



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

Honorable Alice Seagren
Commissioner
Minnesota Department of Education
1500 Highway 36 West
Roseville, MN 55113

MAR 9 2005

Dear Commissioner Seagren:

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 Minnesota. As indicated in my letter to former Commissioner Cheri Pierson Yecke of April 8, 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 with, and improving performance under, Part B and Part C of the Individuals with Disabilities Education Act (IDEA). OSEP conducted its visit to Minnesota during the week of August 23, 2004. This letter addresses our findings regarding your systems for both Part B and Part C.

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 these 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 Minnesota Department of Education (MDE), OSEP staff met with you, Deputy Commissioner Chas Anderson, Assistant Commissioner Rollie Morud, Dr. Norena Hale, Manager, Special Education Policy, and other MDE managers and 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 documents¹, including the following: (1) the State's Self-Assessment; (2) Minnesota's State Improvement Plan; (3) the State's Part B Biennial Performance Report for grant years 1999-2000 and 2000-2001; (4) the State's Federal Fiscal Year (FFY) 2001 and 2002 Part C Annual Performance Reports (APRs), and FFY 2002 Part B APR; (5) Minnesota's State Improvement Grant Application; (6) MDE's written responses to the overarching questions around which OSEP is focusing its verification reviews; (7) the Minnesota Special Education Monitoring Model; (8) MDE's tracking logs for complaints and due process hearings; (9) MDE's submissions of data under Section 618 of the IDEA; (10) the State's Part B eligibility documents

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.

and Part C application; (11) State regulations; and (12) other information and numerous documents posted on the MDE's web site.

OSEP conducted a conference call on May 18, 2004 with members of Minnesota's Continuous Improvement Steering Committee, to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection and reporting, and Part B State-wide Assessment. Dr. Hale and MDE staff also participated in the call and assisted us by inviting the participants. In addition, OSEP conducted a conference call regarding those topics on August 3, 2004, with representatives from a number of groups that represent children with disabilities and their parents.

The information that Dr. Hale and other MDE administrators and 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 MDE's systems for general supervision, data collection and reporting, and State-wide assessment.

In your letter of September 29, 2004 and the chart that Deputy Commissioner Chas Anderson sent by e-mail on September 28, 2004, the State set forth its response to some of the issues that OSEP identified during its verification visit, including the steps that the State has taken, or plans to take, to address some of those issues. In referencing that letter and chart below, OSEP refers to the State's September 29, 2004 letter. OSEP also received a second letter from Deputy Commissioner Anderson, dated October 13, 2004, in which MDE responded to OSEP's August 17, 2004 response to the State's FFY 2002 Part B APR. With regard to the noncompliance related to untimely hearing and complaint decisions (which OSEP has addressed in both its August 2004 letter and this letter), MDE's October 2004 response is discussed below.

General Supervision

In looking at 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.

MDE explained that because the State's mandate for the provision of a free appropriate public education (FAPE) begins at birth and the State has established a birth through 21 system for providing educational services to children and youth with disabilities, MDE uses a single unified system for general supervision under both Part C and Part B and monitors local education agencies (LEAs)² for compliance with both Part B and Part C requirements.³ MDE described its

² Minnesota has 349 LEAs, not including charter schools. These LEAs include independent districts, special districts, education districts, intermediate school districts, and the State Academies for the Deaf and Blind.

general supervision system as being comprised of five components: (1) special education program monitoring; (2) special education fiscal monitoring; (3) special education complaints; (4) due process hearings; and (5) alternative dispute resolution (including mediation and facilitated Individualized Education Program (IEP) and Individualized Family Service Plan (IFSP) meetings. MDE's Division of Compliance and Assistance (DCA) is separate from the Division of Special Education Policy (DSEP), and is responsible for implementation of these five components of the general supervision system.

