



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

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

FEB 19 2008

Dear Commissioner Gendron:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) verification and focused monitoring visit to Maine during the week of October 1, 2007. My August 17, 2007 letter informed you that OSEP is conducting verification and, in some cases, focused monitoring 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, Part B and Part C of the Individuals with Disabilities Education Act (IDEA). As re-authorized in 2004, IDEA requires the Department to monitor States with a focus on: (1) improving early intervention results and functional outcomes for infants and toddlers with disabilities and educational results and functional outcomes for children and youth with disabilities; and (2) ensuring that States meet program requirements, particularly those most closely related to improving early intervention results for infants and toddlers with disabilities and educational results for children and youth with disabilities.

The purpose of our verification and focused monitoring visit was to evaluate the State's general supervision and data systems in order to assess and improve State compliance and performance, child and family outcomes, and the protection of child and parent rights and to review the State's procedures for distribution and use of IDEA funds and the timely obligation and liquidation of those funds. During the verification and focused monitoring visit, OSEP: (1) analyzed the components of the State's general supervision and data systems to determine the extent to which they are designed to ensure compliance and improve performance; and (2) targeted compliance and performance issues identified in our June 15, 2007 letters responding to the State's Federal fiscal year (FFY) 2005 Part B and Part C Annual Performance Reports (APRs)/State Performance Plans (SPPs).

OSEP conducted a video/conference call on September 25, 2007, with several members of Maine's State Advisory Council on Special Education to hear their perspectives on the strengths and challenges of the State's systems for general supervision, data collection, and fiscal management.

As part of the verification and focused monitoring visit to Maine, OSEP staff met with David Stockford, Director of Special Education, Debra Hannigan, Part C and 619 Coordinator, and State personnel responsible for: (1) the oversight of general supervision (including monitoring, mediation, complaint resolution, and impartial due process hearings) and financial systems for

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special education and early intervention; and (2) the collection and analysis of State reported data.

The State reported no FFY 2005 data in its Part C FFY 2005 APR for Indicators 8A (transition steps and activities) and 8C (transition planning conferences), and did not provide valid and reliable data in its Part B FFY 2005 APR for Indicator 12 (early childhood transition). Therefore, as part of its focused monitoring visit, OSEP staff met with the directors from two Child Development Services (CDS) sites to discuss compliance with the requirements of Part C and Part B related to transition from Part C to Part B.

Prior to and during the visit, OSEP staff reviewed a number of documents, including the following: (1) Maine's FFY 2005 Part B and Part C APRs submitted to OSEP in February 2007; (2) Maine's Part C and Part B SPPs submitted to OSEP in December 2005; (3) Maine's grant applications under Parts B and C of the IDEA for FFYs 2006 and 2007; (4) OSEP's Verification Visit letter to Maine dated February 19, 2004; (5) the Maine Department of Education's (MDOE's) website; and (6) other pertinent data. The information provided by MDOE staff 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 financial accountability.

Listed below is the discussion, followed by conclusions and required actions, organized by the critical elements used by OSEP to guide our review of each State's general supervision, data, and IDEA fiscal systems.

STRUCTURE OF MAINE'S EARLY INTERVENTION AND SPECIAL EDUCATION SYSTEMS

MDOE is both the State educational 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 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). One hundred and fifty-eight school districts 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). The Maine State legislature enacted legislation requiring the State to restructure its educational system from 158 districts (118 of which included high schools) to 80 regional school units (RSUs) by the fall of 2008. Each RSU must include at least one publicly-supported high school. The CDS sites are not included in the restructuring.

Because of the State's structure, in which the CDS regional programs implement both Part C and Part B for preschool aged children, this letter first addresses the Part C and Part B preschool requirements (and identifies the different legal requirements and issues applicable to these two programs). The remainder of the letter addresses the State's administration of the Part B program for school-aged children

PART C AND PRESCHOOL PROGRAMS

General Supervision System - Discussion

Critical Element 1: Does the State have a general supervision system that is reasonably designed to identify noncompliance?

As further explained below, OSEP believes, based on the information collected during the verification visit, that the State has begun to implement a systemic, data-based, and reasonable approach to the identification of noncompliance for Part C and preschool special education.

Maine State regulations, that became effective on August 3, 2007, require the Commissioner to issue an administrative letter each year, authorizing monitoring activities for that year. Those monitoring activities are to address the activities for school administrative units (SAUs), a term that includes both CDS sites and school districts/RSUs.

In the new monitoring procedures (which the State began to implement with the first CDS site in May 2007), the State first conducts an on-site visit to the CDS site, during which the State: (1) orients the site to the monitoring process, including presenting the process and protocols that the site must use to review records (at least 10% of the Part C records and 10% of the preschool records) and submit a self-review to MDOE; (2) establishes a due date for the site to report on the results of its self-review to MDOE; and (3) schedules the State's on-site verification visit.

During the State's on-site monitoring review, the State conducts interviews and reviews the records of 10% of the children that the site is serving in Part C and the records of 10% of the children that the site is serving in Part B preschool, using established protocols that address both Part C and Part B requirements. The State selects these records. Following the visit, the State sends the site a report that identifies any findings of noncompliance. The CDS monitoring process addresses requirements of both Part C and Part B for preschool aged children.

A full-time monitor for CDS began to work with MDOE in March 2007. As noted above, MDOE began its first review using the new procedures in May 2007. By the time of OSEP's verification visit in October 2007, MDOE had conducted three visits. During the verification visit, MDOE informed OSEP that it planned to complete monitoring visits to all 16 CDS sites by June 2008.

