



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

Honorable Richard Cate
Commissioner of Education
Vermont State Department of Education
120 State Street
Montpelier, Vermont 05620-2500

FEB - 8 2005

Dear Commissioner Cate:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) verification visit to Vermont. As I explained in my February 23, 2004 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 with, and improving performance under, Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to Vermont during the week of July 26, 2004.

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 data collected through verification visits will help OSEP: (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 Vermont Department of Education (VDE), OSEP staff met with Leanne Garland, who, at the time of OSEP's visit, was Interim Director, Student Support Services, and members of VDE's staff 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 documents¹, including the following: (1) Vermont's Part B State Improvement Plan; (2) the Biennial Performance Report for grant years 1999-2000 and 2000-2001; (3) the Annual Performance Report (APR) for grant Federal Fiscal Year (FFY) 2002; (4) VDE's Part B Program Improvement Monitoring document; (5) VDE's written response to the overarching questions around which OSEP is focusing its verification reviews; (6) VDE's tracking logs for complaints and due process hearings; and (7) information on VDE's website regarding the State-wide assessment system.

On June 30, 2004, OSEP conducted a conference call with a number of members of the Vermont State Advisory Panel to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and State-wide assessment. OSEP also conducted a public input conference call on July 22, 2004 with a number of stakeholders to hear

¹ Documents reviewed as part of the verification process were not reviewed for legal sufficiency but rather to inform OSEP's understanding of your State's systems.

their perspectives on these same State systems. Staff from VDE and the Vermont Parent Information Center (VPIC) participated in the call and assisted us by inviting the participants. The information that Ms. Garland and other VDE staff provided during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of VDE's systems for general supervision, data collection and reporting, and State-wide 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 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.

During OSEP's verification visit, VDE staff explained that the State monitors each of the State's 60 supervisory unions (SU) every six years. VDE also monitors approved independent schools in which public school students have been placed. VDE's Division of Student Support Services has designated several staff whose primary job responsibilities include activities related to monitoring. In addition, VDE includes, as needed, contract personnel, central office administrators and staff from the Office of the General Counsel in its monitoring activities.

VDE explained and provided documentation to illustrate its current monitoring system. Prior to conducting the onsite visit, VDE's monitoring team gathers various data to help focus key points of investigation to be explored. The monitoring team reviews policies, procedures and assurances required for each supervisory union, personnel licensing, child count and placement data, prior monitoring findings, training requests, complaints, and due process findings. VDE also collects data through parent, staff and administrative personnel interviews. Files that are reviewed on-site are pre-selected by VDE and include, at a minimum, records for: (1) a student that is age 16; (2) a student placed by the LEA in a residential or approved independent school; (3) a preschool student; (4) a student who is newly enrolled; and (5) a student who is exiting. Case managers at each school are directed to review the file using a standard checklist. The monitoring team member reviews the same file based on the checklist completed by the case manager. Errors in documentation and/or identification of noncompliance not identified in the student folder by the case manager are discussed on-site and addressed as a technical assistance activity. All data collected in preparation for the visit and gathered on-site are summarized during the exit session, and VDE and supervisory union administrative staff write an improvement plan jointly at that time. VDE issues a comprehensive final report to the supervisory union with an attached improvement plan within six weeks of the on-site visit. The report describes the noncompliance that the supervisory union must correct, timelines for completing those corrective actions, and required documentation that must be submitted as evidence of correction of the noncompliance.

VDE indicated that the analysis of data from all monitoring and other general supervision activities is used to enhance the overall monitoring system, determine the need for professional development activities, and better align the State Improvement Grant and the Higher Education Collaborative functions with identified needs in the State. VDE informed OSEP that it intends to shift to a greater reliance on a data-driven monitoring system that identifies supervisory unions to be monitored by using ratings on key indicators rather than a cyclical review schedule. Although the list of key indicators has not been finalized, VDE, in consultation with the Higher Education Collaborative, the Northeast Regional Resource Center (NERRC) and the State Education Council, has proposed that the key indicators include graduation/drop-out rates, special education identification rates, suspension/expulsion data, State-wide assessment results, due process/complaint data, personnel training activity and vacancy information. In addition, the finalized list of key indicators will be used to monitor those supervisory unions that may not have been targeted for focused monitoring activity through the State's annual local education agency application for funds. Each LEA applicant will be required to provide current information relevant to each key indicator as part of the annual application process. VDE plans to pilot this process in the near future.