MDE has been implementing its current revised monitoring system since the 2000-2001 school year under which school districts are monitored through either traditional on-site monitoring or self-review/validation. MDE explained that in order to be eligible to participate in self-review/validation, rather than traditional on-site monitoring, a district must be "in compliance." Initially, all school districts except Minneapolis and charter schools (each of which is an LEA) were permitted to participate in self-review/validation. At the time of OSEP's visit, 20% of the State's districts were assigned to the traditional monitoring track, and the remaining 80% were engaged in self-review/validation.

MDE explained during the visit that MDE had a cycle for compliance monitoring of LEAs, under which each LEA received a traditional on-site monitoring review or self-review validation visit once every four years, and that the State planned to transition to a five-year cycle during the 2004-2005 school year.

Self-Review. MDE explained that its goals for the self-review process are for each LEA to maintain and improve general compliance, and to develop a program evaluation system that addresses the quality of special education programming. Each LEA participating in self-review must submit an annual report to MDE by June 30 each year. The first year's report is a "planning report," in which the LEA outlines how it will collect and analyze data to address compliance and performance. The planning report is intended to create a foundation for an integrated strategic plan through the development of mission, belief and goal statements, an internal monitoring process, and a data collection plan including questions to be answered through the analysis and interpretation of data. MDE must approve the LEA's data management plan, which must address the collection of compliance data and will be used to establish a baseline for future comparisons and to support progress toward LEA-identified goals or as an indication of areas of high need.

Each LEA is then responsible for implementing its approved action plan, and, in each year after the first, must submit an implementation report (by June 30), in which it includes: (1) performance and compliance information from its review and analysis of data; (2) any needed changes to its data collection plan; (3) its plan to improve performance in high priority areas and to correct any areas of noncompliance that it identifies; and (4) a report on its progress in correcting noncompliance. (Correction of noncompliance is further addressed below.) MDE

³ MDE explained that while the State's 96 Interagency Early Intervention Committees (IEICs) are the mechanism for ensuring interagency coordination at the local level, under Minnesota law, school districts are responsible for ensuring compliance with both Part B and Part C, and that MDE addresses local Part C compliance through its traditional and self-review-validation monitoring of school districts and does not have separate monitoring procedures for IEICs.

explained that its staff and LEA representatives review the annual reports for internal consistency with the initial plan, implementation of the action plan, progress made on areas of noncompliance, State goals and the LEA's data management plan. MDE informed OSEP that it provides technical assistance throughout the self-review process and develops a dynamic understanding of LEA compliance and program issues.

By June 30 of the year prior to the scheduled MDE validation visit, an LEA must complete a compliance self-review that includes student record reviews and collection of stakeholder data. During the following school year, MDE conducts a validation review, to verify the LEA's data collection process, ensure that all compliance areas are addressed, and document LEA improvement in noncompliance areas included in the previously-approved Action Plan. Prior to the validation visit, a Lead Compliance Specialist reviews the LEA's planning and implementation reports, to ensure that the validation review focuses on any additional key areas not addressed by the LEA compliance review. MDE explained that the breadth and process for validation reviews is very similar to those for traditional reviews. After the validation visit, the assigned MDE Lead Compliance Specialist writes a report that addresses the status of the LEA's self-review process, areas of improvement, and areas of noncompliance not previously identified. If areas of noncompliance remain or new areas are identified, the LEA must revise the existing action plan to address those areas. This revised Action Plan must be submitted to MDE for approval by the following June 30.

MDE reported that, based on the high correlation between its validation findings and LEAs' self-review findings, it believes that districts are accurately and honestly making self-review compliance determinations.