The new monitoring system appears to be designed to identify noncompliance with the Part B requirements for preschool children. However, the State reported during the verification visit that the information the State provided in its Part B FFY 2005 APR for Indicator 15 was based only on information for school-age programs. Indicator 15 of the Part B SPP/APR requires States to report on the number of findings of noncompliance with the requirements of Part B that it made in the previous fiscal year, and on the number and percent of those findings that were corrected within one year from identification. MDOE must ensure that the data it reports for Indicator 15 in its APRs includes any findings of noncompliance with the requirements of Part B regarding preschool children, whether these children are served by a school district or a CDS site.

Critical Element 2: As part of its general supervision system, does the State have mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, previous monitoring results, etc.) to identify systemic noncompliance issues?

MDOE reported it has developed a method to review data across systems. The State receives and reviews monthly reports from each CDS site. **Case-e**, the new data system, will house information from a variety of systems such as 618, and service provider logs. The monthly reports, along with functions of **Case-e**, will allow the State to evaluate data collected from multiple sources to determine compliance in a specific area, or issues that are systemic. As further explained below, **Case-e**, has a web-based data input module, **X-logs**, which allows service providers to input information for reimbursement. MDOE uses an internal data base to record timeliness data for due process hearings, complaints and mediation (which includes data for Part C and Part B preschool and school age children).

Critical Element 3: Does the State have a system that is reasonably designed to correct identified noncompliance, including the use of State guidance, technical assistance, follow-up, and, if necessary, sanctions?

OSEP is unable to determine whether the State has a system that is reasonably designed to correct identified noncompliance for two reasons.

First, as explained above under Critical Element 1, MDOE began implementing a new monitoring system in May 2007. During the verification visit, MDOE informed OSEP that its new monitoring procedures require the CDS sites to submit a corrective action plan and correct the noncompliance within one year from the date of the monitoring report. Maine State special education regulations (that apply to both CDS and school-aged programs) also provide for enforcement options that MDOE could take for failure to achieve compliance within one year. (At the time of the verification visit, MDOE had not taken any of those enforcement actions with a CDS site.)

Following the verification visit, MDOE provided OSEP with copies of three monitoring reports that MDOE issued in FFY 2007 (July 9, 2007, November 15, 2007 and December 7, 2007). In the reports, MDOE made findings of noncompliance regarding both Part C and Part B preschool through the Record Audit portion of the monitoring process. In the monitoring reports, MDOE specified that the CDS sites must ensure correction of the identified noncompliance within one year from the date of those reports. However, OSEP cannot determine if the new system is reasonably designed to correct identified noncompliance because the one-year timeline has not passed for the findings that MDOE has made under that system.

Second, during the verification visit, MDOE acknowledged that it was unable to provide the required data in the Part B and Part C SPPs and the FFY 2005 Part B and Part C APRs regarding the status of correction of previously identified noncompliance under Part B (for preschool age children) and Part C in CDS sites. In September 2007, the State informed OSEP that it had not been able to conduct any further follow-up regarding the correction of previously identified

noncompliance. Subsequently (the week before OSEP's October 2007 verification visit), MDOE sent letters to 14 CDS sites with outstanding noncompliance, requesting that each of them report on the status of corrective action plans. During the verification visit, MDOE confirmed that it did not yet have data regarding the status of those corrective action plans. OSEP will be responding under separate cover to the data and information provided in the FFY 2006 APRs.

In addition, the State may not set a threshold percentage for identifying and correcting noncompliance. In two of the monitoring reports that MDOE provided to OSEP, the State required the CDS site to correct, within one year from the date of the report, "all areas of non-compliance that did not meet 80% compliance during the record audit which were noted in Section 4 of the report." In the third report, the State required correction within one year for areas in which the CDS site did not meet 95% compliance. OSEP finds that the State's establishment of a percentage threshold for requiring correction in CDS sites is inconsistent with Part C monitoring and correction requirements in IDEA sections 616, 635(a)(10)(A) and 642 and 34 CFR §303.501, and with Part B monitoring and correction requirements in IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E). Under these requirements, MDOE must ensure that all areas of noncompliance are corrected. While the State may determine the specific corrective action that is needed to ensure correction of noncompliance, and may take into account the extent of the noncompliance in determining what corrective action is needed, the State must ensure the correction of any noncompliance, notwithstanding the extent of the noncompliance.

Critical Element 4: Has the State 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 in a timely manner? If barriers have been identified, what mechanisms has the State put in place to address those barriers?

MDOE informed OSEP that one factor that has impacted the State's ability to ensure the timely correction of noncompliance has been turn-over in key leadership positions in the CDS State office. In 2006, both the State's Part C/preschool special education coordinator and the lead person for monitoring in CDS left. MDOE has filled both of those positions, and reported to OSEP that they are working very effectively as a team and with other CDS State staff to design and implement effective monitoring, guidance, technical assistance, and governance systems to ensure the timely identification and correction of noncompliance and improved performance.

Another barrier that the State identified was the challenge in ensuring practices across the 16 CDS sites that are consistent with the requirements of Part C and Part B. One step that the State took to address this issue was mandating, in September 2007, the use of standardized forms, including individualized family service plans (IFSPs) for infants and toddlers and individualized education programs (IEPs) for preschool children.