During the verification visit, VDE provided OSEP with a copy of a comprehensive monitoring report and attached improvement plan. VDE also provided OSEP with a tracking log, which listed the documentation submitted by the supervisory union to demonstrate correction of noncompliance and the dates that the documentation was submitted. Lastly, VDE provided OSEP with a copy of the letter to the supervisory union to document formal close out of the improvement plan. If VDE finds that a supervisory union is not making sufficient progress toward correction of noncompliance, it may undertake enforcement action such as withholding funds. VDE has not yet withheld funds but has engaged the office of the Commissioner, when needed, to clarify responsibilities and secure compliance. VDE reported to OSEP that recent changes to the monitoring process, such as in the file review process, have resulted in improved identification of noncompliance and a more timely corrective action system.

VDE informed OSEP that it does not monitor to identify and correct non-compliance at Department of Corrections (DOC) facilities throughout the State. VDE has been working with DOC to clarify responsibilities related to the provision of a free, appropriate public education (FAPE) to special education students as required at 34 CFR §300.121 with specific exceptions indicated at 34 CFR §300.122. To date, the discussions have not been finalized. In the FFY 2002 APR on page 4, VDE reported that it had monitored the Woodside Juvenile Rehabilitation Center in 2000-2001 but had not analyzed the data and was scheduled to monitor the Community High School of Vermont (DOC) during the 2004-2005 monitoring cycle. This issue will be addressed in greater detail in OSEP's response to the State's FY 2002 APR submission.

In VDE's FFY 2002 APR on page 22 and in discussions with OSEP during the verification visit, the State indicated that communities all over Vermont were experiencing a shortage of properly credentialed special educators. In response, VDE has continued to explore solutions through its Higher Education Collaborative which allows regular education teachers to attain special education licensure and is based on a core curriculum that has been accepted by all institutes of higher education participating in the collaborative. This collaborative process has expanded to include programs preparing students for specialty areas positions such as special education administrators, speech-language assistants, and teachers of students with low-incidence

disabilities. To improve personnel retention, VDE has initiated mentoring programs and will utilize retired special education administrators and teachers to support graduates. The Vermont Higher Education system and State Improvement Grant (SIG) funding support this effort.

During discussions with OSEP, VDE reported that the interagency agreement with the Part C Lead Agency needs to be revised and updated in order to be in compliance with the requirements of IDEA. Section 612(a)(12) of IDEA and 34 CFR §300.142(a) require that the State must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in section 34 CFR §300.142(b) and the State educational agency to ensure that all the services that are needed to ensure a free appropriate public education are provided. VDE received a conditional approval of its FFY 2004 grant award under Part B of IDEA based, in part, on an April 29, 2004 letter from VDE to OSEP, in which VDE assured that no later than July 1, 2005 it would meet the requirement in 34 CFR §300.142(a). Therefore, VDE must submit to OSEP by July 1, 2005 a signed interagency agreement that meets the requirements of 34 CFR §300.142. In addition, under section 611(e)(1) of the IDEA Improvement Act of 2004, which takes effect July 1, 2005, prior to the expenditure of funds for State administration, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.

Complaints, Mediation and Due Process Hearings.

VDE's Office of the General Counsel is responsible for the management of complaints, mediation, and due process hearings. During the verification visit, OSEP reviewed the special education complaint log maintained by the Office of the General Counsel for the period January 2003 to June 2004. The Part B regulations require that VDE issue a written decision within 60 days from its receipt of the complaint, unless the timeline is extended due to exceptional circumstances that exist with regard to a particular complaint. 34 CFR §§300.661(a) and (b)(1). Of the 35 complaints filed between January 2003 to June 2004, 20 were completed within the 60-day timeline, and in 15 cases the timelines were extended. In all but two cases where extensions had been granted, OSEP could not determine from the case file or VDE's log whether the extension was granted due to exceptional circumstances that existed with regard to the particular complaint, as required by 34 CFR §300.661(b)(1). VDE indicated that for the most part, extensions were necessary due to the failure of LEAs and parents to provide information in a timely manner and the inability of VDE staff to keep pace with the high volume of complaints received. The failure of the complainant or school district to provide timely information, and insufficient numbers of staff to investigate the volume of complaints do not constitute circumstances that would justify extensions to complaint timelines as required by 34 CFR §300.661(b)(1). This newly-identified area of noncompliance will be addressed in greater detail, including requirements for corrective action, in OSEP's response to the State's FY 2002 APR submission.

VDE staff indicated during the verification visit that in the future, reasons for extensions would be documented in the complaint files and in the tracking log. In addition, VDE staff told OSEP that, as part of each on-site visit, monitoring staff follow-up to ensure that the LEA has effectively implemented any complaint decisions.

