



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

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Bureau of Indian Affairs
U.S. Department of Interior
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Dear Mr. Parisian:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification visit to the Bureau of Indian Affairs (BIA). As indicated in OSEP's letter to you of February 28, 2005, 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 BIA during the week of September 12-16, 2005.

OSEP appreciates the considerable challenges that BIA faces in administering its special education program. BIA is responsible for administering 184 schools located on 63 reservations across 23 States. Most of the BIA-funded schools are located in remote areas, making it difficult to recruit and retain service providers necessary to ensure that students with disabilities receive a free appropriate public education. While BIA directly operates some schools, the vast majority are tribally-controlled. Issues of tribal sovereignty further complicate BIA's efforts to carry out general supervisory responsibilities such as compliance monitoring and enforcement.

The purpose of OSEP's 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 you are aware, a sample of BIA schools was the subject of an audit review by the Department's Office of Inspector General (OIG) during 2004. An additional purpose of OSEP's September 2005 visit to BIA was to follow-up on the corrective actions undertaken by BIA and the BIA-funded schools for which there had been findings of noncompliance. As part of its visit, OSEP visited the Eastern Navajo Education Line Office, the Minneapolis Education Line Office, Fond du Lac Ojibwe School, and Wingate Elementary School, in addition to the Center for School Improvement (CSI).

OSEP conducted its visit jointly with several other offices within the Department: the Management Improvement Team, the Office of the Chief Financial Officer and the Office of Elementary and Secondary Education. Although each office has its unique responsibilities with regard to the programs it administers, wherever possible monitoring activities were carried out jointly in order to foster cross program partnership and to reduce the burden on BIA staff.

We appreciate the considerable time that you took to meet with OSEP staff during the visit. As you know, we also met with Mr. David Talayumptewa, Acting Deputy Director of BIA's Office of Indian Education Programs and Mr. Stan Holder, Acting Chief for the Office of Indian Education Programs' Center for School Improvement. We conducted interviews with Ms. Gloria Yepa, BIA's Special Education Director and members of her staff responsible for: (1) the oversight of general supervision activities (including monitoring, mediation, complaint resolution, impartial due process hearings, and State-wide assessment); (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) BIA's Federal Fiscal Year (FFY) 2003 Part B Annual Performance Report; (2) BIA's monitoring procedures manual; (3) the April 20, 2000 OSEP Monitoring Report; and (4) information from BIA's website.

OSEP conducted a public input conference call on August 16, 2005 so that parents and other interested parties could share their views on special education and related services provided and/or funded by BIA. OSEP also participated in a joint conference call with the other participating ED offices on August 16, 2005 during which BIA presented a general overview in preparation for the visit.

The information that you and your 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 BIA's systems for general supervision, data collection and reporting, and State-wide assessment.

General Supervision

In reviewing BIA's general supervision system, OSEP collected information regarding a number of elements, including whether the State: (1) has systemic, data-based, and reasonable approaches to identifying and correcting noncompliance; (2) 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; (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

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.

hearings, complaints, mediation, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.

At the time of OSEP's visit, the BIA system was comprised of 184 elementary and secondary schools, located on 63 different reservations in 23 States. One hundred twenty-three of the schools are grant or contract schools operated by tribes. BIA directly operates the remaining 61 schools.

The Center for School Improvement (CSI), within the Office of Indian Education Programs (OIEP), is headquartered in Albuquerque, New Mexico. CSI administers BIA's special education program and is responsible for providing technical assistance and training, monitoring, special education policies and procedures, Part B funding, 618 data and dispute resolution.

BIA operates 22 regionally-based Agency Line Offices. Each of these offices is supervised by an Education Line Officer (ELO) and staffed by a Field Education Specialist and a Special Education Coordinator (SEC). Agencies may also employ additional staff, including service providers who conduct evaluations and provide related services to both BIA-operated and tribally-controlled schools. ELOs have direct line authority and supervisory responsibility for the 61 BIA-operated schools and supervise contracts and grants for the tribally-controlled schools.

In matters pertaining to special education, the SEC is the primary liaison between BIA and the schools. The SEC has a number of responsibilities including:

- annual onsite program reviews and follow-up visits
- training and technical assistance
- Indian Special Education Program (ISEP) student certification
- ensuring the inclusion of students with disabilities in State-wide assessments
- participating in monitoring and evaluation teams.