One long-standing area of concern in the State has been the lack of clarity in CDS sites regarding how the IDEA Part C and Part B early childhood transition requirements apply in Maine given that CDS provides both Part C and Part B preschool services. Further, the State did not provide FFY 2005 data for SPP/APR Part C Indicators 8A and 8C, and did not provide valid and reliable data for Part B Indicator 12. To address these concerns regarding transition, the State provided

extensive written guidance and technical assistance to CDS sites regarding these issues. In addition, the mandated IFSP form includes a detailed transition section. At the time of OSEP's October 2007 verification visit, a few of the CDS sites had not begun to use the required forms, and the State was considering appropriate action to take to enforce the required use of the forms. As part of its focused monitoring visit, OSEP and State staff met with the directors of two CDS sites to discuss early childhood transition. The site directors explained that Part B transition requirements had not been clear to them prior to the intensive technical assistance and guidance provided by the State in 2007, and the development and implementation, in September 2007, of the mandated IFSP and IEP. Both site directors stated that the State had now made these requirements very clear.

Critical Element 5: Does the State have dispute resolution systems that ensure the timely resolution of complaints and due process hearings?

The State uses the same complaint, hearing and mediation systems for both Part B and Part C (see description below in Part B discussion). At the time of the verification visit, there had been one Part C complaint, resolved through mediation, and no Part C requests for a hearing. (See Part B –School-aged section for discussion of timely resolution of Part B complaints and due process hearings.)

Critical Element 6: Does the State have mechanisms that focus on improving early intervention results and functional outcomes for all infants, toddlers and preschool children with disabilities?

During the verification visit, MDOE reported the use of information gathered during interviews with stakeholders, CDS staff, and service providers to improve outcomes for all children with disabilities.

General Supervision System: Conclusions and Required Actions

As described above, the State reported that it began implementing new monitoring procedures for Part C and preschool special education in May 2007. Based on OSEP's review of the new procedures, they appeared to be reasonably designed to identify noncompliance. OSEP cannot, however, without also collecting data and conducting reviews at the local level, determine whether the monitoring procedures are effective in identifying noncompliance.

OSEP is unable to determine whether the State has a system that is reasonably designed to correct identified noncompliance because (1) the one-year timeline has not passed for the correction of findings that MDOE identified under its new monitoring system in FFY 2007, and (2) MDOE confirmed during the verification visit that it did not yet have data regarding the status of correction of previously identified noncompliance that it followed up on in its September 2007 letters. With its Part C FFY 2007 APR, due on February 1, 2009, in addition to reporting, as required, on the correction of any findings of noncompliance identified in FFY 2006 and corrected in FFY 2007, MDOE must report on (1) the correction of the previously identified noncompliance that it followed up on in its September 2007 letters, and (2) the correction of noncompliance identified in the monitoring reports MDOE issued to CDS sites on July 9, 2007, November 15, 2007 and December 7, 2007.

The State reported during the verification visit that the information it provided in the Part B FFY 2005 APR for Indicator 15 was based only on information for school-aged programs. With its Part B FFY 2007 APR, due on February 1, 2009, MDOE must specifically identify the number of findings of noncompliance with Part B of IDEA regarding provision of services to preschool children with disabilities identified in CDS sites during FFY 2006 and the number of those findings that were corrected in FFY 2007. In addition, MDOE must also report on: (1) the correction of the previously identified noncompliance with Part B of IDEA regarding provision of services to preschool children with disabilities identified in CDS sites that it followed up on in its September 2007 letters; and (2) the correction of noncompliance with Part B of IDEA regarding provision of services to preschool children with disabilities identified in the monitoring reports MDOE issued to CDS sites on July 9, 2007, November 15, 2007 and December 7, 2007.

OSEP finds that MDOE's threshold for identifying and correcting noncompliance is inconsistent with Part C monitoring and correction requirements in IDEA sections 616, 635(a)(10)(A) and 642 and 34 CFR §303.501, and with Part B monitoring and correction requirements in IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600 and 20 U.S.C. 1232d(b)(3)(E). Under these requirements, MDOE must ensure that all areas of noncompliance are corrected. Therefore, MDOE must remove any percentage threshold for identifying and correcting noncompliance. Within 60 days from the date of this letter, MDOE must provide a written assurance that it has removed any specific percentage threshold for identification and correction of Part C and Part B noncompliance in CDS sites and that it has informed all CDS sites in the State of the revocation of its threshold.

Data Systems - Discussion

Critical Element 1: Does the State have a data system that is reasonably designed to collect and report to the Department and the public, timely valid and reliable data and information?

MDOE reported that it has implemented a statewide data collection system for all children (including both infants and toddlers receiving early intervention services and children receiving special education), known as the Maine Education Data Management System (MEDMS). Through MEDMS, the State assigns a unique identifier to each child and CDS sites and school districts are required to submit data to MDOE using this system. This system is used to collect section 618 data for both Part C and Part B.

Each CDS site has a designated person who is responsible for entering the site's data. During monitoring visits to CDS sites, MDOE staff audit paper forms to verify information that is being entered into the database. Also, the Record Audit process, during monitoring visits, is part of the data collection mechanism. The State reported data gathered is used at the legislative level to discuss whether services provided are effective and efficient. The data are compared with national trends, and with data from other States. MDOE reports all of these efforts are part of a mechanism to collect valid and reliable data to report to OSEP and the public. Mechanisms to collect valid and reliable data and information are evolving.

