



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

Honorable Terry Bergeson
Superintendent of Public Instruction
Washington State Office of Public Instruction
Old Capitol Building
P.O. Box 47200
Olympia, Washington 98504-7200

FEB 28 2005

Dear Superintendent Bergeson,

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP) September 20, 2004 visit to Washington. As indicated in my letter to you on September 2, 2004, OSEP is 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).

The purpose of our verification reviews of States is to determine how States use their general supervision, State-reported data collection, and State-wide assessment systems to assess and improve State performance, and to protect child and family rights. The information collected during the verification visits will help OSEP to: (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 Washington, OSEP staff met with Dr. Douglas Gill, the Director of Special Education. OSEP also met with other members of Washington's Part B staff who are responsible for the State's general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings), State-wide assessment systems, and the collection and analysis of State-reported data. Prior to and during the visit, OSEP staff reviewed a number of State documents including: (1) the State's Part B applications for fiscal years 1999-2003; (2) the Part B Annual Performance Reports (APR) for Federal Fiscal Year (FFY) 2002-2003; (3) OSEP's 1999 Monitoring Report; (4) Monitoring Procedures; (5) Local Monitoring Reports; (6) Corrective Action Plans (CAP); and (7) submission of data under section 618 of the IDEA, as well as other information and documents posted on Washington's website.¹ OSEP also conducted conference calls on September 14, 2004 with parents and members of the State Advisory Council to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision and data collection and reporting.

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 system.

Dr. Gill participated in the call with the State Advisory Council and assisted us by inviting the participants.

The information that Dr. Gill and his staff provided during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of Washington's general supervision systems, State-wide assessment, and data collection and reporting systems that the State uses in carrying out the State's administrative and oversight responsibilities for the implementation of Part B.

General Supervision

In reviewing the State's general supervision system, OSEP collected information regarding a number of elements, including whether the State has: (1) systemic, data-based, and reasonable approaches to identifying and correcting noncompliance; (2) identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede the State's ability to identify and correct noncompliance; (3) utilized guidance, technical assistance, follow-up, and if necessary, sanctions, to ensure timely correction of noncompliance; (4) dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) 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.

Monitoring: Identification of Noncompliance

OSEP believes that the Washington State Office of the Superintendent of Public Instruction (OSPI) systems for general supervision constitute a reasonable approach to the identification of noncompliance; however, OSEP cannot, without also collecting data at the local level, determine whether the systems are fully effective in identifying noncompliance.

OSEP learned in the review of OSPI documents, and confirmed through interviews with OSPI staff, that the State's general supervision system consists of: (1) a computerized data-based system; (2) policies, procedures and guidance documents; (3) interagency agreements; (4) local applications; (5) monitoring protocols; (6) a system for providing technical assistance and training; (7) a system for ensuring provisions for procedural safeguards; (8) provisions for corrective actions; and (9) provisions for enforcement actions.

As documented in OSPI's monitoring procedures, OSEP found that local level compliance is determined through OSPI's Consolidated Program Review (CPR) system. The State of Washington developed the CPR system as one of the State activities consistent with the implementation of the Elementary and Secondary Education Act consolidated Federal plan in 1998-99. Special education was incorporated into the CPR system beginning in 2000. All districts and other public agencies are monitored at least once every four years. The special education component of the CPR system in the 2000 through 2003 monitoring cycle combined a series of eighteen core area questions with the collection of pre-visit data, parent surveys, individual student file reviews, classroom observations, staff interviews, exit interviews, and a written final report issued to the district. In implementing the special education component of

the CPR system, Washington moved from a procedural approach that concentrated on traditional file reviews and compliance procedures based on a checklist and source book used by OSPI contractors, to an on-site compliance review system conducted by OSPI staff members.

OSPI staff indicated that a CPR is typically completed in one day for an average-sized district with larger urban districts requiring more time. The size of the monitoring team ranges from 1 to 5 monitors who often have special education experience at the district level, or have experience as an auditor performing K-12 or special education audits, and are cross-trained with other CPR programs such as Title I. Consistency of monitoring findings between monitors is established using a peer review process. Districts are informed of the CPR process through modules that are shared at the regional and district levels and are available on the Internet.