Part B Monitoring

BIA uses multiple methods to monitor its schools for special education compliance. OIEP/CSI retains overall responsibility for this function; however various monitoring procedures are carried out by CSI headquarters staff, contract monitors and Agency staff. Although BIA's procedures are designed to address all special education requirements, OSEP found that lack of alignment and coordination, and pervasive problems with enforcement, severely limited BIA's ability to effectively ensure the timely correction of deficiencies in its IDEA program in accordance with 20 U.S.C. 1412(a)(11), 20 U.S.C. 1232d(b)(3), and 34 CFR §300.600.

Agency Line Offices are responsible for conducting annual ISEP audits for every school. Agency SECs are responsible for reviewing the records of 100 percent of students with disabilities each Fall to ensure that they are eligible for ISEP and IDEA funds. As a part of this review, the SECs verify the implementation of IDEA requirements, including that

students with disabilities are properly evaluated, individualized education programs (IEPs) are properly developed and in effect, appropriate placements are made and services provided, and procedural safeguards are afforded to children with disabilities and their parents. An action plan to address deficiencies is developed by the school and submitted to the Agency Line Office.

Agency Line Offices also carry out 2nd Tier monitoring annually. The primary purpose of 2nd Tier monitoring, usually conducted by the SEC, is to follow up on concerns previously identified through the ISEP audit. Ten percent of student records are reviewed. SECs inform schools of continuing or newly-identified deficiencies.

BIA has contracted with Mountain Plains Regional Resource Center (MPRRC) to develop and implement a Continuous Improvement Monitoring Process (CIMP). Through this process, special education and Title I requirements are addressed. The CIMP occurs during a five-year cycle and includes the following activities and components:

- School is notified by BIA that it will be monitored
- A self-assessment is completed by the school and submitted to BIA at least 30 days prior to the on-site monitoring
- Contract monitors and BIA staff conduct on-site data collection to validate self-assessment results
- A report is issued within 45 days of the on-site visit
- The school develops an improvement plan to address any noncompliance
- BIA reviews and approves the improvement plan
- BIA and Agency Line Offices track implementation of the improvement plan.

After reviewing BIA's procedures and interviewing OIEP leadership staff and CSI and Agency staff, OSEP has determined that BIA's process represents a reasonable approach to the identification of noncompliance. OSEP notes however, that the processes carried out by CSI and BIA's Agency Line Offices are not well-aligned, and often redundant. Because there is no shared electronic database, efforts to coordinate issues identified through the CIMP, ISEP audits and 2nd Tier monitoring are cumbersome and labor intensive. This also makes the tracking corrective actions especially difficult.

CSI staff provided several examples of the problems encountered with collecting 2nd Tier monitoring data. A May 20, 2005 memorandum from BIA's special education director to OIEP's Deputy Director indicated that six agencies had not submitted their 2nd tier monitoring reports by the April 29, 2005 due date. In addition, four agencies had not sent their Agency summary reports and 11 agencies had not submitted improvement plans to address noncompliance. The CSI staff member responsible for special education monitoring explained that part of the reason for agencies not sending reports has been their inability to collect 2nd Tier monitoring data from some tribally-operated schools. A document titled "Agency Action Plan – 2nd Tier Monitoring 2004-2005," received by BIA on May 31, 2005, did not include information from the Fond du Lac Ojibwe School, despite the fact that the school had previously-identified noncompliance (see OIG Audit

section of this letter). Sometimes, Agency Line Offices sent incomplete 2nd Tier monitoring information to BIA. For example, the Turtle Mountain Agency in Belcourt, North Dakota submitted 2nd Tier monitoring data for only seven of the 11 items included in BIA's 2nd Tier monitoring protocol, despite numerous telephone and facsimile contacts from BIA monitoring staff.

OSEP finds that BIA has not ensured that identified deficiencies are corrected in a timely manner, not to exceed one year from the date such deficiencies are identified. Through interviews with OIEP leadership staff and CSI and Agency staff, and review of BIA monitoring records, OSEP learned that BIA has considerable difficulty with enforcement, especially as it concerns tribally-operated schools. As noted earlier in this letter, the vast majority (123 of 184) of BIA-funded schools are tribally-operated.