In addition to the MEDMS system, MDOE is in the process of implementing a new data system entitled **CASE-e**. The system houses data in the following areas for both Part C and preschool: case management, fiscal, and **X-logs**, which can be used by providers and case managers. The State contracted with a vendor to tailor the specific general supervision and data needs required for SPP/APR reporting. The special education management system is centralized with internal controls. **CASE-e** provides standard statewide interfaces for data entry. Through **CASE-e**, the State has the capability of verifying that each CDS site enters data. Because the IFSP or IEP for each child will be entered on-line, the State will be able to review the content of the IFSP/IEP electronically.

The State did not include Part C FFY 2005 data for Indicators 8A (transition steps and activities) and 8C (transition planning meetings) in its FFY 2005 APR. The State reported in its Part C FFY 2005 APR that it had implemented a new form to include the required information for Indicators 8A and 8C, that a new data system was being developed to provide data for those indicators, and that data collection from the new forms was expected to begin in March 2007. During the verification visit, the State reported that it would be able to provide FFY 2006 data for Indicators 8A and 8C, and that it would become easier to collect these data for subsequent years with the use of the new **CASE -e**. data system. OSEP will be responding under separate cover to the data and information provided in the FFY 2006 APR.

Critical Element 2: Does the State provide clear guidance and ongoing training to local EIS programs and public agencies regarding requirements and procedures for reporting data under section 618 of IDEA and the SPP/APR?

MDOE reported that it is conducting training activities on the new **CASE-e** system for CDS site directors and staff. Technical assistance is available at the State office if a staff member is experiencing difficulty with data entry. MDOE offers additional training to staff on request.

The State has worked closely with the Northeast Regional Resource Center (NERRC) related to data issues, including reporting valid and reliable data for the SPP/APR. Two representatives from NERRC were present throughout the verification visit, and will continue to work with the State.

Critical Element 3: Does the State have 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 IDEA sections 616 and 618, OSEP guidance, and State's procedures?

MDOE reported that its data manager has provided specific training on the **CASE-e** system. The State has a designated data person in the MDOE office to provide technical assistance to the CDS director, and staff selected to enter data into the system. The data manager provided guidance and training regarding requirements and procedures for reporting data under section 618 including, but not limited to, web-based conference calls. The new system will allow MDOE to cross reference data that is entered with information from computerized IFSP forms. Funds were available to purchase some new laptops for CDS sites to give staff the capacity to enter data in a timely and efficient manner. Furthermore, data entered and reported in certain

areas are subject to a record audit during monitoring visits to CDS sites. The centralized data management system provides standard statewide interfaces for data entry and verification.

Critical Element 4: Does the State have procedures for identifying anomalies in data that are reported to the State and for correcting any inaccuracies?

MDOE's Part C/preschool data manager described internal controls in the **CASE-e** system that ensures identification of irregularities and inaccuracies. Built-in data fields on the computerized IFSP, such as demographic information and date of referral, can be cross-referenced with data collected relating to 618 and Child Count reporting.

The State explained that all the necessary parts to ensure valid and reliable data, and correct inaccuracies are available through **CASE-e**. For example, the State reported that **Case-e** is designed to not accept information that is not correct or consistent with previously entered information. As the State continues to transition into use of the **CASE-e**, it will evaluate the system to determine whether any refinements are needed to meet the State's data needs and ensure valid and reliable data.

Data System – Conclusions

OSEP did not identify any concerns regarding the State's data system and related policies and procedures to ensure the collection and reporting of required data by Maine to OSEP and the public under IDEA sections 616 and 618, with the exception noted under the General Supervision section regarding data reported under Indicator 9 of the Part C APR and Indicator 15 of the Part B APR. It appears from the State's description of its evolving **CASE-e** data system, that this system will enhance the efficiency and effectiveness of the State's system in ensuring accurate and timely data. OSEP cannot, however, without also conducting a review of data collection and reporting policies, procedures and practices at the local level, determine whether all public agencies in the State implement the State's data collection and reporting procedures in a manner that is consistent with Part B and Part C.

With regard to Indicators 8A and 8C, the State reported that it has taken steps to ensure that it would be able to provide valid and reliable data for those Indicators for FFY 2006. As noted above, OSEP will be responding under separate cover to the data and information provided in the FFY 2006 APRs. (The Part B school-aged section of this letter addresses Part B Indicators for which MDOE did not provide valid and reliable data in the Part B FFY 2005 APR.)

Fiscal Management System – Discussion

Critical Element 1: Does the State have procedures that are reasonably designed to ensure appropriate use of IDEA Part C funds at the State level?

During the verification visit, OSEP reviewed with MDOE staff MDOE's procedures for the use of Part C funds consistent with section 638 of IDEA.¹ MDOE staff described to OSEP the procedures they used to ensure that the State appropriately uses IDEA Part C funds. State staff confirmed that the State's agreement with each CDS site and its contracts with early intervention service (EIS) providers include applicable Part C payer of last resort requirements. The State contracts with an agency, Multi-State Billing Services, to monitor fiscal accountability and to audit CDS sites on at least an annual basis, in part to ensure that expenditures of IDEA Part C funds are consistent with Part C.

In addition, the State reported to OSEP that CDS sites must report on time and effort in monthly reports on expenditures. MDOE reported that its goal was to move all 16 sites into the new **Case-e** data system by March 2008, which would include all sites in a web-based fiscal system with additional internal controls. **Case-e** has a web-based data input module, **X-logs**, which allows service providers to input information for reimbursement. The module cross-references requested reimbursement with data entered on the IFSP form for accuracy.

