



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

FEB 19 2004

Commissioner Susan A. Gendron
Commissioner of Education
Maine Department of Education
23 State House Station
Augusta, Maine 04333-0023

Dear Commissioner Gendron:

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 Maine. As indicated in my letter to you of September 4, 2003, 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). We conducted our visit to Maine during the week of October 20, 2003.

The purpose of our verification reviews of States is to determine how they 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 purposes of the verification visits are 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 the Maine Department of Education (MDOE), OSEP staff met with: Deputy Commissioner Patrick Phillips, State Director of Special Education David Noble Stockford, Federal Programs Liaison Joanne C. Holmes, Director of Child Development Services (CDS)¹ Laurie Bertulli, and other members of MDOE's staff who are responsible for: (1) the oversight of general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings); (2) the collection and analysis of State-reported data; and (3) ensuring participation in, and the reporting of student performance on, State-wide assessments. Prior to and during the visit, OSEP staff reviewed a number of documents²,

¹ MDOE is both the State education agency (SEA), responsible for the administration of the State's special education system, and the State's Lead Agency for Part C. In Maine, 16 Child Development Services (CDS) Regional Site Boards provide both Part C early intervention services to infants and toddlers aged birth to three, and special education preschool services to children aged three through five (children who are not yet five years old by October 15 of a given school year), pursuant to the State's Chapter 180 regulations. 284 School Administrative Units (SAUs) provide "school-aged" special education and related services to children aged five (children who have turned age five by October 15 of a given school year) to age 20 (the school year in which the student turns 20), pursuant to the State's Chapter 101 regulations.

² 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.

including the following: (1) Maine's Self-Assessment and State Improvement Plan; (2) the State's Biennial Performance Report for grant years 1999-2000 and 2000-2001; (3) MDOE's written monitoring procedures for CDS and for special education programs for school-aged children; (4) information from the State's website regarding Maine's State-wide assessment system; (5) CDS' annual entitlement application and annual approval agreement; (6) selected MDOE monitoring files for CDS regional sites and School Administrative Units (SAUs), including monitoring reports and corrective action documents; (7) MDOE's General Supervision Enhancement Grant (GSEG) online web-based application that compares local data to State data; (8) dispute resolution policy and information, including statutory and regulatory language; and (9) MDOE's tracking logs for mediation, complaints, and due process hearings.

OSEP also conducted a conference call on September 16, 2003, with four members of Maine's State Advisory Council on Special Education, to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and State-wide Assessment. These four representatives of the Council were selected to present the input of the whole Council regarding the State's Part C and Part B systems. Ms. Holmes participated in the call and assisted us by inviting the participants.

The information that Mr. Stockford, Ms. Holmes, and Ms. Bertulli and their staff provided prior to and during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of MDOE's systems for general supervision, data collection and reporting, and State-wide assessment.

MDOE has implemented one set of general supervision and data collection procedures for Part C and preschool special education programs under CDS, and a different set of general supervision and data collection procedures for school-aged special education programs. Because of this organizational structure, OSEP has divided the General Supervision section of this letter into three subsections: (1) Identification and Correction of Noncompliance: Part C Early Intervention and Part B Preschool Special Education; (2) Identification and Correction of Noncompliance: Part B Special Education Services for School-Aged Children; and (3) Dispute Resolution Procedures (MDOE uses a single system to address dispute resolution for Part C, preschool special education, and special education for school-aged children).

General Supervision

In reviewing the State's general supervision system, 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 the State's ability to identify and correct noncompliance; (2) has systemic, data-based, and reasonable approaches to identifying and correcting 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.

Identification and Correction of Noncompliance for Part C Early Intervention and Part B Preschool Special Education

MDOE staff informed OSEP that MDOE monitors both Part C and Preschool Special Education Programs through a four-prong monitoring process.³ MDOE implements each of the following three processes annually: (1) each CDS site submits a local entitlement application; (2) each CDS site submits an annual approval agreement; and (3) MDOE staff completes a file audit of a stratified sample of files. MDOE staff reported that these three processes enable MDOE to collect information, and identify noncompliance regarding, written policies and procedures and missing and/or incorrect information in evaluations, assessments, Individualized Family Service Plans (IFSPs)/Individualized Education Programs (IEPs), and other written documents. (Maine has chosen to permit the use of an IFSP, in lieu of an IEP, for children aged three through five, under the circumstances explained in 34 CFR §300.342(c). MDOE informed OSEP that, to date, all parents have chosen to use an IFSP. Therefore, in addressing services for children with disabilities, ages three through five, OSEP uses the term "IEP/IFSP.") The fourth process is the monthly electronic submission by each CDS site of an "Unmet Needs" report; MDOE reported that it uses the data in these reports to identify noncompliance with timeline requirements, and to identify staff shortages that may be causing delays or denials of needed services.

MDOE staff informed OSEP that MDOE's CDS general supervision also includes formal and informal training and technical assistance. MDOE CDS staff attends a monthly CDS site directors meeting. MDOE has informed OSEP that MDOE is planning to begin requiring quarterly meetings with CDS site directors where MDOE sets the agenda. MDOE staff receives frequent questions, requests for technical assistance, and provides training on a regular basis.