OSPI staff stated that the CPR process monitors the provision of services provided to students with disabilities as identified by file reviews at the district level. In all cases, including those where services are provided according to an interagency agreement maintained by OSPI, the districts are the responsible entities for the provision of services. OSPI staff informed OSEP that OSPI has interagency agreements with the following agencies: (1) The Department of Health and Social Services (for healthcare, child and family services and juvenile rehabilitation services); (2) the Department of Services for the Blind (for secondary transition services); and (3) Department of Social and Health Services' Medicaid Assistance Administration (for Medicaid eligibility).

OSPI staff informed OSEP that in year one of the four-year monitoring cycle, OSPI conducts pre-visit data collection and on-site data collection, and a corrective action plan matrix is developed with each final report issued. Pre-visit monitoring activities for the 2003 through 2007 monitoring cycle include: (1) developing a series of questions provided as part of the special education portion of the CPR self-study review; (2) obtaining a list of special education staff; (3) reviewing documentation of district activities relating to child find, public participation, and staff development; and (4) providing a description of the district's monthly enrollment count process. In addition, the pre-visit monitoring activities also include a review of the district's policies and procedures, local educational agency (LEA) application, fiscal documents, and citizen complaint corrective actions. The final element of pre-visit monitoring activities is the selection of a random sample of parents asked to complete a survey regarding the district's special education program.

Pre-visit data is verified through on-site data collection, including the review of particular student files, supporting special education fiscal and enrollment documentation, and interviews with special education and related service professionals. Special education programs and services are verified for all selected students through interviews and classroom visitations. Interviews and classroom visitations for the 2003 through 2007 monitoring cycle are based on 14 questions related to: (1) policies; (2) procedures; (3) section 504 and Title II; (4) public participation; (5) procedural safeguards; (6) private schools; (7) the Family Education Rights and Privacy Act and confidentiality; (8) child find; (9) staff development; (10) fiscal revenues and expenditures; (11) continuum of services; (12) individualized education program (IEP) implementation and free appropriate public education (FAPE); (13) parent participation; and (14) secondary transition.

Discussions with OSPI staff indicated that an area in which the monitoring system is well developed and meticulously constructed is the sampling method that the CPR process uses in file reviews, on-site interviews and observations of students and their programs. For all CPR reviews, analysis of pre-visit data collected from districts drives the analysis of: (1) random files selected during monitoring, (2) observations made while conducting monitoring on-site; and (3) information collected in on-site interviews. The goal of OSPI's targeted sampling review method is to determine potential noncompliance areas using pre-visit monitoring activities, and to design and implement the most efficient process in which to examine potential areas of noncompliance during on-site data collection. Although an area of potential noncompliance would be explored, OSPI still monitors for compliance in all other areas. To achieve this goal, OSPI explained that it conducts a detailed analysis of pre-visit data up to two months in advance of the on-site visit to make on-site monitoring an efficient, highly focused, and informative process.

OSPI informed OSEP that in the beginning of year two, OSPI reviews the LEA application, which OSPI has amended to require districts to identify any actions and activities that the State is currently engaged in related to monitoring findings or a corrective action plan. At the conclusion of year two, OSPI plans to require districts under a corrective action plan to conduct a self-review of progress in implementing activities supporting correction of noncompliance and submit that data as an interim progress report. OSPI staff indicated that their time frame for responding to interim progress reports is anticipated to be within 30 to 45 days.

In year three, OSPI stated that the district should continue implementing its corrective action plan for systemic change, and in year four the monitoring cycle begins again. OSPI staff told OSEP that when a district demonstrates noncompliance, OSPI can impose the following sanctions to enforce compliance: (1) withhold a specified amount of State and/or Federal special education funds, in compliance with the provisions of WAC 392-172-590 and 392-172-514; and (2) initiate an audit of the school district or other public agency consistent with WAC 392-172-512.