Traditional Review. As noted above, approximately 20% of the State's LEAs (including all charter schools) are assigned to traditional review, rather than self-review. Each of these LEAs receives a traditional monitoring visit from MDE once every four years (or, as proposed, five years), pursuant to the cycle that MDE has established. In preparation for a MDE traditional review site visit, an MDE Lead Compliance Specialist selects student records for review, and collects and reviews LEA data including, but not limited to, previous monitoring reports, complaint decisions, data regarding non-discriminatory evaluations, and stakeholder surveys. During a monitoring visit, the MDE team reviews student records, interviews staff, and visits facilities. MDE informed OSEP that it: (1) selects and reviews at least 5% of the files for each district, and used a stratified sampling selection process to ensure that all disabilities are addressed; and (2) reviews at least five Part C files in each district (unless there are fewer than five children receiving Part C services in the district), but does not use a stratified sampling process, or implement any other procedures, beyond this minimum of five Part C files, to ensure that sufficient Part C files are selected to ensure an adequate review of Part C compliance. OSEP explained during the verification visit that it was concerned, especially in light of the very few findings of Part C noncompliance that MDE has made, that this small number of Part C files may not be sufficient for effective monitoring of Part C requirements. In its September 29, 2004 letter, the State confirmed that it would increase the number of Part C files that it reviews as part of its traditional and verification visits, and OSEP assumes files reviewed will be representative samples.

Monitoring of all Part C and Part B Requirements. Pursuant to 34 CFR §300.600 and the General Education Provisions Act (GEPA) at 20 U.S.C. 1232d, MDE must implement effective methods for monitoring for compliance with all Part B requirements. Similarly, pursuant to 34 CFR §303.501 and 20 U.S.C. 1232d, MDE must implement effective methods for monitoring for compliance with all Part C requirements. MDE acknowledged that under its current monitoring procedures, MDE identifies noncompliance only if it can be identified through the review of documents. MDE acknowledged that although it conducts surveys and interviews as part of its validation and traditional monitoring reviews, it makes no findings of noncompliance that cannot be based on document review, and that there are, therefore, requirements regarding which MDE has no method for making monitoring findings. Thus, MDE reviews records to ensure that all children receiving Part C services have a service coordinator and that, if the service coordinator is an early childhood special education teacher (as are 85% of service coordinators), the caseload limitation of 1:12 has not been exceeded. MDE does not, however, implement any systematic monitoring method for determining whether services coordinators fulfill all of the responsibilities set forth at 34 CFR §303.23. Similarly, while MDE reviews evaluations and IFSPs to ensure that the IFSPs are based on the evaluations, and that all required content is included, MDE has no method for making findings as to whether children and families actually receive services consistent with their IFSPs. There were similar examples for Part B, including MDE having no method for determining whether districts made and implemented service and placement decisions in a manner that met Part B requirements.

In its September 29, 2004 letter, the State indicated that MDE is in the process of developing standard practices for conducting focus groups, analyzing pertinent agency data, and scheduling staff training (especially with parents) in order to use survey, interview and focus group responses in a valid and reliable manner. MDE further stated that through its monitoring, it would identify and evaluate available agency data to use in monitoring LEAs. OSEP accepts these strategies. The State must ensure that it corrects this noncompliance (i.e., that it implements monitoring procedures that enable it to identify noncompliance with all Part C and Part B requirements) within a reasonable period of time not to exceed one year from the date of this letter, and provide evidence of such correction to OSEP no later 30 days following the end of that one-year period. That documentation must show that: (1) MDE is implementing effective procedures for identifying noncompliance with all Part B requirements; and (2) MDE is implementing effective procedures for identifying noncompliance with all Part C requirements, including monitoring all agencies that MDE uses to provide Part C services. In its FFY 2003 Part C and Part B APRs, the State must report its progress in correcting the noncompliance. OSEP is extending the timeline for submission of those APRs from March 31, 2005 to 60 days from the date of this letter.

Monitoring and Implementation of the State's Part C Eligibility Criteria. At 34 CFR §303.16(a), the Part C Regulations define "infants and toddlers with disabilities" as "individuals from birth through age two who need early intervention services because they—(1) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: (i) cognitive development, (ii) physical development, including vision and hearing, (iii) communication development, (iv) social or emotional development, and (v) adaptive development; or (2) have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay." The

regulations further provide, at 34 CFR §303.300, that each State must, as part of its Part C Application, "...define developmental delay by-- (1) describing, for each of the areas listed in §303.16(a)(1), the procedures, including the use of informed clinical opinion, that will be used to measure a child's development; and (2) stating the levels of functioning or other criteria that constitute a developmental delay in each of those areas."