OSEP learned, through interviews with MDOE staff and review of MDOE's CDS monitoring files, that MDOE is making findings of noncompliance regarding an array of Part C timeline and documentation requirements, and of Part B timeline and documentation requirements as they pertain to preschool-aged children. MDOE acknowledged, however, that it does not, as part of its monitoring, interview CDS administrators, service coordinators, teachers, related service personnel, or other CDS staff and individuals, including parents, who participate in service coordination, evaluations and assessment, or the development or implementation of IFSPs/IEPs. MDOE further acknowledged that this gap in its monitoring procedures limits MDOE's ability to determine compliance with: (1) Part C requirements relating to service coordination, and the process used to determine the Part C services that each child and family will receive and the setting(s) in which the child and family will receive them, and whether each child's IFSP includes all of the early intervention services that the child needs; and (2) Part B requirements relating to the process used to determine the Part B services that each child will receive, the placement(s) in which the child will receive them, and whether each child's IFSP/IEP includes all of the early intervention services that the child needs. MDOE informed OSEP during the verification visit that it is considering conducting on-site reviews through an analysis of data gathered from its new Integrated Program Monitoring (see below).

³ MDOE informed OSEP that MDOE uses the same *procedures* to monitor CDS' implementation of both preschool services under Part B and early intervention services under Part C (although, appropriately, it monitors CDS' preschool special education services for compliance with Part B *requirements*).

OSEP cannot, without also collecting data at the local level, determine the extent to which MDOE's Part C and special education (Part B) preschool monitoring procedures are effective in *identifying* noncompliance. OSEP is concerned about the effectiveness of MDOE's procedures for monitoring CDS sites, especially given that, as described above, those procedures include no interviews, and this gap limits MDOE's ability to determine compliance with some Part C, and for preschool aged children, Part B requirements. It will be important that, as part of the Part C and Part B Annual Performance Reports that the State will be submitting this year, the State carefully evaluate the effectiveness of its Part C and Part B preschool monitoring procedures to ensure that the State is able to identify all noncompliance, and make any needed revisions to those procedures.

MDOE explained that its general supervision procedures include no systematic process for ensuring that CDS corrects, within a reasonable period of time not to exceed one year, any Part C or special education (Part B) preschool noncompliance that MDOE identifies. OSEP is especially concerned about the effectiveness of MDOE's procedures for *correcting* such noncompliance, given this lack of systematic follow-up on noncompliance, and the longstanding noncompliance, described in OSEP's December 30, 2003 letter to the State regarding its Improvement Plan, in the following areas: (1) untimely initial evaluations for preschool-aged children; and (2) preschool-aged children not receiving all of the special education and related services, as set forth in their IFSPs/IEPs.

As described below, and in MDOE's General Supervision Enhancement Grant (GSEG) application, the State is piloting a new integrated program review model, and is considering revising its onsite monitoring procedures to include interviews; to date, however, there are few data regarding the effectiveness of these new and proposed procedures. It will be important that the State carefully evaluate and address the effectiveness of MDOE's Part C and preschool special education (Part B) monitoring procedures as part of its next Part C and Part B Performance Reports.

Identification and Correction of Noncompliance for Part B Special Education for School-Aged Children

MDOE staff explained that they use the following individuals to implement MDOE's school-aged monitoring system: (1) an individual with whom MDOE has contracted on a fulltime basis for several years to coordinate and lead the monitoring process; (2) three "distinguished educators" (employees of SAUs who work fulltime in MDOE's monitoring process for a one-year period, under the leadership of the monitoring coordinator), who, together with the coordinator, lead monitoring reviews; and (3) peer reviewers from other SAUs who complete the team for each monitoring review. MDOE explained that, before leading his or her first monitoring review, each distinguished educator receives eight weeks of training, shadows the monitoring coordinator on a *year one* visit and on a *year two* visit, and leads a *year one* visit and a *year two* visit under the supervision of the monitoring coordinator.

MDOE staff informed OSEP that MDOE monitors the SAUs on a five-year cycle for compliance of special education programs for school-aged children with disabilities ("school-aged monitoring"). As detailed below, the monitoring of each SAU is a three-year process:

Year One Review

MDOE described its *year one* monitoring activities as a broad and comprehensive self-assessment by the SAU, with on-site technical assistance by MDOE. The purpose of which is to determine a baseline on compliance in the SAU, performance related to access to the general curriculum, promising practices, the referral process, and unmet training needs. MDOE explained that its involvement in the *year one* review consists of the following: 1) it first develops a data “snap shot” for the SAU; and 2) MDOE then conducts an on-site review that includes training, interviews and a record audit. As part of the record audit, the lead reviewer on the monitoring team selects a 20% stratified sample representing disability, age, ethnicity, etc. The lead reviewer and the peer reviewers interview related service personnel, parents, educational technicians (paraprofessionals), administrators, and all special education teachers.