Monitoring: Timely Correction of Noncompliance

Washington must: (1) ensure that each educational program for children with disabilities administered within the State meets Washington's standards, including the requirements of Part B (34 CFR §300.600(a)(2)(ii)); and (2) implement proper methods of monitoring to identify and correct noncompliance in a timely manner (within one-year of identification) (20 U.S.C. 1232d). As documented in OSPI's monitoring procedures and confirmed in interviews with OSPI staff, correction of identified noncompliance found during a monitoring visit required LEA implementation of a four-year improvement plan that targeted district-wide improvement based upon monitoring results. OSPI provided all LEAs with identified noncompliance with a continuous improvement plan template. The process for completing the template required the LEA to establish the framework for correcting any identified noncompliance, including: (1) identifying local planning participants; (2) identifying the desired outcomes for students with disabilities and/or their families; (3) determining indicators that will provide evidence of change and correction of noncompliance; (4) determining the activities necessary to achieve improvement planning outcomes; (5) identifying the resources for performing improvement

planning activities; and (6) determining the timelines and milestones necessary to complete improvement planning. After the monitoring visit, once the final report or the adjusted final report is provided to the district, the district has 90 calendar days to develop a continuous improvement plan and submit it to OSPI. OSPI is required to respond in writing within 30 calendar days to the LEA's improvement plan. OSPI staff stated that if an LEA submitted an improvement plan that needed revision, OSPI worked with the LEA to ensure that the improvement plan was approved. Following OSPI's approval of the improvement plan, the district must provide annual updates on the activities identified in the improvement plan, through the LEA grant application process. As mentioned above, the LEA will also be required to submit an interim progress report using the improvement plan template at the two-year midpoint.

Based on a review of OSPI's current monitoring procedures, information in OSPI's 2003-2007 Special Education Monitoring Forms and Procedures Handbook and information obtained in interviews with OSPI monitors, OSEP determined that OSPI's system for correction of noncompliance was not fully effective in implementing short-term measures to correct noncompliance in a timely manner. This determination was made because OSEP found that OSPI does not have a method to ensure correction of noncompliance within a reasonable period of time, not to exceed one year of identification, or a method for verifying that correction has occurred within 30 days following the one-year timeline in situations where individual students are affected by identified noncompliance.

According to OSPI officials and monitoring staff, OSPI would require a progress report from the district at the completion of the second year of a four-year improvement plan and evidence of correction at the conclusion of the improvement planning period in year four. OSEP recognizes that systemic change may take longer than one year to implement; however, short-term measures to correct identified noncompliance affecting individual students must be implemented within one year of identification, and correction must be verified within 30 days of the one-year timeline. For example, during the verification visit, OSEP clarified that OSPI requires districts to immediately address areas of identified noncompliance that affect the provision of a free appropriate public education in the least restrictive environment to individual children. OSPI can meet its responsibility to ensure timely correction of identified noncompliance by submitting documentation of its efforts to achieve timely correction and documentation of correction by: (1) conducting periodic visits to the affected district to determine whether correction has occurred; (2) issuing a memorandum to the affected district to cease and desist the noncompliant practice(s); (3) requiring technical assistance and training of appropriate staff in the proper implementation of requirements found to be deficient; and (4) requiring the affected district to submit documentation containing specific evidence of correction.

OSPI must also continue to report on the specific systemic change activities it undertook in the 2003-2004 school year including the impact of those activities on performance and compliance. OSPI must submit in the State's FFY 2003 APR, due April 29, 2005, a plan, including strategies, proposed evidence of change, targets, and timelines to ensure correction of noncompliance involving individual students identified through monitoring, within one year of identification and must submit a report to OSEP ensuring correction of this noncompliance as soon as possible, but not later than thirty days following the one-year timeline.

Complaint management

Data from the 2002 APR, confirmed through OSEP's analysis of OSPI's complaint log for years 2002 through 2003, indicated that all complaints were not resolved within 60 days of the agency's receipt of a complaint or within a longer period if timelines are extended if exceptional circumstances exist with respect to a particular complaint. This issue is addressed in the General Supervision section of Washington's FFY 2002 APR letter.

Due process hearings

Data from the 2002 APR indicated that public agencies in Washington do not ensure that not later than 45 days after the request for a hearing a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties, unless the hearing officer grants a specific extension of time, at the request of either party (34 CFR §300.511). According to OSPI staff, late due process decisions are often the result of complex decisions that run six to seven days in deliberation.

