



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

Dr. Veronica Garcia  
Cabinet Secretary for Education  
New Mexico Department of Education  
Education Building  
300 Don Gaspar Avenue  
Santa Fe, New Mexico 87501-2786

FEB 23 2004

Dear Secretary Garcia:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) verification visit to New Mexico. As indicated in my June 18, 2003 letter to you, OSEP is conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance and improving performance with Parts B and C of the Individuals with Disabilities Education Act. We conducted our visit to New Mexico during the week of August 18, 2003.

The purpose of our State verification reviews is to determine how they use their general supervision, State-reported data collection, and Statewide assessment systems to assess and improve State performance and 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 New Mexico State Department of Education (NMSDE), OSEP staff met with Mr. Sam Howarth and NMSDE's staff responsible for the State's general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings), the collection and analysis of State-reported data, and Statewide assessment. Prior to the visit, OSEP staff reviewed a number of New Mexico's documents including: (1) the Part B State Improvement Plan submitted November 2000, and amendments for 2001-2002 and 2002-2003; (2) the Biennial Performance Report for grant year 2000-2001; (3) the State Improvement Grant (SIG) application; (4) the General Supervision Enhancement Grant (GSEG) application; and (5) relevant information posted on the State's website.<sup>1</sup> On July 23, 2003, OSEP conducted a conference call with several State Advisory Panel members to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and Statewide Assessment. Mr. Howarth assisted us by recommending and inviting the conference call participants; he also took part in the call. During the visit, OSEP staff reviewed additional State documents, including: (1) *An Introduction to Focused Monitoring in New Mexico*; (2) *Developing Quality IEPs*, (3) selected NMSDE monitoring files for school districts, including monitoring reports and corrective action documents; (4) *Accountability Data*

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<sup>1</sup> 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.

*Systems Information Manual*; and (5) tracking logs for complaints, mediation, and due process hearings.

The information that Mr. Howarth and his staff provided during the OSEP visit, together with information reviewed by OSEP in preparation for the visit, greatly enhanced our understanding of NMSDE's systems for general supervision, data collection and reporting, and Statewide assessment.

### ***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 its ability to identify and correct noncompliance; (2) has systemic, data-based, and reasonable approaches to the identification and correction of noncompliance; (3) utilizes guidance, technical assistance, follow-up, and -- if necessary -- sanctions, to ensure timely correction of noncompliance; (4) has dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) has mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.

NMSDE informed OSEP that it has designed its general supervision systems with the goal of ensuring both compliance and improved performance for students with disabilities. NMSDE is using data from various sources to target areas for improvement, to focus training and technical assistance activities, to rank-order school districts, to select districts for monitoring and to determine the focus areas during monitoring visits.

NMSDE staff also told OSEP that it relies principally on its focused monitoring system to identify and ensure the correction of deficiencies. There are 89 school districts in New Mexico. For the 2003-2004 school year, 12 districts and charter schools will receive on-site monitoring visits and two additional districts selected at random will receive a data verification audit by NMSDE's Special Education Office. NMSDE also may extend the scope of complaint investigations if it suspects that the issue may be systemic (see "Dispute Resolution, below). But it does not have other methods for reviewing LEAs' practices, policies or procedures to ensure that all LEAs comply with all IDEA requirements.

Although OSEP is impressed with NMSDE's focused monitoring system and its potential to improve performance and compliance in the school districts selected for review, it is concerned that NMSDE does not have a systemic method for identifying and correcting deficiencies for LEAs that have not been selected for focused monitoring. Therefore, OSEP cannot conclude that NMSDE's systems for general supervision constitute a reasonable approach to the identification and correction of noncompliance. As such, within a year of the date of this letter, NMSDE must provide OSEP with documentation to demonstrate that it has in place an effective system for ensuring that NMSDE identifies and ensures correction of noncompliance for all educational programs for children with disabilities administered within the State. Also, OSEP cannot, without also collecting data at the local level, determine whether NMSDE's focused monitoring

system is fully effective in identifying and correcting noncompliance for LEAs that have been selected for review.

**Monitoring:** NMSDE uses a "focused system" to monitor districts for compliance with Federal and State regulations. Through this system, districts are rank-ordered based on data associated with four indicators: (1) least restrictive environment, emphasizing inclusion of students with disabilities in regular classes to the maximum extent appropriate with access to the general education curriculum; (2) identification and evaluation of students with disabilities, emphasizing possible over-identification of students as learning disabled; (3) participation and performance of students with disabilities on Statewide assessments of educational development; and (4) graduation of students with disabilities. These indicators were determined, with input from a diverse group of stakeholders, as those areas of focus most likely to lead to the identification of non-compliance and, if findings are made and remedied, result in improved outcomes for students with disabilities. The indicators are reconsidered annually by the stakeholder group.