Critical Element 2: Does the State have procedures that are reasonably designed to ensure appropriate distribution of section 619 (preschool) funds at the State level?

MDOE informed OSEP that each CDS site submits a single application for both Part C and Part B section 619 (preschool) funds. In order for a CDS site to receive Part C or Part B section 619 funds for a fiscal year, MDOE must first approve both the Part C and section 619 portions of the application. Thus, although a CDS site had submitted an approvable application for section 619 funds, the site would not receive its section 619 subgrant until the Part C portion of its application was also approved. This would be inconsistent with the with section 619(g) of the IDEA, which states that a local educational agency (LEA) is eligible to receive a subgrant under section 619, if the LEA has established its eligibility under Part B of the IDEA. (CDS sites meet the definition of LEA at 34 CFR §300.28.) The State did explain, however, that to date there have not been situations in which the section 619 portion of the application was approvable but the Part C portion was not; therefore, no CDS site has ever been delayed in receiving its section 619 subgrant because the Part C portion of its application was not approved.

MDOE reported that it has procedures designed to ensure the appropriate distribution of Part B section 619 (preschool) funds at the State level. The State provided OSEP with copies of the State's FFY 2005, 2006, and 2007 Part B section 619 distributions to CDS sites and districts, which showed that the State is distributing section 619 funds in a manner that is consistent with Part B requirements. That documentation showed that the base amount under section 619 was the amount the districts and CDS sites would have received under IDEA section 619 for fiscal year 1997 if MDE had distributed 75% of the grant award for fiscal year 1997. MDOE further reported (and the documentation confirmed) that, as required, 85% of the remaining funds are allocated to the CDS sites on the basis of the relative numbers of children enrolled in public and private elementary schools within the jurisdiction of the site, and 15% in accordance with their

¹ Without conducting a complete review of MDOE's expenses and source documentation of all obligations, OSEP cannot determine or conclude that costs charged to IDEA Part C funds are allowable and whether MDOE's policies for use of funds are fully and appropriately implemented.

relative numbers of children living in poverty (based on free and reduced lunch), as determined by MDOE.

Critical Element 3: Does the State have procedures reasonably designed to ensure appropriate use of Part B section 619 (preschool) funds at the LEA level?

During the verification visit, MDOE staff reported that all Part B section 619 funds are distributed to either the LEAs or to the 16 CDS sites. MDOE staff described to OSEP the procedures they used to ensure that CDS sites and LEAs appropriately use Part B section 619 funds.² As noted above, the State contracts with an agency, Multi-State Billing Services, to monitor fiscal accountability and to audit CDS sites on at least an annual basis, in part to ensure that the expenditures of IDEA Part B section 619 funds are consistent with Part B. As part of the Part B application process, districts must provide a detailed explanation for budgeted use of funds, including goals and objectives and specific action plans with timelines.

In addition, the State reported to OSEP that CDS sites must report time and effort in monthly reports on expenditures. MDOE's goal is to move all 16 sites into the new **Case-e** data system by March 2008, which will include all sites in a web-based fiscal system with additional internal controls. **Case-e** has a web-based data input module, **X-logs**, which allows service providers to input information for reimbursement. The module cross-references requested reimbursement with data entered on the IFSP form for accuracy.

Critical Element 4: Does the State have procedures for ensuring the timely obligation and liquidation of IDEA Part C and Part B section 619 (preschool) funds by the State?

MDOE reported that it implements procedures at the State level, and requires CDS sites to also implement such procedures at the local level, to ensure the timely obligation and liquidation of Part C funds and Part B section 619 funds. These procedures include the fiscal principle of "first in-first out" for expending IDEA funds within the appropriate Federal grant period. The State has not lapsed funds under Part C or section 619.

Fiscal Management System – Conclusions and Required Actions

OSEP determined that the State has procedures that are reasonably designed to ensure: (1) appropriate use of Part C IDEA funds at the State level; (2) appropriate distribution of Part B section 619 (preschool) funds at the State level; (3) appropriate use of Part B section 619 (preschool) funds at the LEA level; and (4) the timely obligation and liquidation of IDEA Part C and Part B section 619 (preschool) funds by the State. However, without conducting audits at the State and local levels, OSEP cannot determine whether all public agencies in the State implement the State's fiscal procedures in a manner that is consistent with Part B and Part C and other relevant federal fiscal requirements.

² Without conducting a complete review of MDOE's expenses and source documentation of all obligations, OSEP cannot determine or conclude that costs charged to IDEA Part B section 619 funds are allowable and whether MDOE's policies for use of funds are fully and appropriately implemented.

As noted above, the State reported that its procedures provide that a CDS site would not be eligible to receive its Part B section 619 subgrant until MDOE has approved both its 619 and its Part C application. This procedure is inconsistent with section 619(g) of IDEA. Within 60 days from the date of this letter, the State must provide a written assurance that it has revised this procedure so that the 619 subgrant to a CDS site is not delayed because of the status of its Part C application.

PART B -SCHOOL-AGED PROGRAMS

General Supervision – Discussion

Critical Element 1: Does the State have a general supervision system that is reasonably designed to identify noncompliance?

State regulations require MDOE to monitor each SAU at least once every five years. MDOE informed OSEP that it will, in addition to this five-year cycle, conduct a monitoring review at an earlier time if information from sources such as complaints and hearings indicate the need for such a review. Prior to the initial visit, MDOE performs a desk audit of each selected district. Following the desk audit, the monitoring staff visit the district to perform a data review of SPP Indicators 2 (drop-out), 3 (statewide assessment), 4 (discipline), 5 (placement in the least restrictive environment), and 8 (parental involvement). In addition, the district is required to perform a self-review and an internal compliance review of 20% of student files. The self-review, using a State-mandated format, must be submitted to MDOE within one month following the initial visit.