OSPI staff told OSEP that although OSPI has a system for recording requests for due process hearings, the Office of Administrative Hearings conducts OSPI's due process hearings in addition to other hearings regarding transfers and teacher certification, the largest percentage of their cases. A panel of judges hears only special education cases. Of that panel, OSPI funded three judges full time for hearings and related matters for special education, and an administrative assistant. According to OSPI officials responsible for due process hearing requests, OSPI meets with administrative law judges at least three times a year and requires at least one training for administrative law judges a year.

OSPI included in its 2002 APR a plan for correcting this noncompliance. See OSEP's FFY 2002 APR letter to Washington for further discussion of this issue. OSEP recommends that OSPI continue to improve the performance of its general supervision system and the review of existing policies, procedures, rules and regulations to maintain compliance with IDEA Part B requirements. OSPI may continue to collaborate with other national technical assistance programs and OSEP to devise appropriate strategies to continue to bring about better results for children with disabilities and their families.

State-Wide Assessment

In looking at the State's system for State-wide assessment, OSEP collected information regarding a number of elements, including whether the State: (1) establishes procedures for State-wide 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. In order to better understand Washington's system for State-wide assessment, OSEP also discussed with your staff how the alternate assessment is aligned with grade-appropriate content standards.

OSEP has determined, through its review of the State's written procedures for State-wide assessments and the State's reports to the public and the Secretary on the participation and performance of children with disabilities on such assessments, that those procedures, as written, and those reports are consistent with Part B requirements. OSEP cannot, however, without also collecting data at the local level, determine whether all public agencies in the State implement the State's procedures in a manner that is consistent with Part B.

OSEP reviewed documentation on Washington's assessment system prior to the verification visit and confirmed during interviews with State staff that the State's assessment system is composed of three broad programs: (1) State-wide standardized testing; (2) classroom-based assessments; and (3) assessment staff development. State-wide standardized testing is composed of three components. The primary component is a criterion-referenced test, the Washington Assessment of Student Learning (WASL). The two other components of the testing program are: (1) a series of norm-referenced tests, the Iowa Test of Basic Skills (ITBS) and the Iowa Test of Educational Development (ITED); and (2) the National Assessment of Educational Progress. All State-wide assessments are linked to the Essential Academic Learning Requirements (EALRs), that are Washington's content standards and have a range of accommodations that are available for students with disabilities.

Washington State's assessment staff informed OSEP that use of accommodations must be submitted to an assessment review board. The assessment review board compares how the accommodation is used in instruction and how it will be used on the assessment. In the event that the review board determines there is a mismatch between uses of the accommodation in the student's instructional setting compared to the test setting, or that use of the accommodation would invalidate the test, the request for the accommodation may be granted as a nonstandard accommodation. Scores from assessments with nonstandard accommodations: (1) are counted in the assessment system as an invalid score and scored as a zero; (2) do not contribute to the development of general education curricula and instruction; and (3) may not count toward graduation requirements (the class of 2008 is the first class that must pass the WASL to graduate). Washington State Assessment staff indicated that any request for a nonstandard accommodation automatically triggers technical assistance to identify the next level of allowable accommodation. This system of review of accommodation requests and technical assistance has resulted in very few cases that have required nonstandard accommodations. OSPI staff identified the need to provide more technical assistance and training on the difference between a modification and an accommodation. State staff also discussed plans to incorporate universal designs for learning, in State-wide assessments.

OSEP's review of documentation and discussion with State staff verified that the WASL is administered in grades four, five, seven, eight, and ten. In grades four, seven and ten, the WASL assesses math, reading, and writing. In grades five and ten, science is assessed. The ITBS assesses reading and math in grade three, and assesses reading, language arts, and math in grade six. The ITED assesses reading, language arts, math and interest inventory in grade nine. The State ensures that all children including children with disabilities participate in the State-wide assessment program using enrollment data reported yearly. Enrollment data indicate which students are assigned to each grade. Students in non-graded special education programs are tested with their age-appropriate peers.

OSPI staff indicated that students who are unable to take the WASL, even with accommodations, participate in the Washington Alternate Assessment System (WAAS). Washington's alternate assessment system is based on a portfolio. Portfolios include evidence of the student's work that is designed to demonstrate participation in and progress toward IEP goals that are aligned with EALRs. OSEP learned through discussion with State staff and a review of documentation that IEP skills are linked to EALRs in portfolio assessments in a number of ways including: (1) using appropriate modifications/adaptations, supports, or assistive technology to demonstrate tacit and implicit knowledge; (2) assessing skills in a variety of settings and contexts, including the classroom, other areas of the school, community settings, and home to determine the ability of the student to use learned skills; (3) assessing interactions with nondisabled peers and others during IEP activities structured to build social relationships; and (4) assessing student self-determination skills in planning, monitoring and evaluating their progress and skill development.