VDE operates a single-tier due process hearing system. During the verification visit, OSEP reviewed the special education hearing log that VDE’s Office of the General Counsel maintained for the period of January 2003 to July 2004. OSEP learned, through its review of VDE’s due process hearing log and interview with the staff responsible for tracking hearing timelines, that most cases (48 of 65) did not go to hearing because settlements were reached by the parties and the cases were subsequently dismissed by the hearing officer. OSEP noted that the reasons for dismissals were not documented on the tracking logs it reviewed. In further review of the due process hearing logs provided by VDE, OSEP discovered that 33 of 48 hearing decisions dismissed extended beyond the 45-day timeline for a final decision to be reached, without documentation for the extensions. Seven additional hearings marked “pending” also exceeded the required 45-day timeline. In all 4 cases where a hearing officer did reach a final decision, the 45-day timeline was extended. OSEP could not determine if VDE ensured that a final decision was reached within 45 days after the receipt of a request for a hearing or within a specific extension of time granted at the request of a party as required by 34 CFR §§300.511(a) and (c). Here is a summary of the hearing logs reviewed by OSEP:

<i>VDE Hearing Decision Log – January 2003 through July 2004</i>	
Total	65
Dismissed - total	48
• Within 45 days	15
• Beyond 45 days	33
Pending – total	10
• Within 45 days	3
• Beyond 45 days	7
Hearing Decisions – total	4
• Within 45 days	0
• Beyond 45 days	4
3 additional hearings	
• Waived	1 (beyond 45 day time line)
• Hearing Order denied	1 (within 45 day time line)
• Hearing Officer granted motion	1 (beyond 45 day time line)

This issue will be addressed in greater detail in OSEP’s response to the State’s FFY 2002 APR submission.

During the verification visit, VDE acknowledged that in order to improve its oversight of the due process system the due process log should be revised to include, where appropriate, reasons for the dismissal of the case. VDE staff informed OSEP that, as part of each on-site monitoring visit, staff follow up to ensure that the supervisory union has effectively implemented any hearing decisions.

As described above, VDE uses data from several different sources to help focus its general supervision efforts State-wide. In addition, OSEP learned from its interviews with VDE staff that VDE uses data from its monitoring findings, its 618 data and other similar data to inform its improvement planning process and to refine its monitoring procedures. In light of the fact that VDE’s legal office, rather than its special education office, is responsible for oversight of special

education hearings and complaints, it will be very important that the legal office accurately track dispute resolution activities and keep the State Director of Special Education fully informed regarding the issues raised in complaints and hearings and the decisions that VDE and hearing officers, respectively, issue.

Collection of Data Under Section 618 of the IDEA

In reviewing 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 corrects 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.

VDE informed OSEP that during the last year, it created a centralized data system managed by the Data Management and Analysis Team (DMAT). The system is used to collect all student data electronically. VDE staff explained that the system does not collect 618 data related to personnel and discipline. Personnel data are collected from the supervisory unions when they are submitted as part of the annual report required of each supervisory union. Discipline data are collected under the auspices of the Safe and Healthy School Act. In all cases, data are collected at the local level and aggregated electronically at the supervisory union office. Required error checks are built into both the data system managed by the DMAT and the Safe and Healthy School Act data system. Data for both are mailed on a disk to the central office where they are aggregated and disaggregated according to IDEA reporting specifications. VDE reported that it provides training and ongoing support to LEA personnel responsible for 618 data through workshops, telephone and e-mail support, and scheduled site visits for direct training and assistance.

Currently, under a General Supervision Enhancement Grant (GSEG), VDE is implementing an enhanced data system that will improve the staff's capability to ensure valid and reliable collection of data and promote more use of the data in decision-making. The State plans, in the near future, to move to a web-based data collection system. OSEP looks forward to getting a current status report and when ready, viewing data on this web-based data system developed under the GSEG to ensure that VDE is submitting all of the required data consistent with 618 and OSEP's directions to the State. Generally, VDE's data collection system seems to constitute a reasonable approach to ensuring the accurate collection and reporting of the State's 618 data.

State-wide Assessment

In reviewing VDE's system for State-wide assessment, OSEP collected information regarding a number of elements, including whether the State: (1) establishes procedures for State-wide assessments that meet the participation, alternate assessment, and reporting requirements of Part B, 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 VDE's system for State-wide assessment, OSEP also discussed with VDE staff how the alternate assessment is aligned with grade-appropriate content standards.

Vermont's FFY 2002 grant award under Part B of IDEA was issued with Special Conditions requiring the State to report publicly, and to the Secretary, on the participation and performance of children with disabilities on alternate assessments by May 2003. The State submitted the information and satisfied the requirements of the Special Conditions.