In discussions with OSEP, OIEP leadership staff explained that its relationship with tribally-controlled schools was substantially different than it is with BIA-operated schools. While OIEP employs all the staff who work at BIA-operated schools and has direct authority over those staff, its authority over tribally-controlled schools is limited. BIA, through its Agency Line Offices, has the authority to approve tribes' grant applications. Those applications include assurances that, in operating its schools, tribes will comply with the provisions of IDEA. However, OIEP leadership explained that it cannot require a tribally-controlled school to accept technical assistance from OIEP headquarters or Agency staff. BIA monitors and requires corrective actions, but believes that under the Tribally Controlled Schools Act (TCSA) (25 U.S.C. 2501), it has no authority to enforce corrective actions against tribes. OSEP was also told that in some cases tribally-controlled school staff do not want BIA Agency Line Office staff in their schools.

OIEP leadership staff explained to OSEP that there are two mechanisms that enable BIA to take back responsibility for tribally-operated schools – reassumption and retrocession. OIEP staff stated that where there is programmatic noncompliance, BIA has no authority to reassume control of a tribally-operated school, unless a tribal governing body requests that it do so. Section 5203(f) of TCSA provides that a tribal governing body may request the “retrocession” to BIA of a tribally-controlled school. OSEP was told that, in fact, tribal governing bodies requested retrocession of the Havasupai School in 2002-2003 and the Mariano Lake Community School in 1999-2000.

When the OSEP team visited the Eastern Navajo Agency, the ELO explained that she was in the process of negotiating with the education committee of a tribal government. She wanted the committee to recommend to its tribal government that it request retrocession of a school that had serious compliance issues for the last three years. The school officials had ignored requests from the SEC to correct deficiencies including failure to provide inclusion services, and to ensure appropriate placements for students with disabilities. The ELO said that if she were unable to convince tribal authorities to request retrocession that she would inform OIEP leadership, but that she had no other authority to intervene with the school.

OIEP leadership staff stated that BIA can reassume control of a school only in the event that it can demonstrate gross mismanagement of funds or where the school authorities have knowingly jeopardized the lives, health or safety of students. OSEP was told that there are no provisions for reassumption for issues of programmatic noncompliance. According to OIEP leadership staff, BIA's enforcement options are limited. One staff member concluded by saying, "We don't have much of a hammer."

We understand that the enforcement options available under the TCSA are limited and this makes ensuring correction of identified IDEA deficiencies in tribally-operated schools difficult. However, this does not alter BIA's responsibility under IDEA to ensure the correction of noncompliance in all elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. Nothing in IDEA suggests that BIA is relieved of this responsibility in tribally-operated schools. The State Performance Plan (SPP), submitted on December 1, 2005, includes an action plan BIA is implementing to review and restructure its monitoring system by Fall 2006. (See pages 53-54 and Appendix C of the SPP). As required in OSEP's November 21, 2005 response to BIA's FFY 2003 Annual Performance Report (APR), the plan includes activities to ensure correction of noncompliance within one year of identification in accordance with section 612(a)(11) of IDEA and 34 CFR §300.600. However, it does not specifically address the barriers discussed above that impede BIA's ability to enforce IDEA in tribally-operated schools. Within 60 days of the date of this letter, BIA must submit to OSEP a revised plan that includes additional activities specifically designed to address the correction of noncompliance in tribally-operated schools. We would be willing to meet with BIA to discuss what steps can be taken to ensure correction in tribally-operated schools that would be consistent with the TCSA and BIA's responsibility under IDEA. BIA must include in the APR, due on February 1, 2007, data and analysis demonstrating that noncompliance with IDEA identified in BIA funded schools, including tribally-operated schools, is corrected within one year of identification.

Complaint Resolution. BIA has designated CSI to be responsible for the resolution of complaints received pursuant to the regulations implementing the IDEA. Within CSI, one person is responsible for intake of complaint investigation requests. CSI contracts through Utah State University with individuals on an "as needed" basis to resolve complaints. OSEP interviewed CSI officials responsible for complaint resolution and was informed that complaint requests that are received at the school are to be forwarded to the SEC at the Agency Line Office. The SECs at the agencies are to forward complaints to CSI in a timely manner so the complaint can be resolved within 60 days of the date of receipt. CSI received 8 complaints during calendar year 2001, 1 during 2002, 4 during 2003 and 17 during 2004. CSI staff explained that one school had 13 complaints filed during calendar year 2004.