In its approved Part C Application, the State provides that a child is eligible to receive Part C services if the child: (1) has a specified level of developmental delay in one or more of the following areas: (i) cognitive development, (ii) physical development, including vision and hearing, (iii) communication development, (iv) social or emotional development, and (v) adaptive development; (2) has a composite delay of 1.5 standard deviations across the five areas of development; (3) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or (4) meets the State's criteria for one of 13 disability categories.

OSEP has determined that the State is not implementing eligibility criteria for Part C services that are consistent with Part C or its approved Part C application. During the verification visit, the State acknowledged that the State is excluding children who have: (1) a physical or mental condition that has a high probability of resulting in developmental delay, unless the district makes a separate determination that the child is exhibiting the specified level of development delay and needs early intervention services; and (2) a developmental delay in one of the five areas of development, unless they meet one of the other three criteria for eligibility (e.g., a condition or syndrome, a composite delay of 1.5 standard deviations, or one of the thirteen disability categories). MDE clarified that these exclusions have been reflected in its monitoring standard, its technical assistance and guidance to districts, and the understanding of school districts. Within 60 days from the date of this letter, the State must submit to OSEP the State's plan for documenting, within one year from the date on which OSEP accepts the plan, that the State is implementing eligibility criteria that are consistent with the State's approved Part C application and the requirements of 34 CFR §§303.16(a) and §303.300. That plan must include monitoring to ensure that: (1) children who are determined to have a diagnosed condition are not required to meet additional eligibility criteria; and (2) children who are determined to meet the requisite level of developmental delay are not required to meet additional criteria to be eligible.

Correction of all Noncompliance. As part of its monitoring, MDE has established a standard for requiring correction, which is inconsistent with: (1) *Part C*, the requirements of 20 U.S.C. §1232d(b)(3) and 34 CFR §303.501(b)(4); and (2) *Part B*, the requirements of 20 U.S.C. §1232d(b)(3) and 34 CFR §300.600. MDE informed OSEP that it does not require a school district to correct noncompliance if MDE (or the district in the case of a self-review) finds at least 80% compliance with the requirement in question. MDE further explained that: (1) it requires correction of any noncompliance (even if MDE finds greater than 80% compliance) regarding an LEA inappropriately determining a child eligible for Part B or Part C services, and late IEPs, IFSPs, evaluations, and reevaluations; (2) on a case-by-case basis, the lead monitor may decide to require correction even where MDE finds less than 20% noncompliance; and (3) the general practice, however, is not to require correction where MDE finds less than 20% noncompliance. Thus, if MDE or the district reviews 30 files and finds that 25 of those files meet a particular requirement and five do not, MDE does not require the district to take any

corrective action in regard to that requirement. MDE explained that it adopted this standard based on its understanding of guidance from OSEP.⁴

In its September 2004 letter, MDE stated that it was its understanding from OSEP during the August 2004 visit, that, “anything short of 100 percent compliance on 100 percent of the files reviewed must be cited as noncompliance, and that any instance of noncompliance in any file must be corrected.” MDE expressed its concern that, “this standard conflates monitoring with the complaint system by providing individual relief to individual files even where no one has complained or requested relief. For example, if a file is reviewed where an IEP team meeting where a necessary member was missing, MDE would have to order the district to reconvene that meeting. MDE is concerned that this approach will create tension between families and districts where none exists. MDE’s practice has been to request correction on individual files where the violation has a large impact, for example, where a student is ineligible according to State disability criteria, when an evaluation report or IEP is not current or when services have not been provided. MDE seeks clarification on the distinction between individual due process and systemic monitoring.”

As OSEP explained during the verification visit, it is part of the State’s general supervisory responsibility under both Part C and Part B to ensure that noncompliance that the State identifies, through any methodology, is corrected and does not recur. Thus, if the State determines through its monitoring that a public agency is not ensuring that IEP meetings include all of the participants that the IDEA requires, the State must ensure that future IEP meetings do include the required participants. While the State should consider the specific circumstances to determine what action is needed to ensure future compliance by the public agency, the State may not set an arbitrary threshold below which it takes no action to ensure future compliance.

Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that MDE has revised its monitoring procedures and is requiring and ensuring the correction of all noncompliance; or (2) the State’s plan for documenting, within one year from the date on which OSEP accepts the plan, that MDE is ensuring correction of all noncompliance.

Timely Correction of Noncompliance. As noted above, if a district self-identifies noncompliance in a self-review implementation report, the district must include a corrective action plan (CAP) as part of the report. When MDE identifies noncompliance through a traditional monitoring review or a validation review, it requires the school district to submit a CAP within 45 days from receipt of the final report. MDE reviews each proposed CAP to determine whether it sets forth a reasonable plan for correcting each area of noncompliance. Each CAP must include the actions needed, persons responsible, timelines, and evidence of completion. If changes are needed in the proposed CAP, MDE works with the district to revise the CAP. Once the CAP is approvable, MDE sends a letter to the district in which it approves the CAP and directs the district to implement it.

MDE stated that if it finds areas of systemic noncompliance in an LEA through a Traditional Review, MDE conducts a follow-up review the year following approval of the district’s CAP. MDE’s report from the follow-up review identifies any areas of continuing noncompliance, and

⁴Notwithstanding MDE’s misunderstanding, OSEP has not established such a standard.

MDE conducts additional follow-up reviews until it determines that the LEA has corrected the noncompliance. If MDE finds that the noncompliance persists, it will conduct additional follow-up reviews. When the district demonstrates continued noncompliance, repeated follow-up visits occur. MDE stated that its oversight increases with the need for each additional follow-up review.

In addition, if a Self-Review district is found in significant noncompliance during a validation review, MDE may exercise a variety of options, including, but not limited to, a follow-up review within the same year as the validation visit or the following year. If a district continues in serious noncompliance, the district will be identified for Traditional Review until systemic compliance is demonstrated. If an LEA does not demonstrate improvement in noncompliance areas, funds can be decreased based on the percentage of records found noncompliant compared to number of records reviewed.

MDE acknowledged that, so long as a district is making progress in correcting noncompliance, it does not require districts to correct identified noncompliance within one year from identification, and that in many cases a district remains in noncompliance for a number of years. Thus, MDE is not meeting its responsibility: (1) under 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3) to ensure that all identified Part B noncompliance is corrected no later than one year after MDE or the district identifies the noncompliance; and (2) under 34 CFR §303.501 and 20 U.S.C. §1232d(b)(3) to ensure that all identified Part C noncompliance is corrected no later than one year after MDE or the district identifies the noncompliance. In its September 2004 response, the State indicated that MDE is in the process of developing a database that will track LEA monitoring data over time, so that the data will be more readily available than with the current system and maintain a database of the districts that are in pervasive noncompliance and include effectiveness of the sanctions overtime. In addition, the State indicated that MDE would develop procedures to ensure correction of noncompliance, and to notify LEAs of their compliance status. Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that MDE is implementing effective procedures for ensuring the timely (i.e., no later than one year after MDE identifies the noncompliance) correction of noncompliance; or (2) the State's plan for correcting and demonstrating, within one year from the date on which OSEP accepts the plan, that MDE is effectively ensuring the correction of noncompliance within the one year timeframe.

Timeliness of Part B Complaint Decisions. The Part B regulations require that MDE issue its written decisions on each Part B complaint within 60 days of receipt, unless the timeline is extended due to exceptional circumstances with regard to a particular complaint (34 CFR §300.661(a) and (b)(1)). As noted in OSEP's August 17, 2004 letter, the State's FFY 2002 Part B APR included data showing that the State was not in compliance with those requirements during the 2002-2003 reporting period. OSEP directed the State to submit, within 60 days, a plan for correcting the noncompliance within a reasonable period of time, not to exceed one year from the date of the OSEP letter. During the verification visit, MDE provided data showing that MDE had made some improvement, but was still not meeting the 60-day timeline for complaints. In its September 2004 letter, MDE indicated that it had distributed new office protocols to increase efficiency and oversight of complaint timelines, begun a bi-weekly review of staff's files, and implemented a process for extensions in exceptional circumstances. In its October