OSEP learned through interview and review of monitoring files that MDOE’s *year one* reports document deficiencies that MDOE found through analysis of the SAU’s self-assessment, record review, and/or interview. Each report identifies the percentage of the files reviewed that MDOE found to be in compliance for each requirement. MDOE explained that for noncompliance that can be corrected immediately, the SAU must submit documentation of correction within 30 days. For any area in which MDOE finds an SAU in less than 90% compliance and which requires more long-term correction efforts, MDOE follows up on the issue through a *year two* review (see below). MDOE does not, however, require the SAU to submit a corrective action plan or any documentation of correction, prior to the *year two* review. MDOE told OSEP that in most, but not all, cases the SAU has corrected any noncompliance by the time MDOE conducts the *year two* review. MDOE confirmed that, for those situations in which the SAU has not corrected the noncompliance identified in the *year one* review by the time of the *year two* review, MDOE allows the SAU one year from the time of the *year two* review to correct the noncompliance. In these later situations, MDOE is not meeting its general supervisory responsibility under 34 CFR §300.600, because it is not ensuring that SAUs correct noncompliance in a reasonable time, not to exceed one year from the date on which MDOE initially identified the noncompliance.

For areas in which, through the record audit form, MDOE finds some noncompliance but at least 90% compliance, MDOE takes no steps to ensure correction. This practice is inconsistent with the requirement that MDOE ensure the correction of all identified noncompliance.

Year Two Review

As explained above, for any compliance area in which MDOE found less than 90% compliance in an SAU through MDOE’s *year one* review, MDOE reviews student records as part of its *year two* review to determine whether the SAU has corrected the noncompliance. As MDOE explained, it determines, depending on the nature of the identified noncompliance, whether the *year two* review will consist of off-site documentation review, on-site data collection, or both. MDOE has the SAU select the sample of files that MDOE will review, and MDOE does not select any additional files

for review. OSEP is concerned that permitting SAUs to self-select all of the files that MDOE will review may limit the ability of MDOE to make a valid determination regarding the extent of correction.

If MDOE finds there is still less than 90% compliance in an area in which MDOE found noncompliance in year one, MDOE requires the SAU to develop a Continuous Improvement Plan (CIP), which must provide for completion for correction within one year from the *year two* visit. Thus, as noted above, MDOE is not ensuring that SAUs correct noncompliance in a reasonable time, not to exceed one year from the date on which MDOE initially identified the noncompliance.

Year Three Review

MDOE explained that it implements *year three* procedures only for those SAUs that did not document at least 90% compliance in *year two* (currently, approximately 30% of the State's SAUs proceed to a *year three* review). MDOE requires these SAUs to submit documentation by the end of *year three* that demonstrates at least 90% compliance in any outstanding areas. MDOE explained that it usually uses a desk audit, where the SAU self-selects files to reflect their understanding, to determine whether an SAU has met this standard, but that it has conducted an additional on-site follow-up visit to at least three SAUs, over the past five years, in *year three*. MDOE has, in some cases, delayed the flow of Part B funds to SAUs until they could provide documentation of compliance.

OSEP learned, through interviews with MDOE staff and review of monitoring files, that MDOE is making findings of noncompliance regarding a broad array of Part B requirements. MDOE explained, however, that it is not implementing systematic procedures for ensuring that SAUs correct noncompliance within a reasonable time not to exceed one year. Further, as explained above, MDOE is not fully meeting its general supervisory responsibilities, because it does not require that noncompliance be corrected if MDOE found noncompliance, but at least 90% compliance. Within 60 days from the date of this letter, MDOE must submit to OSEP either: (1) documentation that it has corrected these deficiencies in its procedures for ensuring correction of noncompliance within one year (i.e., that it is implementing procedures that are effective in ensuring timely correction of noncompliance, including noncompliance in less than 10% of the reviewed files); or (2) its plan for ensuring such correction and full implementation, as soon as possible but no later than one year from the date of this letter.

Further, as explained above, OSEP is concerned about MDOE's procedure of having each SAU select the files that MDOE will review to determine whether the SAU has corrected noncompliance. Having an SAU self-select files to demonstrate correction may be a useful tool as part of MDOE's technical assistance (because, according to MDOE staff, it allows the SAU to demonstrate what it considers to be a compliant record). OSEP strongly suggests, however, that MDOE consider utilizing a selection of a stratified sample of files or another valid method to determine the status of systemic correction.

Integrated Program Review

As MDOE described in its GSEG application, and further explained through interview with OSEP, another element in MDOE's Part C and Part B monitoring is MDOE's newly piloted Integrated Program Review (IPR). MDOE developed this pilot, using funds from the Federal Fiscal Year 2002 GSEG that OSEP awarded to the State. The purpose of the GSEG-funded pilot is to develop a Comprehensive Continuous Quality Improvement Monitoring System, for monitoring: (1) Part C early intervention services and Part B special education and related services in public, State-operated, and private programs; (2) the requirements of the No Child Left Behind Act; and (3) career and technical education programs. The State's goal is to align the Integrated Program Review with the reporting, monitoring and accountability requirements of the State's Part C and Part B Annual Performance Reports, the Continuous Improvement Monitoring Process, special education indicators related to the Government Performance and Results Act (GPRA), the No Child Left Behind Act, the Carl D. Perkins Vocational and Technical Education Act, and United States Department of Education Rule 236 on Applied Technology. MDOE plans to base this monitoring system on: (1) multi-source data and results; (2) self assessments at program, school and SAU levels; (3) building the capacity of all staff to review self-assessments at program, school and SAU levels; (4) building the capacity of all staff to review and evaluate data; and (5) developing and implementing data-based continuous improvement plans.