The Part B regulations require that BIA issue its written decision within 60 days of receipt of the complaint, unless the timeline is extended due to exceptional circumstances with regard to a particular complaint (34 CFR §300.661(a) and (b)(1)). OSEP reviewed 11 of the complaints filed in this school and noted that the complaints were filed with the Agency between June 10 and July 29, 2004. CSI became aware of the complaints at a

national meeting in Denver and subsequently logged in the complaints on September 15, 2004. Complaint resolution personnel were assigned and responses to the complainants were issued on November 24, 2004. Although CSI reported these complaints as resolved within timelines in its Federal Fiscal Year 2003 Annual Performance Report (APR), OSEP notes that the timeline should be calculated from the June and July dates when the complaints were filed with the Agency Line Office which would make the complaints exceed timelines by 2 to 3 months. Even if the September 15, 2004 date had been the correct timeline for receipt, the complaints would still have been resolved beyond the 60-day timelines. OSEP noted no extensions in the files reviewed.

CSI made findings of noncompliance and required that the school take corrective action. In an interview with OSEP, the CSI staff member who had been responsible for managing the complaint process during this period stated that as of January 2005, the school had not completed the corrective actions. CSI had not followed up on this subsequent to a January 2005 fax to the schools. However, problems continued. In an April 2005 monitoring of the Agency, BIA concluded that serious issues relating to the issues raised in the complaints had not been corrected. On September 9, 2005, just prior to OSEP's visit, BIA sent another fax to the school requesting that it provide information on the status of required corrective actions resulting from the 2004 complaints.

CSI staff informed OSEP that they routinely start the 60-day timeline from the point the complaint is received at CSI because they do not know when complaints are received at the Agencies. OSEP raised concerns regarding the Agencies' understanding of their responsibility to forward complaints to CSI immediately upon receipt. CSI informed OSEP that subsequent to the above-discussed complaint, training had been provided to ELOs and SECs to ensure that in the future complaints are referred to CSI in a timely manner. OSEP reviewed training materials and noted that they were primarily a reiteration of the complaint requirements in the Part B regulations and did not clarify the responsibility of schools and Agencies to forward complaints in a timely manner to CSI. In addition, OSEP reviewed CSI's written complaint procedures and noted that the procedures state that the 60-day timeline starts from the point when CSI receives the complaint. Because the Agencies are components of OIEP, the 60-day timeline clearly starts when the Agency receives the complaint.

While in one Agency Line Office, OSEP questioned an SEC regarding complaint procedures. The SEC indicated that the Agency had not received a complaint but if it did the first action would be to contact the parent. The complaint would be taken to the school in an attempt to resolve the issues. The SEC further stated that CSI would probably be contacted at some point. The SEC indicated that most complaints are informal, rather than written, and resolved by assisting the parties to resolve issues. OSEP was further informed that parents may not be fully informed about the complaint provisions and some parents may have difficulty with submitting written complaints.

Within 60 days of receipt of this letter, BIA must provide either: (1) documentation that complaints are investigated and decisions issued within 60 days of receipt by BIA (including BIA's Agency Line Offices), unless an extension is granted due to exceptional

circumstances with regard to a particular complaint; or (2) a plan to ensure correction within one year from the date of this letter. Also within 60 days of the date of this letter, BIA must submit documentation demonstrating that corrective actions resulting from complaints filed during 2004 have been completed.

Due Process Hearings. As with complaints, BIA contracts with Utah State University to conduct due process hearings. Utah State University recruits and trains hearing officers. When CSI receives a request for a hearing, it contacts Utah State University, which provides CSI with a list of available hearing officers, and CSI arranges for a hearing officer to conduct the hearing. CSI receives few due process hearing requests and almost none go to hearing. CSI received 0 requests for hearings in calendar year 2001, 4 in 2002, 2 in 2003 and 4 in 2004. Of the hearing requests in 2004, all were withdrawn or settled prior to going to hearing.

Mediation. BIA encourages school staff to informally resolve disputes with parents. If parents are not satisfied with those efforts, they can request formal mediation. In FFY 2003-2004, there were 3 requests for mediation; all three resulted in mediation agreements.