2004 response to OSEP's August 2004 APR letter, MDE further reported that: (1) The revised complaint procedures specify that a draft of the final complaint decision is due to the supervisor 45 days from the date the complaint was opened. If the complaint is not near completion at that point the problems with completing the complaint are addressed and a preliminary determination of whether an extension may be justified is discussed. At this point, a log is made of where the final draft is and how long it is maintained, in order to determine which, if any, part of the process (typing, reviews) is detaining the final decision. (2) Procedures were in place for issuing extensions in exceptional circumstances, and that MDE anticipated that this would eliminate late complaints where the complaints are late due to their complexity and scope. (3) MDE had instituted biweekly individual meetings between the supervisor and with complaint investigators, to improve the supervisor's oversight of complaint investigations and the accountability of complaint investigators. OSEP accepts the strategies described in MDE's September and October 2004 letters. MDE must ensure, within one year from the date of this letter, that it is meeting the timeline requirements of 34 CFR §300.661(a) and (b)(1). MDE must submit documentation of such compliance by 30 days after that one-year timeline, and must provide an interim Progress Report in its FFY 2003 Part B APR.

Timeliness of Part B Due Process Hearing Decisions. The Part B regulations require that the final decision in a due process hearing must be reached and mailed to the parties not later than 45 days after the receipt of a request for a hearing, and that a hearing officer may grant specific extensions of time beyond that period at the request of either party (34 CFR §300.511(a) and (c)). As noted in OSEP's August 17, 2004 letter, the State's FFY 2002 Part B APR included data showing that the State was not in compliance with those requirements during the 2002-2003 reporting period. OSEP directed the State to submit, within 60 days, a plan for correcting the noncompliance within a reasonable period of time, not to exceed one year from the date of the OSEP letter. During the verification visit, MDE provided data showing that of 14 decisions issued in 2004: (1) a decision was issued within 45 days for 5, and within a properly extended timeline for 5; and (2) the decision was reached beyond the extended timeline for four. In its September 2004 letter, MDE indicated that: (1) it met with the Office of Administrative Hearings (OAH) to address hearing timelines and extension protocols; (2) decision timeliness would be examined as part of periodic review of hearing officers; and (3) hearing officer training would routinely emphasize hearing deadlines and the process for extensions.

In its October 2004 response to OSEP's August 2004 APR letter, MDE further reported that: (1) MDE recently promulgated a rule requiring all hearing officer orders granting or denying a request to extend the hearing deadline to be filed with MDE (Minn. R. 3525.4110(C)), permitting MDE staff to monitor the timelines and to notify hearing officers when deadlines are approaching to ensure the timeline is met or appropriately extended. (2) MDE provided sample Documentation of Extension of Final Decision forms to facilitate the filing with and tracking of deadlines and extension notifications by MDE. (3) MDE recently met with the Minnesota Office of Administrative Hearings (OAH) to discuss OSEP's recent letter to MDE and the concerns regarding timelines and time specific extensions. The OAH judge who oversees the special education docket subsequently sent a notice to the applicable hearing officers, reiterating the requirements regarding hearing decisions, timelines and extensions. (4) The importance of meeting hearing deadlines has been a topic of nearly every training session. In 2004, hearing officers participated in trainings on March 3, March 10, June 4 and several attended the National

Academy for IDEA Administrative Law Judges and Hearing Officers at Seattle University June 16, 17 and 18. Training will continue on a regular basis and include both in person sessions and periodic written items on timely and important topics, including meeting deadlines and the procedures involved therein. (5) MDE and the Minnesota Office of Administrative Hearings will create and disseminate a procedural outline for hearing officers to easily reference in dealing with procedural matters such as the filing of extension decisions and other business matters, which will be a valuable resource for new hearing officers not yet familiar with standard operating procedures. (6) The meeting of deadlines will be examined as part of periodic reviews of hearing officer performance. OSEP accepts the strategies in MDE's September and October 2004 letters. MDE must ensure, within one year from the date of this letter, that it is meeting the timeline requirements of 34 CFR §300.511(a) and (c). MDE must provide documentation of such compliance by 30 days after that one-year timeline, and must provide an interim Progress Report in its FFY 2003 APR.