Within 12 months of its initial visit, MDOE returns to the district to verify the data analysis. State staff reported that during verification visits, they review student files, review policies and procedures, interview students, and conduct phone interviews with parents. Within 45 days of the visit, MDOE provides a Letter of Verification, which identifies any findings of noncompliance with Part B of IDEA.. The State reported that if noncompliance is identified, MDOE requires the district to submit a Corrective Action Plan within 30 days of the Letter of Verification. The Corrective Action Plan must include activities that will lead to sustained compliance.

Critical Element 2: As part of its general supervision system, does the State have 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?

State staff reported to OSEP that all divisions at MDOE work closely together to share and utilize district data. The Due Process Office (DPO) has a database for tracking all complaints, mediations, and due process hearings. The State uses data to prepare district-level profiles, which are easily accessible on the website. As described above, the State uses data from those profiles in conducting its monitoring reviews.

Critical Element 3: Does the State have a system that is reasonably designed to correct identified noncompliance, including the use of State guidance, technical assistance, follow-up, and, if necessary, sanctions?

OSEP is unable to determine if the State has a system that is reasonably designed to ensure correction of all identified noncompliance no later than one year from identification. During the OSEP verification visit, MDOE reported that it issues a Letter of Verification, finding the district either in full compliance or requiring corrective action if there are findings of noncompliance. The State reported that the letters require LEAs to correct noncompliance related to individual students within 30 days from the date of the Letter of Verification and to correct all other noncompliance within 90 days from the date of the Letter of Verification. However, the Part B SPP, submitted to OSEP in December 2005, states under Indicator 15 that "written approval of the [Corrective Action] Plan initiates the one year compliance resolution period." This is inconsistent with the requirement to ensure correction of identified noncompliance with Part B of IDEA within one year of identification. The information in the SPP is also not consistent with our understanding of the information provided during OSEP's visit or our review of the Letters of Verification and Corrective Action Plans, which indicate that MDOE requires correction within one year of identification (the date of the Letter of Verification). MDOE reported that, of the 24 verification visits made during 2005-2006, 15 districts demonstrated correction of noncompliance within 12 months, five demonstrated correction within 13 months, and four received State imposed sanctions. A final letter is sent from the Commissioner when the district has reached full compliance.

For those districts that do not achieve correction of noncompliance within one year, enforcement actions are available for the State to impose on the district. These enforcement actions are included in the State's recently adopted regulations. OSEP staff reviewed several monitoring files during the verification visit, including monitoring reports, corrective action plans, audit documents, and letters either closing the case with noncompliance corrected, or imposing enforcement actions.

Critical Element 4: Has the State 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 in a timely manner? If barriers have been identified, what mechanisms has the State put in place to address those barriers?

MDOE reported no limitations on the State's authority to identify and correct noncompliance in a timely manner, and that the State Commissioner is fully supportive of the State's monitoring efforts and activities, and signs all letters that require corrective actions or imposes sanctions on districts.

Critical Element 5: Does the State have dispute resolution systems that ensure the timely resolution of complaints and due process hearings?

Once a complaint is received, the Due Process Office (DPO) acts upon the request immediately. For hearing cases, a case manager is assigned that stays with the case until closed and a letter is issued. If the hearing decision contains a hearing order, the case manager is responsible for

monitoring the districts' compliance with the hearing order. Data and all associated dates are tracked in the Due Process database. The State provides model forms for parents to use in filing a complaint or to request a due process hearing. In addition to the districts having copies of forms and procedural safeguards available for parents, they are also available online. Parents are also provided with workshops in the spring of each year, with availability of technical assistance by phone, and with copies of Chapter 101 upon request.

In its February 1, 2007 Part B APR, the State reported that for FFY 2005 APR, 81.3% of complaint decisions were timely, and that all due process hearing decisions were timely. For the period of July 1, 2006 through June 30, 2007 (FFY 2006), the State reported that IDEA timelines were met with regard to complaint and due process cases. The State provided data under Part B for FFY 2006, showing that it received 59 State complaints. Forty-four of those complaints were withdrawn. Of the 15 complaints that were not withdrawn and for which the State issued decisions, the State issued three decisions within the 60 calendar timeline, and the remaining 12 within timelines extended for exceptional circumstances.

The FFY 2006 Part B data also indicate that 37 hearing requests were received, of which six resulted in fully adjudicated hearings, with the decisions issued within properly extended timelines. Thirty of the hearing requests were resolved without a hearing and one was settled through a resolution session.

Critical Element 6: Does the State have mechanisms that focus on improving educational results and functional outcomes for all children with disabilities?

As of September 2007, Maine has instituted the requirement of a statewide IEP form that must be used by all districts/RSUs (and, as explained in the Part C/preschool section of this letter by CDS sites for children aged three and older). In addition, MDOE now requires districts to use statewide Written Notice and Consent to Evaluate forms. These changes are expected to have a positive effect on the State's general supervision system, while at the same time, provide consistency and improve educational results and functional outcomes for children with disabilities.

General Supervision System: Conclusions and Required Actions

Based on OSEP's review of Maine's Part B school aged monitoring system during the visit, OSEP did not identify any concerns regarding MDOE's system for identifying noncompliance. OSEP cannot, however, without also collecting data and conducting reviews at the local level, determine whether the monitoring procedures are effective in identifying noncompliance with Part B.

