



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

Honorable Kenneth James  
Director of Education  
Arkansas Department of Education  
Four State Capitol Mall, Room 304A  
Little Rock, Arkansas 72201-1071

DEC 13 2004

Dear Director James:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) verification visit to Arkansas. As indicated in my letter to you of June 18, 2003, OSEP is conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance and improving performance under Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to Arkansas during the week of October 27, 2003.

The purpose of our verification reviews of States is to determine how they use their general supervision, State-reported data collection, and State-wide assessment systems to assess and improve State performance; and to protect child and family rights. The purposes of the verification visits are to: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify and correct noncompliance.

As part of the verification visit to the Arkansas Department of Education (ADE), OSEP staff met with Marcia Harding (the State's Director of Special Education) and members of ADE's staff who are responsible for: (1) the oversight of general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings); (2) the collection and analysis of State-reported data; and (3) ensuring participation in and the reporting of student performance on State-wide assessments. Prior to and during the visit, OSEP staff reviewed a number of documents<sup>1</sup>, including the following: (1) Arkansas's Part B State Improvement Plan; (2) the State's Biennial Performance Report; (3) Arkansas Rules and Regulations Governing Special Education and Related Services; (4) Arkansas State Improvement Grant (SIG) application; (5) Arkansas 2001 Procedural Manual for Compliance Monitoring of Local Educational Agencies' Programs for Children with Disabilities; (6) ADE's 2003-2004 Focused Monitoring Manual; (7) the State Assessment Manual for Special Populations; (8) selected ADE monitoring files for school districts, including monitoring reports and corrective action documents; (9) the materials related to presentations by ADE staff regarding the State's general supervision of special education, that included student assessment and 618 data oversight; (10) ADE tracking logs for complaints and due process hearings; (11) ADE's

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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.

2003 Data Collection materials; and (12) and other information from the State's web site. OSEP also conducted a conference call on October 21, 2003 with a number of the Arkansas State Special Education Advisory Panel members, to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and State-wide assessment. Marcia Harding also participated in the call and assisted us by recommending and inviting the participants.

The information and excellent presentations that Marcia Harding and her staff provided during the OSEP visit, together with the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of ADE'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.

OSEP believes that ADE's systems for general supervision constitute a reasonable approach to the identification and correction of noncompliance. The continuation of the basic special education compliance system as the State implements the Random Monitoring, Continuous Improvement Monitoring, and Continuous Improvement/Focused Monitoring triad should continue the State's supervisory responsibility for compliance.

ADE informed OSEP that it designed general supervision systems with the goal of ensuring both compliance and improved performance for students with disabilities. Each year, for each category of monitoring (Random Monitoring, Continuous Improvement Monitoring, and Continuous Improvement/Focused Monitoring), a select number of local education agencies (LEAs) was identified for monitoring based on an analysis of numerous data elements, established by OSEP. For all forms of monitoring, a district/school-based self-assessment was required. Improvement planning to address aspects of the special education program found to be deficient or noncompliant was incorporated into the LEA's Arkansas Comprehensive School Improvement Plan (ACSIP).

Data profiles were used to identify LEA trends over the past three years, including the most current data available. Districts were identified for Continuous Improvement Monitoring or Continuous Improvement/Focused Monitoring based on an analysis of the data and trends. Additional LEAs were selected to participate in Random Monitoring. Data and information reviewed prior to identifying LEAs to participate in continuous improvement and/or focused

monitoring include: the results of the previous official ADE special education LEA monitoring; the number and type of any deficiencies requiring corrective actions; the findings and decision(s) issued in complaint investigations and due process hearings occurring during the previous three years in the LEA; the status of the LEA relative to accreditation, including whether the LEA has been or is currently placed on academic and/or fiscal distress by the ADE; and status and ranking in each of the following trigger areas --

- Percentage of students with disabilities participating in regular classes at least 80% of the instructional day (least restrictive environment (LRE) data)
- Dropout rate for students with disabilities as compared to that of non-disabled students in the LEA
- Percentage of students with disabilities graduating with a regular diploma as compared to non-disabled students in the LEA
- Percentage of students with disabilities receiving long-term suspensions/expulsions as compared to non-disabled students in the LEA
- Percentage of minority students receiving special education and related services that exceeds the percentage of that group in the LEA as a whole
- Participation rates for students with disabilities in the LEA in the State-wide student assessment program
- Performance outcomes for students with disabilities in the LEA in the State-wide student assessment program

As documented in ADE's monitoring manuals and evidenced in its monitoring files, ADE conducts initial on-site visits to the districts selected on the basis of established criteria. The LEA review team and the ADE monitoring team meet to discuss the self-assessment process and the LEA's data profile (which is also on the SEA web-site), and reviews parent survey data. The ADE Monitoring Team subsequently conducts a validation process that includes a review of student files randomly selected from the LEA's December 1 Child Count, and an on-site visit that includes a review of the implementation of individualized education programs (IEPs). The specific student files that have been the involved in a due process hearing or complaint also are selected in district compliance monitoring reviews. Charter schools, correctional facilities, and other special education agency programs are included in the monitoring process. During the site visit the ADE Monitoring Team conducts interviews with teachers, administrators, parents, service providers, and students (when appropriate). The site visits also include observations of special education and regular education classrooms, and related service providers. It was evident from ADE's monitoring manuals and monitoring files, and interviews with ADE staff, that ADE uses data from several different sources to focus its data collection in each LEA.