Funding. During the verification visit, BIA staff told OSEP that Part B funds provided to tribally-controlled schools become "no year funds", meaning that these funds are not obligated subject to the provisions of 34 CFR §76.709. Section 76.709 of the Education Department General Administrative Regulations (EDGAR) states that,

- (a) If a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which congress appropriated the funds, it may obligate the remaining funds during a carryover period of one additional fiscal year.
- (b) The State shall return to the Federal Government any carry-over funds not obligated by the end of the carry-over period by the State and its subgrantees.

Under 34 CFR 76.1(a), the regulations in Part 76 apply to each State-administered program of the Department. A note following 34 CFR §76.709 states that this section is based on a provision in the General Education Provisions Act (GEPA). Section 421(b) of GEPA states that "notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds from appropriations to carry out any programs to which this chapter is applicable during any fiscal year, which are not obligated and expended by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such succeeding fiscal year".

Because Part B funds become available to States on July 1 of each program year, entities receiving funds under the Assistance to States for the Education of Children with Disabilities program have a total of 27 months to obligate the funds appropriated for a fiscal year. BIA does not require tribes to return funds that are not obligated at the expiration of the 27-month obligation period. BIA staff went on to explain that tribes are

free to invest Part B funds, consistent with §5207(b) of the Tribally Controlled Schools Act. Although TCSA does permit tribes to invest Part B funds, OSEP finds no authorization supporting the designation of these funds as “no year funds.” Part B funds provided to BIA, and subsequently to tribes for the operation of grant schools, are subject to the provisions of 34 CFR §76.709 of EDGAR and must be obligated with the 27-month obligation period. Any funds not obligated by the end of the carry-over period must be returned to the Federal Government.

Within 60 days of the date of this letter, BIA must clarify whether there is a provision in the TCSA that authorizes the designation of Part B funds as “no year funds.” If there is no such provision, BIA must clarify the extent to which this practice is occurring in tribally-controlled schools. If BIA finds that this practice is occurring, it must submit a plan to ensure that it enforces the provisions of 34 CFR §76.709 with respect to Part B funds provided to tribes.

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 correcting any inaccuracies; and (4) has identified any barriers, (e.g., limitations on authority, sufficient staff or other resources, etc.) that impeded the State’s ability to accurately, reliably and validly collect and report data under section 618.

BIA collected data through various means, including: manually (paper and pencil), electronically (Web-ISEP program), spreadsheets, and Online Annual Report. CSI staff informed OSEP that a system-wide integrated data collection system was not fully implemented in all of its schools. Child count data were often collected manually by designated school personnel, and then entered into computers (using the Web-ISEP program) where the data were sent directly to CSI via its server. Data are then sent to Agency Line Offices to be verified. Verification was often done by a sight-count and by record reviews conducted by Agency Line Office staff. Data for OSEP tables (discipline, exiting, personnel) were entered on spreadsheets by designated school personnel before being sent electronically to Agency Line Offices. The data were then correlated and sent to CSI. A data manager has been assigned the responsibility of handling the data received at CSI.

In interviews with CSI staff, OSEP was informed of several problems related to BIA’s current system for collecting 618 data. The data manager told OSEP that it is difficult to be 100% accurate because much of the data is “paper and pencil” and processed manually which increases the chance of human error. In interviews with CSI staff, OSEP was told

that data verification was a problem and that only the Indian School Equalization Program (ISEP) data could be systematically verified. OSEP was told that CSI conducts edit checks for the 618 data submitted by schools, but has no process for independently verifying its accuracy.

CSI trains Agency Line Office staff regarding their responsibilities for ensuring the accurate collection and reporting of data by their respective schools. However, each Agency Line Office determines the manner with which it works with its schools regarding data collection.

CSI staff informed OSEP that it is in the process of implementing the Native American Student Information System (NASIS), a web-based student information system. NASIS is a comprehensive program for entering all data (618 data, OSEP data, child count) at the school level. These data are stored in a commercial server, and can be retrieved for use, analysis, and reporting by CSI. In addition, NASIS accepts academic achievement scores from publishers and provides better control over all student-related data collection. Program software for NASIS has been in place since August 2005 and personnel in approximately 25 schools have been trained in its use (given access and passwords). Once all designated school personnel are trained, the expectation will be for schools to start using the system. Barriers for implementing NASIS include the need for training, and monitoring for correct use of the new system. BIA stated all designated school personnel would be trained by June 30, 2006. Full implementation was expected for the SY 2006-2007.