NMSDE has, as a part of its selection process, divided its school districts into groups. The first four groups are based upon number of students per school within a district. The fifth group contains primarily high school level charter schools; the sixth group contains elementary and middle school level and K-12 charter schools. It was determined that the focus area for the fifth group would be graduation rate, while the focus area for sixth group would be test participation and performance. Rather than visiting all school districts on a cyclical basis, each year NMSDE uses information from the State Accountability Data System (ADS) as well as student performance data from the spring CTBS Terra Nova Statewide achievement tests to rank districts and charter schools within each enrollment group, after which monitoring selections are made of those entities with wide variances from the State averages on key indicators for students with disabilities. If a selected district includes within its boundaries elementary and/or middle school charters, NMSDE will include these charters in its district sample.

Although NMSDE uses a focused monitoring system for its local educational agencies (LEAs) and charter schools, it will continue to use a traditional cyclical monitoring process for State supported schools (the School for the Deaf, the School for the Visually Impaired and the Children's Psychiatric Hospitals) and juvenile correctional facilities. Each year NMSDE reviews information from the State Accountability Data System (ADS) as well as student performance data from the spring CTBS Terra Nova Statewide achievement tests for the State supported schools and the juvenile correctional facilities. Each time an onsite visit is conducted a data verification audit is also performed.

NMSDE staff uses data from a variety of sources to help focus its data collection in each LEA. Prior to conducting the onsite visit, NMSDE reviews the complaint, due process hearing, facilitated Individualized Education Program (IEP) meeting, and the parent call data logs for information related to the school district. NMSDE also assembles data on placement, disability categories, graduation and diploma pathways, disproportionality, child count and participation in and performance on Statewide achievement tests. A copy is made of the latest special education funding report for the district. The report contains information on all personnel in the county providing IEP services. All of this information is provided to the monitoring team. LEAs that have been selected for focused monitoring are required to have available for the monitoring team a copy of the LEAs special education policies and procedures.

NMSDE staff informed OSEP that a monitoring team consists of Team Leads (veteran special educators), peers (current special educators), and parents. NMSDE staff provide ongoing support to teams pre-visit, in the field, and post-visit, with NMSDE staff participating on site as needed. All team members receive training to prepare them for on-site visits. It should be noted that the majority of Team Leads and parents have been involved in the focused system for three years and, as such, have received accumulative training over the years. All trainings are conducted by veteran NMSDE staff in collaboration with staff from the National Center for Special Education and Accountability Monitoring (NCSEAM.)

NMSDE developed standard monitoring forms, sets of monitoring questions, and monitoring report templates in school year 2001-2002. These forms and questions are reviewed and updated annually in an effort to constantly improve the system. NMSDE has also developed and articulated "areas of focus" for each indicator to guide teams in determining areas and issues to be investigated for each indicator. NMSDE, in collaboration with NCSEAM, is completing a comprehensive monitoring manual that will further support the effectiveness of the monitoring system. NMSDE also provides clear guidance to teams regarding who should be interviewed, and what documents and materials need to be reviewed. When a school district's poor data could qualify it for investigation in more than one of the focused indicator areas, the monitoring team investigates all potential non-compliance associated with each indicator.

If a district is found to be out of compliance with one or more State regulations, the district is required to develop an Improvement Plan to specifically address the findings in the report. NMSDE provides guidance to the district on how to write the Improvement Plan and the district is told that the plan must be aligned with district general education initiatives. The district is required to convene a development team that includes the district superintendent (or an administrator with the authority to commit district time and resources), the special education director, the professional development coordinator, the Educational Plan for Student Success (EPPS) coordinator, a representative from Federal programs, and the curriculum and development coordinator. Other suggested participants include regular and special education teachers, parents, and the local regional educational center consultant.

When developing and implementing the Improvement Plan, NMSDE encourages each district to consult with institutions of higher learning, neighboring school districts, Federal programs and parent organizations. All of the team members are required to sign the Improvement Plan. Each district must use the Improvement Plan form developed by NMDSE. The area of noncompliance is stated at the top of each page; below this statement are the underlying factors contributing to the noncompliance. Each chart has six columns: (1) Task/Activity; (2) When; (3) By Whom; (4) Why; (5) Deliverables; and (6) Follow-up/Evaluation, with multiple rows for entries. NMSDE works with each district until an approvable plan is submitted. NMDSE requests that each district submit monthly narrative reports detailing the progress and completion of each task detailed in the Improvement Plan. For each item of noncompliance, NMSDE determines what evidence of change will be required before an item is removed from the Improvement Plan. The Improvement Plan is monitored by NMSDE until the district has met the evidence of change requirement.

