing the child to the Community Mental Health facility and on the parents' cooperation in the process. If the parents do not cooperate in the evaluation process, Community Mental Health will generally close the child's case. While in some cases Community Mental Health will inform the school district if it closes a case before completing the evaluation or determines that a child is not eligible for mental health services, in many cases it does not. The school districts that OSEP visited did not have any systematic way to track referrals to Community Mental Health, or any way of providing psychological counseling services directly if Community Mental Health closes a case before completing the evaluation or determines that a child is not eligible for mental health services.

If Community Mental Health determines that a child with a disability is eligible for mental health services, that agency, and not the IEP team, will determine the beginning date, duration, frequency, and location of the services. In most cases, even if Community Mental Health does provide services to address a child's need for psychological counseling as a related service, these services are not documented in the child's IEP, the school districts that OSEP visited did not have any systematic way to monitor services provided by Community Mental Health, and the school districts did not have any way of providing psychological counseling services directly if Community Mental Health terminated services to the child.

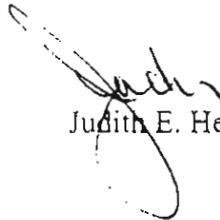
Teachers and administrators in nearly all of the visited districts informed OSEP that many children with disabilities could be educated with nondisabled children for greater portions of the day and removed from the regular education classroom for smaller portions of the day if there were sufficient trained personnel to provide needed supplementary aids and services to support the children in the regular education classroom. A number of teachers and building level administrators who regularly participate in IEP meetings and placement decisions explained that, even when they believe that the education of a child with a disability could be achieved satisfactorily if an aide or a special education teacher was assigned to support the child (and other children with disabilities), they rarely write the needed support into the IEP, and instead remove the child from the regular education environment.

District and building administrators in several districts informed OSEP that their districts had significant delays, beyond the three-year timeline, in completing reevaluations for a number of students with disabilities. For example, in one of the school districts in which OSEP reported overdue reevaluations in its April 1999 Report, district administrators informed OSEP that there were, in April 2000, still hundreds of children with overdue reevaluations, that the district did not yet have a fully reliable system for tracking the timeliness of evaluations, and that it would take until at least the end of 2000-2001 school year before the district would be able to correct the serious delays in reevaluations.

OSEP found from its review of IEPs and interviews with teachers and administrators who helped to develop those IEPs, that, for many children with disabilities aged 16 or older: (1) the notice to the parents of the IEP meeting did not inform the parents that the consideration of needed transition services was a purpose of the IEP and that the student would be invited, or identify other agencies that would be invited to send a representative because they were likely to be responsible for providing or paying for transition services; and (2) the IEP did not include a statement of needed transition services that was a coordinated set of activities for the student, designed with an outcome-oriented process to promote movement from school to post-school activities.

CONCLUSION: Based upon the data that OSEP collected at the State and local levels during its April visit to California, as well as the reports that CDE submitted—pursuant to the February 25, 2000 corrective action plan—on March 31 and May 15, 2000, we conclude that: (1) CDE has been working hard to develop and implement a compliance system intended to integrate information from several different data sources, to make accurate compliance determinations and to focus on improving results for students; but (2) CDE cannot yet demonstrate that it is implementing an effective system that consistently identifies and corrects noncompliance. The corrective action plan requires CDE to submit an additional report to OSEP on or before June 30, 2000. We will review that report to determine what additional progress CDE has made in working toward compliance and whether it can then demonstrate that it is implementing an effective system that consistently identifies and corrects noncompliance.

Sincerely,



Judith E. Heumann

Cc: Delaine Eastin