By implementing NASIS, BIA is attempting to make improvements in its data collection system. BIA reported on page 66 of the SPP submitted on December 1, 2005 that with the use of NASIS, data will be collected using consistent definitions and codes, mitigating the introduction of errors inherent in manual computations. The SPP included activities to ensure that data are accurately collected and reported. Although BIA did not specifically address data verification in the SPP improvement activities, it references initiatives it will be taking with regard to data verification on pages 64 and 65 of the SPP. OSEP assumes that these initiatives will be part of BIA's overall effort to improve its data collection, verification and reporting activities. OSEP looks forward to reviewing data and information indicating continued progress in ensuring timely and accurate data in the APR due on February 1, 2007.

State-Wide Assessment

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

and (4) reports on the performance of children with disabilities on those assessments, in a manner consistent with those requirements.

In order to collect State-wide assessment data accurately and report these data in a meaningful way, BIA has established an interim administrative rule which encourages schools to use the standards-based assessments of the States in which the schools were located; however, schools currently have the choice of whether to do so or not. CSI staff stated that currently all BIA schools have adopted the assessment standards of the States and use those States' regular and alternate assessments. Because BIA schools are located in 23 States, BIA's State-wide assessment system is comprised of 23 different regular and alternate assessment instruments. In addition to the varying regular and alternate assessment instruments, BIA's State-wide system, including analysis and reporting, must account for inconsistencies among the State systems its schools use. These include varying grade levels tested, testing windows, content areas tested, and criteria for determining proficiency.

BIA reported that guidance, training, and technical assistance regarding State-wide assessments was provided through the line agencies as well as State and regional training activities. Currently, BIA is working with 23 States to develop Memoranda of Agreement (MOA) involving State-wide assessments. The MOAs will stipulate that States provide technical assistance and training on testing procedures. Once in place, the MOAs will address test security issues and training and technical assistance for staff, as well as ensure that assessments are scored by the same contractors used by the State and that scores will be sent directly to CSI.

CSI reported using No Child Left Behind (NCLB) accountability workbook standards as a guide for determining individual State standards and proficiency determinations. Most States assessed reading and math achievement, while a few assessed language arts. Data were collected at the school level before being forwarded through the Agency Line Offices. In annual reports, schools submit assessment data online to CSI. Starting in the 2002-2003 school year, schools were required to report the numbers of students with disabilities: participating in general assessments with or without accommodations; participating in alternate assessments; participating in out-of-level assessments; whose test results were invalid; and who were not tested. Schools, in reports to line agencies, included data on the number of children with disabilities participating in State-wide assessments with accommodations and modifications. At the Agency level, SECs were responsible for ensuring that the required accommodations and modifications were documented in IEPs and that children with disabilities received appropriate accommodations and modifications in administration, if necessary, of State-wide and district-wide assessments. Agency Line Offices were responsible for verifying the accuracy of assessment data. In addition, assessment summaries from test publishers were attached to the report and used to verify the accuracy of participation data and test scores.

BIA reported accountability information on its website. In addition, BIA schools report assessment results individually in various ways, including: tribal meetings, websites, and

publications. BIA's 2002 Part B grant award was issued with Special Conditions related to reporting publicly on the participation and performance of children with disabilities on alternate assessments. Since then, BIA has implemented an improvement plan addressing this noncompliance and, subsequently, special condition status was removed from the 2005 grant award. BIA reported to OSEP that strategies were in place to ensure continued compliance with this requirement, including assigning a data specialist to monitor the reporting of assessment results.

OSEP has determined, through its review of BIA's written procedures for State-wide assessments and BIA'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 for which BIA is responsible implement BIA's procedures in a manner consistent with the requirements of Part B.

Although IDEA does not include requirements specifying performance levels, OSEP is concerned with the poor performance of Indian children with disabilities, as reported by BIA. For FFY 2004-2005, 79.31% of the children with disabilities attending BIA-funded schools scored in the basic range (lowest) in language arts, while only 19.46% and 1.23% achieved the level of proficient or advanced, respectively. The comparable language arts data for all students in BIA-funded schools is 52.81% basic, 43.84% proficient, and 3.35% advanced. On math assessments, 82.16% of the children with disabilities achieved at the basic level, while only 16.59% and 1.25% achieved at levels of proficient or advanced, respectively. The comparable math performance data for all students is 65.29% basic, 30.74% proficient, and 3.96% advanced.