Based on a comprehensive needs assessment across MDOE, the project identified three goals: (1) develop a comprehensive system based on the principles of focused monitoring that decreases data redundancy and increases integration, coordination, and alignment of data elements and indicators with federal legislation; (2) after training State, SAU, and CDS personnel, conduct and evaluate, through an external evaluator using a multi-case study comparison design, a pilot of the monitoring system in six volunteer SAUs and CDS regional sites; and (3) review the pilot summary and evaluation reports on the monitoring system and make appropriate decisions and plans for statewide implementation.

As part of this project, MDOE has developed a comprehensive electronic application for various programs, including Part C, preschool special education, and school-aged special education. At appropriate points, the application includes performance indicators that are designed to be consistent with federal legislation, complete with "snapshot data" that allows the applicant to compare its program's performance to a State benchmark. For CDS, the performance indicators track the early childhood cluster areas of the self-assessment and address the corresponding areas in the Improvement Plan. Data that are significantly "out of line" are flagged to direct the applicant to investigate its data and to write program improvement strategies. For school-aged special education, the State has developed a district "Scorecard" that evaluates each SAU on 64 accountability indicators, 44 of which are special education indicators. These indicators can be disaggregated for special education. In establishing any "triggers" or determinations that data are "out of line," MDOE must ensure full compliance by all CDS sites and SAUs with all Part C and Part B requirements.

MDOE reported that it has made these changes in an effort to shift its resources to a far greater emphasis on focused monitoring of accountability indicators. MDOE believes that placing snapshot data within the funding application allows MDOE and the applicant to better evaluate

whether a given CDS site or SAU is allocating its own resources to those areas that most need improvement. MDOE plans to use these data and proposed “triggers” to determine which CDS sites and SAUs will receive a desk audit only, which ones will receive a phone call for discussion and technical assistance, and which ones receive a site visit to provide technical assistance.

MDOE is also considering including additional pilot sites in the electronic application process, with a target date of July 2005 for full statewide implementation of this accountability system.

It will be important, as MDOE proceeds in the design and implementation of the IPR, that it attend to key issues, including: (1) the identification and use of data triggers; (2) the role of stakeholders; (3) how MDOE will identify and correct noncompliance in SAUs that it does not identify as the lowest performers; (4) how MDOE will follow up on noncompliance identified in the “pre-application accountability review;” (5) the full spectrum of methods MDOE will use to identify and correct noncompliance, and, when necessary, to take enforcement action; (6) how MDOE will evaluate the effectiveness of the system; and (7) how MDOE will ensure compliance during the transition from its current monitoring system to the revised system.

Dispute Resolution Procedures

Part C and Part B require that, at a minimum, each State must make mediation available whenever a party has initiated an impartial due process hearing. Maine has exceeded this requirement, and makes mediation available whenever a party has initiated an impartial due process hearing, filed a State complaint, or under any other circumstance when the parties believe that mediation may assist them in resolving a dispute.

Pursuant to a request for proposals, MDOE has, for both Part C and Part B, contracted with Impartial Resolution Incorporated (IRI) for the provision of mediation services, resolution of State complaints, and the provision of due process hearing officers.

Part C: OSEP reviewed MDOE's systems for the resolution of State complaints, due process hearings and mediation under Part C. Although Maine has in place State complaint procedures under Part C and under 34 CFR §303.420 has adopted for Part C its Part B procedures for due process hearings and mediation procedures, to date there have been no Part C due process hearing or mediation requests or state complaints filed. OSEP cannot determine whether the lack of administrative complaints and or due process hearing requests is due to a high degree of family satisfaction with Part C services, or whether parents have not been sufficiently informed regarding the State's Part C dispute resolution procedures.

The Part C regulations require, at 34 CFR §303.403(a), that written prior notice must be given to parents a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. They further specify the required content for such notice at 34 CFR §303.403(b). Subsequent to the verification visit, OSEP requested that MDOE provide OSEP with a copy of the notice documents that it uses to meet the requirements of 34 CFR §303.403, to determine whether they include all of the required information regarding complaints and due process hearings, and whether any lack of required notice content might be a factor in the lack of complaints and due process hearing requests. The

regulations require, at 34 CFR §303.403(b)(3) and (4), that, “The notice must be in sufficient detail to inform the parents about-... (3) All procedural safeguards that are available under §§303.401-303.460 of this part; and (4) The State complaint procedures under §§303.510-303.512, including a description of how to file a complaint and the timelines under those procedures.” MDOE explained that CDS sites meet the requirements of 34 CFR §303.403(b)(3) and (4) by providing parents with a copy of Section XII (“Procedural Safeguards”) of Chapter 180 (the State’s rule for early intervention and preschool special education). This document does not meet the prior written notice content requirements, including, for example, the required content about where to file a complaint. In addition, OSEP cannot determine whether the State can meet the requirements of 34 CFR §303.403(b)(3) and (4) (as well as the Part B prior written notice requirements for 3-5 year olds) by providing a copy of the Procedural Safeguards Section of Rule 180 to parents. OSEP will provide its analysis to MDOE under separate cover, and is available to provide technical assistance to the State as MDOE determines how it can best meet these requirements.