OSPI reported that it provides clear guidance and training to public agencies regarding assessment procedures and best practices through a network of assessment centers and teams of local assessment trainers. OSPI provided training modules for districts on assessment and additional comprehensive information on its website.

As evidenced through Washington's State-wide assessment data, children taking a State-wide assessment with accommodations are scored and reported together with children taking the assessment without accommodations. Assessment results for all students including students participating in alternate assessments are available on the web in State, district, and school reports. Disaggregated assessment results are available by program, race/ethnicity, and gender. In conclusion, OSEP found that OSPI has a State-wide assessment system that ensures the participation of students with disabilities and, in addition to reporting assessment results in the same manner and frequency as children without disabilities, has developed an exemplary system of technical assistance and accountability for improving the performance of children with disabilities.

Data Collection Under Section 618 of the IDEA

In looking at the State's system for data collection and reporting, 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 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, sufficient staff or other resources, etc.) that impede the State's ability to accurately, reliably and validly collect and report data under section 618.

OSEP believes that OSPI's system for collecting and reporting data is reasonably calculated to ensure the accuracy of the data that OSPI reports to OSEP under section 618.

During OSEP's verification visit, OSPI discussed its system of data checks and balances to ensure accurate and valid data as required under section 618. The core element in Washington's data collection from all districts and buildings is a central database. The database is populated with information from districts provided in pre-formatted Microsoft Excel templates with data validity checks built into the code structure of the template. The validity checks prevent arithmetic mistakes and automatically check for other common errors. Errors are highlighted in red and are required to be corrected before final submission of the template. All errors that are not corrected before submission to OSPI are returned to the district before the data is imported into OSPI's State database. A single template is used for all districts. This process represents the first level of system integrity within the Washington State data collection process.

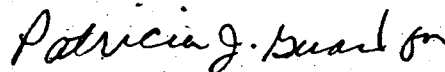
OSPI data staff informed OSEP that the second level of system integrity occurs once the information is imported into the State's main database. District and building level files are created with total enrollment for each grade. The grades reported are matched against the grades served in the district. The number of students is verified against the reported fall and spring enrollment data provided by all districts and buildings. OSPI attempts to resolve any anomalies, such as districts with buildings not reported, inappropriate or missing grade levels, and under-reporting of students. OSPI then examines the data to identify any duplicate student records and verify that all of the data collected has been reported in the correct reporting period. Next, the data is checked for the inclusion of data for special education, socioeconomic, and limited English proficient variables. If any of these data variables are missing or do not correspond to special education enrollment reported data, the district or entity submitting the data, is contacted for verification and correction of the data. The data is then checked for appropriate codes relating to: (1) race/ethnicity, (2) gender; (3) school year; (4) dropout rates; (5) continuing students; and (6) students who complete/graduate from school. As a final check, all of the information submitted is compared against the information submitted the previous year, and any anomalies that are identified are examined at the school or district level to ensure consistency and quality within the system. Depending on the extent of any anomaly found, the school or district may be asked to make minor changes or may be asked to complete an entire new submission of data and review of all students reported for the school or district.

In interviews with OSEP, OSPI staff stated that the State developed and disseminated a data manual to administrators responsible for the local oversight of data entry to ensure consistency and to provide ongoing technical assistance. If needed, OSPI provides technical assistance directly to data managers in schools and districts. Data submission requirements and the data manual are also available on the State's website.

In summary, as noted in the general supervision section of this letter, in the next APR, due April 29, 2005, OSPI must submit a plan to ensure that identified noncompliance is corrected within a reasonable period of time, not to exceed one year from date of identification. Two other issues, regarding timely issuance of complaint and due process hearing decisions, are further addressed in Washington's 2002 APR letter.

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

Sincerely,

A handwritten signature in black ink that reads "Stephanie Smith Lee". The signature is written in a cursive style with a large initial 'S' and 'L'.

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Douglas Gill, Ed.D.