NMSDE reported that although child specific noncompliance is corrected as soon as possible, complex systemic issues may take longer than a year to correct. There have been a few instances when LEAs have been given extended timelines when extenuating circumstances have existed. While onsite, OSEP staff reminded NMSDE that all noncompliance should be corrected within one year. NMSDE informed OSEP that it has designed its general supervision systems with the goal of ensuring both compliance and improved performance for students with disabilities. NMSDE reported that generally the threat of withholding funds has been sufficient to secure compliance with findings of noncompliance in monitoring reports and complaint decisions.

In a recent two-year data study, NMSDE's focused monitoring system has been successful in producing significant evidence of change in the areas of Least Restrictive Environment (LRE) and over-identification of children with Learning Disabilities in those districts where these variables were the focus of monitoring. The selected districts placed a smaller percentage of students in separate settings and a greater percentage in general education settings. Also, these districts had a reduced percentage of children identified as learning disabled.

**Dispute Resolution:** NMSDE has one staff member who functions as a parent liaison (a retired professional with a special education background). This individual provides technical assistance to parents who call for information. A log is kept with pertinent information from the calls. NMSDE has developed a Facilitated Individualized Educational Program (IEP) Process where trained facilitators can be present to assist in the writing of appropriate IEPs. The process was developed after NMSDE determined that the most frequent topics for mediations concerned IEPs, and that mediation agreements did not necessarily result in successful IEP meetings.

NMSDE's system for due process hearings results in decisions that meet the timeline requirements of Part B. OSEP learned, through its review of NMSDE's due process hearing log and interview with the staff responsible for tracking hearing timelines, that decisions on due process hearings are issued within 45 calendar days from NMSDE's receipt of the hearing request, unless the hearing officer grants a specific extension of the timeline at the request of a party, consistent with 34 CFR §300.511(a) and (c). Such extensions were appropriately documented in hearing files.

OSEP also learned, through its review of NMSDE's complaint log and interviews with staff responsible for resolving complaints, that in some instances NMSDE has failed to issue written decisions on Part B complaints within 60 calendar days from its receipt of the complaints, unless the timelines were extended due to exceptional circumstances consistent with 34 CFR §300.661(a) and (b)(1). This finding was consistent with the monitoring report issued by OSEP on January 7, 2000. For the last four years, NMSDE has averaged about 50 complaints per year; for this same time period 28 percent of NMSDE complaints exceeded the 60 day or extended timelines; the average number of days the timeline was exceeded has increased from 5.3 in 1999-00 to 35 in 2002-03 (12 of the cases for the current year were still under investigation at the time of OSEP's visit). NMSDE's written decisions were comprehensive and well researched, and included specific corrective actions. NMSDE effectively tracked the completion of district corrective actions.

NMSDE attributed its difficulties with meeting complaint timelines to problems with filling staff vacancies during the last four years. NMSDE has used a part time contractor and two new staff members; however the new staff members were unable to keep pace with the volume of complaints. The Director of Special Education informed OSEP staff that there would soon be a restructuring of staff to address the ongoing problem of timely complaint resolution.

Because NMSDE has failed to correct this previously identified finding -- failure to issue written decisions on complaints within 60 days -- within a year of OSEP's approval of the State's Improvement Plan, NMSDE must submit documentation to OSEP by June 1, 2004 demonstrating that it has come into compliance with the 60-day timeline for resolving complaints. If NMSDE is unable to demonstrate compliance by this date, there may be consequences for its FY 2004 IDEA grant award.

**Local Education Policies and Procedures:** IDEA requires that an LEA must demonstrate to the SEA that it meets the conditions in 34 CFR §§300.220-300.250 in order to be eligible for assistance under 34 CFR §300.180. NMSDE told OSEP that the last time the State reviewed all LEAs special education policies and procedures was in 1997, as a part of the local application for special education funding process; this was prior to the last reauthorization of IDEA. Since 1997, NMSDE has required annual assurances from the LEAs stating that they will follow all of the IDEA requirements, as well as the State special education requirements. NMSDE has not required LEAs to amend, or submit for review, policies and procedures as required by the IDEA amendments of 1997. See 34 CFR §300.220. NMSDE explained that they were waiting until the next IDEA reauthorization before requiring LEAs to revise and submit their policies and procedures.