Part B: In most cases, MDOE’s system for resolution of State complaints results in decisions that meet the timeline requirements of Part B. OSEP learned, through its review of MDOE’s complaint log and interviews with staff that are responsible for resolving complaints, that, with a few exceptions, MDOE issues written decisions on Part B complaints within 60 calendar days from its receipt of the complaint, unless the timeline is extended due to exceptional circumstances that exist with regard to a particular complaint, consistent with 34 CFR §300.661(a) and (b)(1). OSEP reviewed a log of 28 complaints that MDOE received between July 1 and December 31, 2002, and a log of 45 complaints that MDOE received between January 1 and July 1, 2003. The following table summarizes the timelines for resolving those 73 complaints:

6 complaints	MDOE did not meet the 60 day timeline (and no extension of timeline) <ul style="list-style-type: none"> • 2 complaints – 2 days over timeline • 2 complaints – 3 days over timeline • 1 complaints – 4 days over timeline • 1 complaint – 6 days over timeline
22 complaints	MDOE issued its decision within 60 days from date on which it received complaint
7 complaints	MDOE extended 60-day timeline due to exceptional circumstances with regard to the particular complaint, and issued a decision within extended timeline
12 complaints	Complainant withdrew complaint before 60-day due date for MDOE’s decision
26 complaints	Parties reached mediated agreement before 60-day due date for MDOE’s decision

Thus, while MDOE has, in most cases, ensured compliance with the timeline for complaint decisions, it will be important that MDOE carefully monitor complaint decision timelines to ensure compliance for all complaints.

MDOE’s system for due process hearings under Part B has not been effective in ensuring compliance with the requirements of 34 CFR §300.511(a) and (c). Those provisions require that MDOE ensure that a final decision is reached in each due process hearing and a copy of the decision mailed to each of the parties not later than 45 days after the receipt of a request for a hearing, unless the hearing officer grants specific extensions of time beyond the 45 day timeline at the request of a party. A State education agency must ensure that if a hearing officer exceeds the 45-day timeline, there is documentation that the hearing officer extended the timeline at the

request of a party *and for a specific period of time*. Both MDOE and IRI staff informed OSEP that hearing officers grant continuances of the scheduled dates for hearings, generally at the request of a party. However, they explained, hearing officers do not extend the timeline for the hearing decision by a specific period of time, or establish another due date. Within 60 days from the date of this letter, MDOE must submit to OSEP either documentation that it has corrected this noncompliance, or its plan for ensuring such correction, as soon as possible, but, no later than one year from the date of this letter.

The regulations promulgated under Part B provide, at 34 CFR §300.507(a)(1), that, “A parent or a public agency may initiate a hearing on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).” (See, also, sections 615(b)(6) and 615(k) of the IDEA.)

Maine's Statute MRSA 20-A, Part 4, chapter 303, Subchapter 1, §7206. Investigation of noncompliance, paragraph 4. Appeal, states: “4. Appeal. A parent or a school administrative unit may challenge a complaint investigation report by requesting a due process hearing within 30 days of the receipt of the complaint investigation report.” 1999, c. 424, Pt. A, §6 (amd).

Maine indicated in its October 8, 2003 correspondence to OSEP that “based on 20-A M.R.S.A. section 7206(4), if a party did not appeal the complaint investigation report within 30 days of receipt of the complaint investigation report, then, if the party requested a due process hearing on the identical issues in six months, the case would not be opened.” When OSEP questioned MDOE about this provision during the verification visit, MDOE staff confirmed that, pursuant to this provision of State law, if a party raises an issue in a State complaint under 34 CFR §§300.660-300.662, and does not appeal from the complaint decision within 30 days, the parent may not raise that same issue in a due process hearing pursuant to 34 CFR §300.507.

Under 34 CFR §300.507(a)(1), a parent has the right to initiate an impartial due process hearing “...on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child),” whether or not the parent has previously raised the same issue in a State complaint under 34 CFR §§300.660-300.662. Maine's linkage of its statute of limitations for a due process hearing request to its adjudication of the State complaint is inconsistent with the IDEA. The due process hearing right under section 615 of the IDEA is not linked to, and is separate from the State complaint procedures at 34 CFR §§300.660 through 300.662. Under the IDEA, parents are not required to choose between the due process hearing under section 615(f) of the IDEA and the State complaint procedures under 34 CFR §§300.660 through 300.662.

States may use a due process hearing as an appeal procedure for a State complaint decision so long as that action does not deny or otherwise limit an individual's right to file a due process hearing under IDEA on any issues described in 34 CFR §300.503(a)(1) and (2) and the appeal procedure does not substitute for the due process hearing under section 615 of the IDEA and 34 CFR §300.507(a)(2). OSEP has previously stated that “Part B neither prohibits nor requires the establishment of procedures to permit either party to request reconsideration of a State complaint decision.” OSEP Memorandum 00-20 (July 17, 2000). Similarly, there is nothing in the IDEA that would preclude a State from authorizing appeals of a State complaint decision to a hearing

officer and setting a time limit for filing that appeal. However, that appeal does not take the place of a hearing under section 615 of the IDEA. If a party requests a hearing under section 615, the statute of limitations for appeals of State complaint decisions would be inapplicable.

Once a State complaint is filed and the SEA renders its decision, if parents disagree with the SEA decision issued under 34 CFR §§300.660 through 300.662 regarding individual services for their child, they may choose to request a due process hearing under section 615 of the IDEA but that hearing officer must conduct an independent review of the due process hearing request issues or remedies and is not reviewing the issues as an appeal of the State complaint decision. If an issue in a complaint is also the subject of a simultaneously filed due process hearing request, the SEA must “set aside any part of the complaint that is being addressed in the due process hearing” subject to 34 CFR §300.661(c)(1). In addition, the decision of an issue in a due process hearing would be binding in a State complaint resolution. 34 CFR §300.661(c)(2).