Office of Inspector General (OIG) Audit. The OIG conducted five audits, applicable to the period July 1, 2001 through September 30, 2003, of the following BIA-funded schools: Fond du Lac Ojibwe School, Circle of Nations School, the Eastern Navajo Agency Schools (Fort Wingate Elementary and Bread Springs Day School), the Turtle Mountain High School, and the Turtle Mountain Elementary and Middle Schools (Schools). The audits' objectives were to determine whether these schools administered IDEA Part B funds in accordance with applicable requirements, laws, and regulations, and provided services to eligible children in accordance with the students' IEPs. Findings from the OIG audit included the following: (1) special education and related services were not provided in accordance with the student's IEP (34 CFR §300.350(a)(1)); (2) parents were not informed of their child's progress as specified in the student's IEP (34 C.F.R. §300.347(a)(7)(ii)(A)); and (3) special education and related services provided to all students in accordance with their IEPs were not documented (34 CFR 300.347(a)(3)).

In the final audit report, OIG made recommendations regarding the final audit findings, including: obtaining assurance from each school that Part B funds would be used to deliver the educational assistance proposed in each of the IEPs for the children with disabilities; providing instruction to each school on the documentation of all special

education and related services; and submitting corrective action plans. BIA agreed to implement OIG's recommendations. BIA also proposed a corrective action plan that included strategies, benchmarks, targets, and timelines to ensure the noncompliance identified was corrected. OSEP has received documentation of the corrective actions from each of the BIA schools as required by the OIG audit.

As part of OSEP's September 2005 verification visit to the BIA, OSEP visited the Eastern Navajo Education Line Office, the Minneapolis Education Line Office, Fond du Lac Ojibwe School, and Wingate Elementary School, in addition to the CSI. OSEP interviewed Agency Line Office staff, special education teachers, regular education teachers, related service providers, and administrators. Both Agency Line Office staff and school personnel reported that corrective actions have been implemented addressing the OIG audit findings. Strategies implemented included: 1) enacting detailed policies and procedures for implementing and documenting special education and related services; 2) providing training and technical assistance on IEP documentation; 3) developing sign-in logs to track service providers and document services; and 4) training staff on requirements related to informing parents of their child's progress as specified in the student's IEP.

OSEP reviewed a random sample of 24 student records at Fond du Lac Ojibwe School and Wingate Elementary School. In the records reviewed, OSEP found clear documentation of services on IEPs, logs documenting related services received by students, and copies of student progress reports that were issued to parents. In interviews with special education teachers, regular education teachers, and related service providers, OSEP was told that training by Agency Line Office staff has led to improvements in the documentation of special education services as well as the provision of services to students in accordance with their IEPs. Further, OSEP was told that the use of service logs has improved the documentation of special education services and has made it easier to track the work of service providers.

BIA informed OSEP that their monitoring practices have been modified to include specific areas related to the OIG audit findings. Through interviews and file reviews, CSI included an evaluation of service documentation and the delivery of IEP services in their monitoring system. Based on record reviews and interviews with CSI staff, Agency Line Office staff, and school personnel, OSEP found that the issues identified in the OIG audits had been corrected.

Conclusion

As stated above, within 60 days of the date of this letter, BIA must submit to OSEP:

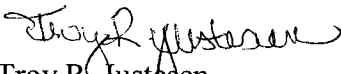
1. Revisions to the plan in Appendix C of the SPP that include additional activities specifically designed to address the barriers to ensuring correction of noncompliance in tribally-operated schools within one year of identification ;
2. Either: (a) documentation that complaints are investigated and decisions issued within 60 days of receipt by BIA (including BIA's Agency Line Offices), unless

an extension is granted due to exceptional circumstances with regard to a particular complaint; or (b) a plan to ensure correction within one year from the date of this letter. Also, BIA must also submit documentation demonstrating that corrective actions resulting from complaints filed during 2004 have been completed; and

3. A clarification of the extent to which treating Part B funds as “no year funds” is occurring in tribally-controlled schools. If BIA finds that this practice is occurring, it must submit a plan to ensure that it enforces the provisions of 34 CFR §76.709 with respect to Part B funds provided to tribes.

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

Sincerely,



Troy R. Justesen

Acting Director
Office of Special Education Programs

cc: Ms. Gloria Yepa