Following the completion of the monitoring activities, the ADE monitoring team leader provides the LEA with a final report and meets with the LEA personnel to discuss the findings and areas for corrective actions to be addressed in the LEA improvement plan that includes effective, evidence-based strategies that will address the areas of deficiencies. The LEA submits to ADE the improvement plan that confirms that all areas identified in the monitoring process have been addressed, and that there are measurable benchmarks that lead to improvement. Technical assistance is provided to support the LEA improvement efforts. There are regional specialists in each of the State's nine regions who assist in providing the technical assistance. The ADE

monitoring team conducts follow-up site visits to verify the implementation of the improvement plan, periodic progress reviews, and confirmation of implementation of all related corrective action plans.

As documented by ADE's schedule of monitoring visits and monitoring files, ADE conducts an on-site monitoring review of each of the 308 LEAs and the other public agencies that provide special education at least once every three years, and visits agencies with persistent noncompliance more often to provide technical assistance and to collect data to determine the status of correction. It was evident from OSEP's interviews with the monitoring staff that ADE provided substantial training to the personnel conducting monitoring reviews, and ensured inter-rater reliability across its nine regional monitoring supervisors. It was clear from ADE's monitoring files and its summary of its findings that ADE is making findings of noncompliance regarding a broad array of Part B IDEA requirements.

While ADE has not found it necessary to withhold funds from LEAs, it believes the threat of withholding funds has been sufficient to secure compliance. Additionally, the State has directed LEAs to allocate funds for specific areas related to special education noncompliance. ADE staff provided documentation of the substantial technical assistance that it provided to LEAs to ensure effective correction of noncompliance. ADE's monitoring files showed that, in most cases, it was successful in ensuring correction of noncompliance within one year or less. At the time of the verification visit all noncompliance identified during the 2002-2003 monitoring cycle had been corrected within the one year timeline. ADE reported that there was a small number of LEAs where, notwithstanding extensive guidance and technical assistance, noncompliance persisted for more than one year. ADE staff continued its general supervisory oversight to address the persistent LEA noncompliance, providing frequent and targeted technical assistance and continued to review district data. Also, as part its oversight responsibility, the State used a data base to track hearing and complaint issues, district risk factors, and monitoring results that were reviewed quarterly and reported to the State Advisory Panel. ADE staff informed OSEP that it would withhold the funds of any LEA if full correction was not achieved, and that it has invoked probation and other disciplinary actions for charter schools. It appears that ADE's procedures for ensuring correction are generally effective.

ADE's systems for complaint resolution and due process hearings are administered in the Special Education Office. Formal written due process hearing requests and complaints across the State are submitted to ADE's legal division in the Special Education Office for assignment and tracking. The State has implemented a plan to improve the timeliness of due process hearings to meet the requirements of 34 CFR §300.511. OSEP reviewed the State's hearing log and determined that the 45-day hearing timeline had been met or appropriately extended. Additionally, two hearing cases were selected at random for comprehensive review, analysis, and verification of the process.

OSEP learned, through its review of ADE's complaint log and interview with the staff responsible for resolving complaints, that ADE had not issued all written decisions on Part B complaints within 60 calendar days from its receipt of the complaint, unless the timeline was extended due to exceptional circumstances that existed with regard to a particular complaint,

consistent with 34 CFR §300.661(a) and (b)(1). The total number of complaints that exceeded the 60-day timeline is as follows:

- 2003 - 11 of 24 complaints
- 2002 - 2 of 21 complaints

During 2003, the additional time needed for ADE personnel to review and sign complaints accounted for 7 out of the 11 complaints that exceeded the 60-day timeline. In all but one instance, ADE exceeded the 60-day timeline by only two or three days.<sup>2</sup> However, IDEA specifies that complaint timelines may be extended only for exceptional circumstances with regard to a particular complaint.<sup>3</sup> This issue is being addressed through OSEP's response to ADE's Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) IDEA Part B funds.

As described above, ADE used data from several different sources to help focus its site visit data collection in each LEA. In addition, OSEP learned from its review of ADE's improvement planning documents and its interview with ADE staff, that the State used data from monitoring findings, Section 618 data, State-wide assessment data, and other similar data to inform its improvement planning process and to refine its monitoring procedures.

The Special Education Office interfaces with other offices in ADE whose functions impact children with disabilities in the State. For example, the Accountability Office involves the Special Education Office in decisions regarding large-scale assessments, including the regular assessment with accommodations, and the alternate assessment. Staff of the Special Education Office also participate in the monitoring of assessments conducted by the Accountability Office.