Because Maine's Statute MRSA 20-A, Part 4, chapter 303, Subchapter 1, §7206 is inconsistent with the IDEA, it must be revised to ensure that Maine's Statute MRSA 20-A, Part 4, chapter 303, Subchapter 1, §7206(4) is not used to deny or otherwise limit a party's right to initiate a hearing under 34 CFR §300.507(a)(1) because the party raised the same issue in a State complaint or declined to appeal within a particular time period the State's decision on the complaint. MDOE must submit within 60 days from the date of this letter its plan to revise this statute and ensure compliance in the interim (that hearing officers will not dismiss or otherwise preclude issues from being heard that have been raised in a State complaint due to §7206 of MRSA 20-A, Part 4, chapter 303, Subchapter 1).

Collection of Data 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 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, 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 has set forth below, separate discussions regarding MDOE's procedures for collecting and reporting data for Part C, preschool special education, and school-aged special education. With the exception of the concerns described below regarding Part C settings and exit data, OSEP believes that MDOE's systems for collecting and reporting data appears to be a reasonable approach to ensuring the accuracy of the data that MDOE reports to OSEP under section 618.

Part C

The CDS regional sites report section 618 data for Part C to the CDS State office, using MDOE's ChildLink system. Each CDS regional site has designated one or two individuals who enter data

into the ChildLink system. Each service coordinator provides to the designated entry person, in paper form, updated information regarding the services each infant or toddler receives, the settings in which the child receives the services, and exit data. The designated data entry people then enter the data in the ChildLink system, and those data are transmitted to MDOE in hard copy, and electronically in a “zip file,” once a month. MDOE’s CDS data manager in turn aggregates the data to report to OSEP by pulling the child count, services, settings, personnel and exit data from these data. The MDOE CDS data manager uses a formula to calculate the personnel data in full time equivalents (FTEs) from the number of service hours.

MDOE informed OSEP that, in order to ensure the accuracy of the Part C data: (1) CDS provides clear and detailed written data instructions; (2) the CDS data manager and the CDS site directors provide training to the data entry individuals on an ongoing basis; and (3) the data managers from the 16 CDS sites meet once a month with the CDS data manager to discuss data collection and reporting issues. They further explained that MDOE conducts an annual review of a stratified sample of approximately 10% of the child files to check on the accuracy of the submitted data. MDOE confirmed that it uses the same race/ethnicity, exit, services, personnel, and settings data as those set forth in OSEP’s data collection directions.

MDOE reported that it has a high level of confidence in the accuracy of the child count, services, and personnel data, but that it was less confident about the accuracy of the settings and exit data. The data manager indicated that the error rate in the settings data could be as high as 20%. MDOE expressed its concern regarding the accuracy of the exit data was affected by the fact that many service coordinators do not understand that when children reach age three, and age out of Part C eligibility but continue to receive services from CDS under section 619, they are “exiting” Part C. In order to ensure that MDOE can meet its responsibility to submit accurate Part C settings and exiting data under section 618 of IDEA, MDOE must submit to OSEP its plan for ensuring that the Part C settings and exiting data provided as part of the next required submission of section 618 data are accurate. Please submit that plan to OSEP within 60 days from the date of this letter.

Preschool Special Education Services

MDOE explained that, as with Part C data, the 16 CDS regional sites report section 618 data for Section 619 preschool special education services to the CDS State office, using MDOE’s ChildLink system. As explained above, each CDS regional site has designated one or two individuals who enter data into the ChildLink system, and each service coordinator provides to the designated entry person, in paper form, updated information regarding the services each preschool child receives, and the placement(s) in which the child receives the services. The designated data entry people then enter the data in the ChildLink system, and those data are transmitted to MDOE in hard copy, and electronically in a “zip file,” once a month. They further explained that MDOE’s CDS data manager in turn aggregates those data and sends a report back to each CDS site with the aggregated data. Then, using that report, each CDS site manually inputs the data into a web-based database, from which MDOE draws the data for its 618 report to OSEP. As with Part C, the MDOE CDS data manager uses a formula to calculate the personnel data in full time equivalents (FTEs) from the number of service hours.

Special Education Services for School-Aged Children

MDOE explained that it has had a unique identifier for each student since 1984. MDOE staff confirmed that the State uses definitions for all its data collection and reporting under section 618 that are consistent with the OSEP definitions. MDOE staff further informed OSEP that the State provides annual training to personnel who are responsible for section 618 data input at the local level.

Since 1999, each SAU has entered its data regarding child count, placement, services, and exiting into the State's web-based data system. SAUs also began reporting personnel data online in 2000. The Superintendent for each SAU must certify the accuracy of the SAU's data submissions. The web-based system runs a broad range of edit checks on the data. The programmer alerts MDOE staff of any errors, who in turn work with the SAU to ensure correction of errors. MDOE also reviews the accuracy of these data as part of its *year one* monitoring process, using a random sample of child records.