OSEP is unable to determine if the State has a system that is reasonably designed to ensure correction of all identified noncompliance no later than one year from identification. The information provided in the SPP that the timeline for correction is one year from approval of the Corrective Action Plan is inconsistent with the requirements of IDEA and our understanding of the information provided during the visit. Within 60 days from the date of this letter, MDOE must provide either clarification that MDOE does ensure correction of all noncompliance under

Part B of IDEA no later than one year from identification (the date of the Letter of Verification) or submit revised policies and procedures that ensure correction of identified noncompliance within one year of identification, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600 and 20 U.S.C. 1232d(b)(3)(E). MDOE must also revise its SPP to accurately reflect the required timeline for correction of noncompliance identified under Part B of IDEA.

Data Systems - Discussion

Critical Element 1: Does the State have a data system that is reasonably designed to collect and report to the Department and the public, timely valid and reliable data and information?

MDOE reported that it currently has several systems in place to collect valid and reliable data. Maine recently implemented a state-wide data collection system for all students known as the Maine Education Data Management System (MEDMS). Through MEDMS, the State assigns a unique identifier to each student and districts are required to submit data to MDOE using this system. Educational placement, related services, anticipated services (for ages 14-21), and exit data for students with disabilities are automatically loaded from MEDMS into the EFS05 data system several times a day. In order to ensure the security of the data, all access is password-protected. Maine utilizes federal definitions for all data collections.

Data on parentally-placed students in private schools are entered into the MEDMS for the December Child Count only if the students have an individualized services plan (ISP). Home-schooled children can be entered into MEDMS for the December Child Count only if they have an identified disability, a current ISP, and are receiving special education services.

For children ages three, four, and "not yet school-aged" five year olds, data are also entered into the MEDMS, either by the CDS site or, if the district is providing services, by the district.

In 2008, the State expects to implement a new real-time data collection system called Infinite Campus. This system will eventually replace MEDMS, and all districts will be required to use it for submitting all data for children ages 3 - 20. A key feature of the Infinite Campus data system is the electronic passport, which will be critical in tracking highly mobile children. When fully implemented, Infinite Campus will have the capability to produce a variety of real-time and specific-interval data reports, and will eliminate the use of paper/pencil data entry at the school level.

Several MDOE staff attend data manager and leadership conferences, and participate on technical assistance calls provided by OSEP staff to be well-informed regarding data collection and reporting issues.

As reported in OSEP's June 15, 2007 response to the State's FFY 2005 Part B APR, the State did not report valid and reliable data for Indicators 1, 2, 3A, 7, 12, and 15. During the verification visit, the State described the steps that it had taken to ensure that it would be able to report valid and reliable data for these indicators in its FFY 2006 APR, and indicated that it was confident that it would be able to do so. Since early in 2007, the State has utilized the technical assistance

and support of the NERRC and NECTAC to prepare for the February 2008 APR submission. In addition, the State has made changes in their data collection processes to ensure that the required data will be available for each indicator.

Critical Element 2: Does the State provide clear guidance and ongoing training to public agencies regarding requirements and procedures for reporting data under section 618 of IDEA and the SPP/APR?

MDOE provides guidance and ongoing support to local programs, including web-based training, technical assistance memos, and frequently-asked questions which are also posted on the State's website. Regularly scheduled workshops and training sessions are provided (April and October) as well as phone technical assistance, a full-time help-desk, and when needed, onsite training and assistance.

Critical Element 3: Does the State have procedures to determine whether the individuals who enter and report data at the local and/or regional level do so accurately and in manner that is consistent with IDEA sections 616 and 618, OSEP guidance, and State's procedures?

The State has implemented procedures to determine whether 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, 618 requirements, and SPP/APR requirements. In addition to the technical assistance, training, and support provided to district staff, and the numerous cross checks provided at the State level, accuracy of the data is verified through the State's monitoring system, and, for the December 1 count, the district superintendents must sign an assurance of data accuracy.

Critical Element 4: Does the State have procedures for identifying anomalies in data that are reported and for correcting any inaccuracies?

MEDMS has procedures built into the data systems to identify data anomalies and correct them prior to submission. The system will reject most data that does not make sense (e.g., a six-year-old graduate). If there is a large change in a district's data from the previous year or if the data appear to be abnormal, MDOE will call the district to discuss the discrepancy. The current data system requires many hours of manpower in order to accomplish edit checks and crosschecks for data that appears suspect. The State is confident that, with the new system, assuring accuracy of the data will become less burdensome.

Data System – Conclusions

OSEP did not identify any concerns with the data system, MEDMS, and related policies and procedures used by the State to ensure the collection and reporting of required data by Maine to OSEP and the public under IDEA sections 616 and 618. The State confirmed that its 618 data provided to WESTAT are timely and accurate, and that it has taken steps to ensure that its data for all indicators in the FFY 2006 APR would be valid and reliable. OSEP cannot, however, without also conducting a review of data collection and reporting policies, procedures and

practices at the local level, determine whether all public agencies in the State implement the State's data collection and reporting procedures in a manner that is consistent with Part B.

Fiscal Management System – Discussion

Critical Element 1: Does the State have procedures that are reasonably designed to ensure appropriate distribution of IDEA funds at the State level?