Therefore, except for those LEAs that have been selected for focused monitoring, NMSDE does not require the submission of LEA policies and procedures to ensure that they are consistent with IDEA, as required by 34 CFR §300.180-182. By June 1, 2004 NMSDE must submit to OSEP a procedure for reviewing and approving all LEA policies and procedures. NMSDE's procedures must be implemented as a part of its process for approving LEA applications for FY 2004 Part B funds. Within one year of the date of this letter, NMSDE must submit to OSEP documentation that it has completed its review of all local policies and procedures.

#### ***Collection of data under section 618 of the IDEA***

As a part of its analysis of 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 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.

NMSDE staff informed OSEP that New Mexico uses a unified electronic data collection system. Data are sent by local educational agencies to the State via a file transfer profile system. Data from State supported/operated programs are also transferred electronically. The data system includes information on regular and special education students as well as personnel. The data pass through filters before being entered into the database. A variety of screens or edit checks are performed on all data submitted. When a problem is identified an error message is transmitted to the district directing it to correct and check the entire file. There is a State internal audit unit that conducts cyclical reviews of districts. A staff member from the NMSDE follows up with the local educational agencies and the State supported/operated programs to give them an opportunity to confirm the accuracy of the child count and end of the year reporting data. Focused monitoring visits include verification checks on locally reported data including child count, and placement data. NMSDE staff stated that they believed the most accurate information was the data used in the funding formula, while the discipline data was probably the least accurate. NMSDE is addressing data accuracy as a part of its ongoing technical assistance to local district data managers.

NMSDE stated that there was a high turnover among personnel who enter data at the local level and that this could result in inaccuracies with data entry. Besides the checks listed in the paragraph above NMSDE has provided technical assistance and training activities to local level personnel to increase data accuracy. NMSDE's website includes Accountability Data System Newsletter, information on District Software for Data Collection, a State District Report Card Manual, a State District Report Card Template, and a Training and Experience Report. Annual workshops are conducted in several regions by NMSDE general education staff. Information on data is shared during an annual data conference and at the annual budget conference. An NMSDE (special education) staff person is available daily to provide technical assistance over the phone. This individual addresses the subject of data at the annual training conference for new special education directors and at least once a year at the quarterly meetings for the special education directors. NMSDE has converted clerical positions to data positions in an effort to enhance its data collection and analysis capabilities.

### ***Statewide Assessment***

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

OSEP has determined, through its review of the State's written procedures for Statewide assessments and the State's reports to the public and the Secretary on the participation and performance of children with disabilities on such assessments, that those procedures, as written, and those reports are consistent with Part B requirements. Without also collecting data at the

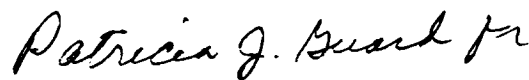
local level, OSEP cannot determine whether all public agencies in the State implement the State's procedures in a manner that is consistent with Part B.

NMSDE informed OSEP that it has provided training and guidance to LEAs regarding the participation on Statewide assessment, clearly requiring that all children with disabilities participate in each of the regular assessments in which non-disabled children participate, unless the IEP team determines that participation in the regular assessment is not appropriate for a specific student and requires administration of the alternate assessment. OSEP staff reviewed examples of this guidance and technical assistance in New Mexico documents including: *Manual for Developing an IEP*, *Guidance to IEP Team Members on Determining Accommodations for Students Participating in State-Mandated Assessments*, the *Addendum IEP form* for documenting accommodations in assessments, and *The Accountability Workbook*. Also New Mexico's website includes an Alternate Assessment Description and Instructions for Administrators and an Alternate Assessment Online Web Course. This year one of the State's monitoring focus areas is participation in and performance on Statewide assessments. NMSDE is in the process of setting standards for criterion referenced testing in preparation for the replacement of norm-referenced tests with criterion-referenced tests. OSEP staff were also informed that by the end of this school year each student in the State would have a student identification number. The assessment system has its own data collection system.

Through interviews with NMSDE staff and through reviewing the NMSDE website, OSEP staff learned that the performance of children with disabilities on assessments is reported to the public through School District Report Cards and through the State Accountability Report. On May 15, 2003 NMSDE reported to the Secretary on the performance of children on the 2001-2002 administration of the New Mexico Alternate Assessment; this information was also published on the NMSDE website. At the time of OSEP's visit, NMSDE had not yet published the State Accountability Report for the year 2001-2002. NMSDE staff informed OSEP staff it planned to issue this the report by January 2004.

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to our continued collaboration with New Mexico to support your work to improve results for children with disabilities and their families.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special  
Education Programs

cc: Mr. Sam Howarth