MDOE uses a formula to calculate the personnel data in full time equivalents (FTEs) from the number of service hours by teacher time spent with each student with the specific disability. Each SAU has electronic access to its personnel data.

Currently, each SAU electronically reports discipline data to the Office of Substance Abuse (a State agency that is separate from MDOE). MDOE has direct electronic access to these data. The Office of Substance Abuse is housed in the Department of Behavioral and Developmental Services, which manages the system that provides the discipline data that MDOE reports to OSEP. The discipline data are reported by incident, not by student. MDOE has worked closely with the Office of Substance Abuse to ensure the clarity of instructions to SAUs regarding the reporting of discipline data, but MDOE has less direct control over the accuracy of these data.

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 your system for State-wide assessment, OSEP also discussed with your staff how the alternate assessment is aligned with grade-appropriate content standards.

Reporting on the Performance of Children with Disabilities on Alternate Assessments

According to the information reported to the Department in the Biennial Performance Report for the 2000-2001 school year, Maine was not reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments, as required

by Part B of the Individuals with Disabilities Education Act (IDEA). Therefore, the Department determined that Maine had not complied with all the terms and conditions of the Federal Fiscal Year 2001 awards under Part B of IDEA, and, under the authority of the Education Department General Administrative Regulations, 34 CFR §80.12, the Department imposed Special Conditions on Maine's Federal Fiscal Year 2002 awards under Part B. Those Special Conditions required that Maine demonstrate, by July 1, 2003, that it was reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments, as required at 20 U.S.C. §1412(a)(17) and 34 CFR §300.139(a).

The State did not meet that timeline, and informed OSEP that, by November 15, 2003, it would provide documentation that it had reported publicly on the participation and performance of children with disabilities in alternate assessments. Therefore, the Department imposed Special Conditions on Maine's Federal Fiscal Year 2003 awards under Part B. The 2003 Special Conditions required the State to demonstrate by November 15, 2003, that it was reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments, as required at 20 U.S.C. §1412(a)(17) and 34 CFR §300.139(a). The Special Conditions further provided that if, notwithstanding the State's assurance that it would demonstrate that it had met the Special Conditions by November 15, 2003, the State did not meet that timeline, the State would need to: (1) submit to OSEP by November 15, 2003, a written plan detailing the steps and timelines for reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments by May 30, 2004; and (2) submit progress reports on January 5, 2004, March 29, 2004, and the final submission due on May 31, 2004.

On November 13, 2003, MDOE submitted the following documentation regarding its reporting on the participation of students with disabilities in, and their performance on, the Alternate Assessment:

1. "a state-wide report on how Maine students performed in four content areas: English, Language Arts, Mathematics, Social Studies and Science and Technology at Grades 4, 8, and 11;"
2. "a sample Individual Student Report by content area for each Grade Level 4, 8, and 11. The School and the parent get this report;" and
3. "a sample of the roster report which is prepared for each content area and lists the students that took the Alternate Assessment. Rosters are prepared at the state, district, and school levels by grade, and list the content standard scores for each individual student."

The documentation that the State submitted shows that the State has collected data regarding students with disabilities participation in, and performance on, alternate assessments, and that the State has reported these data to parents and schools. The State has provided no documentation that it has reported *to the public, with the same frequency and in the same detail as it has reported on the assessment of nondisabled children*, regarding participation in and performance on alternate assessments. OSEP confirmed with MDOE through phone calls and e-mails that the State has reported to the public, by posting data on MDOE's web-site, on the performance of

nondisabled students on State-wide assessments, but that MDOE has not posted data on its website regarding participation in and performance on alternate assessments. Thus, the State has not complied with the requirements of 34 CFR §300.139 or the Special Conditions. Therefore, the State must submit to OSEP:

1. Within 30 days from the date of this letter, a written plan detailing the steps and timelines for reporting publicly on the participation and performance of children with disabilities in alternate assessments by May 31, 2004;
2. A progress report on March 29, 2004; and
3. By May 31, 2004, documentation that the State has reported to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the number of children with disabilities participating in alternate assessments, and the performance results of those children if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

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, are—with the exception of the State's failure to report publicly on the participation and performance on alternate assessments, as discussed above—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.

MDOE staff reports to OSEP that they have provided extensive training and guidance regarding participation in State-wide assessments, and expressly required that all children with disabilities participate in each of the general assessments in which non-disabled children participate, unless the IEP team determines that participation in the general assessment, with or without accommodations, is not appropriate for a specific student and determines that the student will participate in the alternate assessment.

In July 1997, the Maine State Legislature enacted legislation establishing the Maine Learning Results, which provide the foundation for the State's curriculum and learning expectations, and for Maine's State-wide assessments: the Maine Educational Assessment (MEA) and the Personalized Alternate Assessment Portfolios (PAAP). MDOE described the three purposes of these assessments as: (1) helping inform teaching and learning; (2) certifying achievement of the Learning Results; and (3) ensuring unit/system accountability. The legislation expressly requires that the MEA not be used as the sole evidence of student achievement.

The Local Assessment System (LAS) – MDOE staff reports that, within parameters that the State will establish, each SAU will develop its local assessment system, and its superintendent must provide a written certification that its system meets all of the State requirements. In addition, each SAU will establish graduation requirements consistent with State standards. The LAS has been put in place for school year 2003-2004, and should be tied to certification by 2008. Eighteen SAUs are part of the study now regarding LAS certification. There are 2 primary advisory committees, both appointed by the commissioner that are informing this process.