All districts in Maine are required to electronically submit a consolidated application on or before August 15 of each year for Part B section 611 and section 619 funds. The local applications are web-based and are pre-populated with the grant award amounts and also the current carryover amounts. Maine's web-based grant application system was developed through a 2001 General Supervision Enhancement Grant and has been in effect for three years. The application system has a number of features built into it including: (1) numerous drop boxes for checks and balances; (2) a mechanism for reporting on State goals and objectives; (3) a mechanism for calculating proportionate share for parentally-placed private school students; and (4) district-level maintenance of effort information.

The State provided OSEP with copies of the State's FFY 2005, 2006, and 2007 Part B section 611 distribution to school districts and Part B section 619 distributions to CDS sites and districts, which showed that the State is distributing section 611 and section 619 funds in a manner that is consistent with Part B requirements. That documentation showed that the base amount under section 611 was the amount the LEA would have received under section 611 for fiscal year 1999 if MDOE had distributed 75% of the grant award for fiscal year 1999, and that the base amount under section 619 was the amount the LEA would have received under section 619 for fiscal year 1997 if MDE had distributed 75% of the grant award for fiscal year 1997. As required, 85% of the remaining funds are allocated to LEAs on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the jurisdiction of the LEA, and 15% in accordance with their relative numbers of children living in poverty (based on free and reduced lunch), as determined by MDOE.

Critical Element 2: Does the State have procedures reasonably designed to ensure appropriate use of IDEA funds at the LEA level?

During the verification visit, OSEP reviewed with MDOE staff the State's procedures for the use of Part B funds at the LEA level.³ MDOE staff reported that all section 619 funds are distributed to either the LEAs or to the 16 CDS sites. As part of the Part B application process, districts must provide a detailed explanation for budgeted use of funds, including goals and objectives and specific action plans with timelines.

Critical Element 3: Does the State have procedures reasonably designed to ensure the timely obligation and liquidation of IDEA funds?

³ Without conducting a complete review of MDOE's expenses and source documentation of all obligations, OSEP cannot determine or conclude that costs charged to IDEA Part B funds are allowable and whether MDOE's policies for use of funds are fully and appropriately implemented.

Maine has mechanisms in place for ensuring the timely obligation and liquidation of Part B funds. Districts are given ten months to spend their Part B funds, and must use a first-in first-out principle when obligating funds. Through a cash management system, districts are not permitted to have excess cash on hand and no interest is permitted to be drawn on the funds. Distribution of funds automatically stops if a district has not already spent down the previous payment.

Fiscal Management System – Conclusions

As a result of OSEP's review of the State's written policies and procedures, it appears that, with the exception of the issue described in the Part C/Preschool section of this letter, regarding the approval of applications for 619 funds and subgrants under section 619, Maine has policies and procedures that are reasonably designed to ensure that the State appropriately distributes Part B funds to LEAs, LEAs properly use Part B funds, and IDEA funds are timely obligated and liquidated. OSEP cannot, however, without conducting audits at the State and local levels, determine whether all public agencies in the State implement the fiscal procedures in a manner that is consistent with Part B and other relevant federal fiscal requirements.

Summary

Within 60 days from the date of this letter, MDOE must:

1. Provide a written assurance that it has removed any specific percentage threshold for identification and correction of Part C and Part B noncompliance in CDS sites and that it has informed all CDS sites in the State of the revocation of its threshold;
2. Provide a written assurance that it has revised its procedures so that the 619 subgrant to a CDS site is not delayed because of the status of its Part C application; and
3. Provide either clarification that MDOE does ensure correction of all noncompliance under Part B of IDEA no later than one year from identification (the date of the Letter of Verification) or submit revised policies and procedures that ensure correction of identified noncompliance within one year of identification, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600 and 20 U.S.C. 1232d(b)(3)(E). MDOE must also revise its SPP to accurately reflect the required timeline for correction of noncompliance identified under Part B of IDEA.

With its Part C FFY 2007 APR, due on February 1, 2009, in addition to reporting, as required, on the correction of any findings of noncompliance identified in FFY 2006 and corrected in FFY 2007, MDOE must report on (1) the correction of the previously identified noncompliance that it followed up on in its September 2007 letters, and (2) the correction of noncompliance identified in the monitoring reports MDOE issued to CDS sites on July 9, 2007, November 15, 2007 and December 7, 2007.

With its Part B FFY 2007 APR, due on February 1, 2009, MDOE must specifically identify the number of findings of noncompliance with Part B of IDEA regarding provision of services to preschool children with disabilities identified in CDS sites during FFY 2006 and the number of

those findings that were corrected in FFY 2007. In addition, MDOE must also report on: (1) the correction of the previously identified noncompliance with Part B of IDEA regarding provision of services to preschool children with disabilities identified in CDS sites that it followed up on in its September 2007 letters; and (2) the correction of noncompliance with Part B of IDEA regarding provision of services to preschool children with disabilities identified in the monitoring reports MDOE issued to CDS sites on July 9, 2007, November 15, 2007 and December 7, 2007.

As noted above, OSEP will be responding under separate cover to the data and information provided in the Part B and Part C FFY 2006 APRs, submitted on February 1, 2008, and may require further actions in light of that information.

We appreciate the cooperation and assistance provided by your staff during our visit to review the State's general supervision, data and fiscal management systems to ensure the provision of early intervention services to infants and toddlers with disabilities and their families, and a free appropriate public education to children with disabilities in Maine. We look forward to collaborating with Maine as it continues to work to improve results for infants, toddlers and children with disabilities.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

cc: David Stockford
Debra Hannigan