OSEP was impressed with the integration of the functions of multiple State offices that impact the educational service delivery for students with disabilities in Arkansas, and with the integrated use of data in the general supervision oversight of special education. It was noted that the leadership provided by the Special Education Office in Arkansas for these multiple integration processes has been essential for its successful results.

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

In its review 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 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

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<sup>2</sup> In the remaining instance, complaint timelines had been properly extended due to the exceptional circumstances existing with regard to the particular complaint.

<sup>3</sup> ADE staff informed OSEP that, as part of each on-site monitoring visit, the implementation of hearing and complaint decisions is verified.

other resources, etc.) that impede the State's ability to accurately, reliably and validly collect and report data under section 618.

ADE staff informed OSEP that Arkansas used a single data system for all students (i.e., children with and without disabilities), managed by Arkansas Public School Computer Network (APSCN) and that LEAs submit child count data to ADE electronically. A full-time data and grant manager in the Special Education Office works in close collaboration with APSCN, and while there was a temporary vacancy in the position, the previous manager provided excellent leadership during the transition phase. They further described how APSCN staff and the special education data manager performed complex edit checks. The data manager also performs a manual check of LEA data across multiple years to detect anomalies. ADE staff reported that: (1) LEA staff responsible for reporting data receive training and support from the APSCN regional staff, and are provided with a list of resources, posted on the State's website, as well as a manual for standard operating procedures; (2) the Special Education Data Dictionaries were updated and made available on the SEA web site; (3) Quarterly Special Education/APSCN content meetings were held to review data issues; and (4) APSCN conducts inter-periodic statistical data analysis among Section 618 elements and other data sets. The 618 data disaggregated by district, were posted on the SEA web site. Each district was given an opportunity to review the accuracy of its data prior to the public posting. The data were used in the special education monitoring process, and districts were aware of the use of the 618 data in the high stakes decision-making process. ADE's training, materials, and procedures, as described above, result in an effective process for collecting and reporting 618 data.

### *State-wide Assessment*

In its review of the State's system for State-wide assessment, OSEP collected information regarding a number of elements, including whether the State: (1) establishes procedures for State-wide assessment that meet the participation, alternate assessment, and reporting requirements of Part B, including ensuring the participation of all students, including students with disabilities, and the provision of appropriate accommodations; (2) provides clear guidance and training to public agencies regarding those procedures and requirements; (3) monitors local implementation of those procedures and requirements; and (4) reports on the performance of children with disabilities on those assessments, in a manner consistent with those requirements. In order to better understand Arkansas' system for State-wide assessment, OSEP also discussed with your staff how the alternate assessment is aligned with grade-appropriate content standards.

ADE informed OSEP that it provided extensive training and guidance to LEAs regarding the participation on State-wide assessments, 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. If the IEP team determines that the regular assessment is not appropriate for the student, it makes a determination of the accommodations needed to participate in the regular assessment, or recommends participation in the alternate assessment. All students in Arkansas must participate in the State-wide assessment process. ADE's monitoring manual and monitoring files show that ADE monitors LEAs for compliance with requirements regarding State-wide assessment, and provides improvement strategies for LEAs when necessary. ADE

informed OSEP that it required each LEA to account specifically for each child with a disability to ensure that he or she has participated in either the regular or alternate assessment. Additionally, the State Accountability Office monitors participation in State-wide assessments for all students, including special education students, and involves special education staff in their monitoring process.

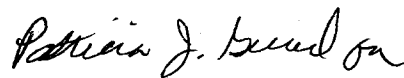
As evidenced by reporting documents that ADE submitted in September 2003 and during the verification visit, ADE reports to the public on the performance of children with disabilities on the regular and alternate assessments with the same frequency and in the same detail as it reports on the performance of children without disabilities.

The Arkansas alternate assessment is a portfolio process. The portfolio items are linked to the Arkansas Functional Curriculum Domain areas. The IEP team is responsible for decision-making regarding participation in the alternate assessment. Scores for students taking the alternate assessment are reported in four levels of academic achievement, as are the scores for other assessments<sup>4</sup>. The scores for special education students taking the alternate assessment are included in the accountability system, and are reported on the State's web site.

OSEP has determined, through its review of the State's written procedures for State-wide assessments and the State's reports to the public and the Secretary on the participation and performance of children with disabilities on such assessments, that those procedures, as written, and those reports, are consistent with Part B requirements. OSEP cannot, however, without also collecting data at the local level, determine whether all public agencies in the State implement the State's procedures in a manner that is consistent with Part B of IDEA.

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to our continued collaboration with Arkansas 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: Marcia Harding

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<sup>4</sup> Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. For example, the Title I regulation requires, at 34 CFR 200.2(b)(4), that all State assessments must: "(4)(i) Be valid and reliable for the purposes for which the assessment system is used; and (ii) Be consistent with relevant, nationally recognized professional and technical standards." This letter does not, and should not be interpreted to address Arkansas' compliance with the requirements of Title I.