MDOE personnel are committee members and/or co-chairs for both of these committees. The committees are: (1) the Technical Advisory Committee (TAC) that is focused on technical design of assessment and includes national measurement experts; and (2) the Policy Advisory Committee (PAC) that evaluates the programmatic impact of assessment.

MDOE staff reports that MDOE continues to use the MEA to meet the No Child Left Behind (NCLB) requirements for grades 4, 8, and at least one grade between grades nine and twelve (MDOE selected grade 11). MDOE staff informed OSEP that the State will develop a "Common Assessment" to be implemented during the 2004-2005 school year, and that the plan is for the State to eventually use the LAS to meet those requirements.

MDOE staff informed OSEP that the MEA started about 20 years ago with a primary focus on program evaluation and a secondary emphasis on student performance. Since the implementation of the Learning Results in 1998-1999, there has been a greater emphasis on looking at student performance and looking now to focus even more towards student performance. MDOE staff reported that the State will seek, where possible, to incorporate universal design principles in refining its assessment system. One example cited is the on-line assessment for eighth graders. Another example is using "sheltered English" for the Math assessment. In addition, Maine reported that it no longer allows parents to waive participation in assessments, and that it does not allow out-of-level testing.

MDOE staff explained how its rubric for the alternate assessment (PAAP) is aligned with the Maine Learning Results. They further informed OSEP that MDOE has provided extensive guidance on participation, accommodations, and scoring of the PAAP, and that they believe that the use of teachers to score PAAP has greatly increased the teachers' understanding of the PAAP.

MDOE uses its monitoring procedures to ensure compliance with the Part B requirements, at 34 CFR §§300.138 and 300.347(a)(5). MDOE did not describe any systematic evaluation of the effectiveness of the training and guidance they have provided regarding assessment, but expressed their confidence that they had been effective.

Conclusion

As noted above, within 60 days from the date of this letter, MDOE must submit to OSEP:

1. Either: (a) documentation that it has corrected the noncompliance related to not ensuring that SAUs correct identified noncompliance, even where the SAU or MDOE has found noncompliance in less than 10% of the reviewed files, and MDOE is implementing procedures that are effective in ensuring correction of all noncompliance, including noncompliance in less than 10% of the reviewed files; or (b) its plan for ensuring such correction, as soon as possible but no later than one year from the date of this letter;
2. Either: (a) documentation that it has already corrected the noncompliance noted in this letter relating to procedures for the correction of all noncompliance identified through monitoring within a reasonable timeframe not to exceed one year; or (b) its plan for

correcting such noncompliance, as soon as possible, but, no later than one year from the date of this letter;

3. Either: (a) documentation that it has already corrected the noncompliance noted in this letter relating to the right of a party to request an impartial due process hearing under 34 CFR §300.507, regardless of whether the issue has already been addressed through resolution of a State complaint under 34 CFR §§300.660-300.662; or (b) its plan for correcting such noncompliance, as soon as possible, but no later than one year from the date of this letter; and
4. Either: (a) documentation that it has already corrected the noncompliance noted in this letter relating to the timeliness of due process hearing decisions; or (b) its plan for correcting such noncompliance, as soon as possible, but no later than one year from the date of this letter; and
5. Its plan for ensuring that the Part C settings and exiting data provided as part of the next required submission of section 618 data are accurate.

Further, to address the noncompliance related to reporting on the performance of children with disabilities on alternate assessments, the State must submit to OSEP:

1. Within 30 days from the date of this letter, a written plan detailing the steps and timelines for reporting publicly on the participation and performance of children with disabilities in alternate assessments by May 31, 2004;
2. A progress report on March 29, 2004; and
3. By May 31, 2004, documentation that the State has reported to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the number of children with disabilities participating in alternate assessments, and the performance results of those children if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

OSEP issued its response to Maine's Improvement Plan under Parts C and B of the IDEA on December 30, 2003. That letter requested MDOE to modify its Improvement Plan in a number of areas (including general supervision) and resubmit the revised plan within 60 days of the letter. The documentation that OSEP has requested in this letter is in addition to the documentation that OSEP requested in its December 30, 2003 letter.

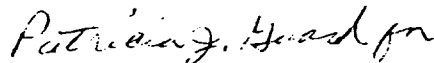
As noted above, OSEP issued its response to Maine's Improvement Plan under Parts C and B of the IDEA on December 30, 2003 and requested a revised Improvement Plan to be submitted within 60 days of that letter. This letter requires additional changes to MDOE's Improvement Plan to be submitted within 60 days of this letter. Maine must also submit to OSEP the Part C and Part B Annual Performance Reports (APRs), due to OSEP on March 31, 2004. Because it is important that the State integrate all of the information requested by OSEP in the December 30th letter, this letter, and the Part C and Part B Annual Performance Reports, MDOE may combine its submission and submit to OSEP by April 15, 2004, if the State chooses. The April 15, 2004

Page 18 – Honorable Susan A. Gendron

submission must, however, include all of the information required for the Part C and Part B APRs as well as the data, documentation and information that OSEP has requested in its December 30, 2003 letter and in this letter.

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

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: David Noble Stockford
Joanne C. Holmes
Laurie Bertulli