The New Standards Reference Examinations (NSRE) in mathematics and English/language arts (ELA) in Grades 4, 8 and 10 and the Vermont Developmental Reading Assessment (VT-DRA) at Grade 2 comprise the basis for State-wide accountability. For students who cannot participate in regular assessments even with accommodations, alternate assessment options are available to meet their specific needs. VDE has three alternate tests that it uses for students who cannot participate in the standard State-wide tests. Those are:

- 1) Modified Assessments for students working towards the same standards as students taking the standard assessments, but who need an alternate because it is not possible to provide appropriate accommodations on the regular assessment;
- 2) Adapted Assessments (out-of-level testing) for students working on the same standards as students taking the standard assessments, but are performing at significantly lower levels; and
- 3) Lifeskills Assessments for students with severe learning impairments and multiple disabilities who are working on individually designed Lifeskills curriculum that is distinct for the content of the regular classroom.

In Vermont, all students must be accounted for unless there is an allowable exemption for reasons such as a medical excuse, family emergency, parental refusal, expulsion or suspension for the duration of the test, or enrollment on or after the first day of testing. The State uses an "Allowable Accommodations Grid" that outlines the allowable accommodations that should not result in a change in the standards or in the performance being assessed. The accommodations include: (1) alternative presentation formats; (2) alternative response formats; (3) alternative settings; (4) assistive personnel; (5) assistive devices; (6) additional time; and (7) additional structure. The Eligibility for Alternate Assessment protocol form has been adopted to justify use of the alternate assessment with a student. The protocol form is used by the IEP team in determining whether it is appropriate for a student to take the alternate assessment. The form

must have prior approval by VDE and must be documented on the IEP.

Vermont reports scores for the regular and alternate assessments on the VDE website. All students enrolled in Vermont schools, or placed in approved independent schools participate in the accountability system. No exemptions are permitted. There are 368 schools receiving public funds in the State. Three hundred ten are public schools and 58 are non-public independent schools. All public alternative schools are included in accountability system, by assigning all students in public alternative programs to a public school. Students taking out-of-level tests are counted as not proficient against standards, but VDE will include them in the participation rate calculation.

State documentation indicates that only students in public schools and students placed in approved independent schools at public expense are included in the State-wide assessments. VDE informed OSEP that in most cases, youth with disabilities placed in juvenile correctional facilities are not included in State-wide assessments. (The requirements in section 612(a)(17) of IDEA relating to participation of children with disabilities in general assessments do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.) VDE explained that challenges include the transience of the students within the juvenile correctional system and other legal issues taking precedence over assessment in the juvenile correctional setting. Because VDE cannot ensure that youth with disabilities being served in juvenile correctional facilities participate in the State-wide accountability system and that their performance is reported, it does not fully comply with the requirements of 34 CFR §§300.138-139. This newly-identified area of noncompliance and the requirements for corrective action will be addressed in greater detail in OSEP's response to the State's FFY 2002 APR submission.

Conclusions

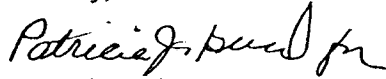
As noted above, OSEP found two areas of noncompliance that were not previously identified: (1) failure to comply with the complaint timelines as required by 34 CFR §300.661(a) and (b)(1) and (2) failure to include youth with disabilities placed in juvenile correctional facilities in the participation and reporting on assessments as required by 34 CFR §§300.138-139. These newly-identified areas of noncompliance and the requirements for corrective action will be addressed in greater detail in OSEP's response to the State's FFY 2002 APR submission. The issues of VDE's responsibility to identify and correct noncompliance in the DOC and to ensure that a final due process decision is reached within required timelines will be also be addressed in greater detail in OSEP's response to the State's FFY 2002 APR submission.

In addition, VDE received a conditional approval of its FFY 2004 grant award under Part B of IDEA based, in part, on an April 29, 2004 letter from VDE to OSEP, in which VDE assured that no later than July 1, 2005 it would meet the requirement in 34 CFR §300.142(a). Therefore, VDE must submit to OSEP by July 1, 2005 a signed interagency agreement that meets the requirements of 34 CFR §300.142. Under section 611(e)(1) of the IDEA Improvement Act of 2004, which takes effect July 1, 2005, prior to the expenditure of funds for State administration, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.

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We appreciate the cooperation and assistance provided by your staff during and before our visit. The time that your staff spent in preparing for our visit resulted in a smooth, informative and organized visit. We look forward to our continued collaboration with Vermont to support your work to improve results for children with disabilities and their families.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Smith Lee". The signature is written in a cursive style with a large, stylized initial 'S'.

Stephanie Smith Lee

Director

Office of Special Education Programs

cc: Karin Edwards