Part C Complaints and Hearings. MDE received two Part C complaints and no Part C hearing requests. MDE extended the timeline for both Part C complaints due to exceptional circumstances with respect to those two particular complaints. MDE staff explained its belief that the lack of Part C due process hearing requests and the small number of Part C complaints was due to effective service coordination and informal dispute resolution procedures. OSEP cannot determine whether the few complaints and lack of due process hearing requests is due to family satisfaction or a lack of awareness of procedural safeguards. OSEP recommends MDE continue to monitor that parents are informed of their procedural safeguard rights and provided written notices consistent with CFR §303.403.

Collection of Data Under Section 618 of the IDEA.

In looking at 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 impede the State's ability to accurately, reliably and validly collect and report data under section 618.

MDE explained that while its traditional and self-review validation reviews are on a fixed cycle and MDE does not use performance data to determine when it will monitor a district, MDE does use performance data to help focus its traditional or validation review in a district.

MDE informed OSEP it uses the Minnesota Automated Reporting Student System (MARSS) to collect data on: (1) Part C child count, settings, and exiting; and (2) Part B child count, educational environments, and exiting. MDE explained that each child is assigned a 13 digit unique identifier that remains with the child throughout his or her participation in the Part C and Part B system, and that MARSS is an individual record file format system. MDE has certified

the software systems developed by each of ten vendors for reporting of data to MARSS, and each district selects one of these ten vendors. MDE explained that it has built a number of edit checks into the MARSS system, to ensure that duplicate and illogical data are not reported.

MDE informed OSEP that if a child becomes three between September 1 and December 1, MDE includes the child in the December 1 Part C child count although the child transitioned to Part B prior to December 1. Similarly, data for such a child are incorrectly included in the Part C settings data, rather than the Part B educational environments data. Further, the State has inappropriately delayed, until the State's report on Part C exit data for the following year, including a child who turns three between September 1st and December 1st. During the verification visit, MDE acknowledged that these practices were inconsistent with 618 requirements, and assured OSEP that it would correct them. In its September 29, 2004 letter, the State confirmed that it would make these corrections in its next 618 data report.

OSEP identified an additional problem in the State's Part C exiting data. Although the MARSS system provides for districts to enter data regarding all of the other required exiting categories, it does not require districts to provide data regarding children who exit Part C and have been determined to be eligible for Part B services as "Part B Eligible," as required by OSEP's instructions. Rather, the State assumes that any child who is not reported to have exited for another reason to have exited *and transitioned* to Part B. Thus, when MDE submits its report to OSEP on Part C exiting, it includes in the "Part B Eligible" count all exiting children for which the data have not otherwise accounted.

MDE acknowledged an additional issue affecting the accuracy of its educational environment data. Approximately ten percent of the State's students are served in area learning centers, which are alternative schools for students with and without disabilities who have a broad variety of school issues. MDE explained that some school districts are inaccurately reporting students with disabilities who are educated with nondisabled students at area learning centers as being served in a separate facility for students with disabilities. In its September 2004 letter, MDE indicated that it would provide training to special education directors and State-Approved Alternative Programs (SAAPs), which include Area Learning Centers, about how to report setting data for special education students in SAAPs. In its FFY 2003 Part B APR, the State must report on its progress in ensuring that its Part B educational environment data are accurate.

Pursuant to OSEP's directions to States for reporting graduation data, a State may only include students with disabilities who meet the same requirements as nondisabled students. MDE informed OSEP that nondisabled students must pass the State's Eighth Grade Basic Skills Test and meet course credit requirements, but that it included students with disabilities who met the objectives in their IEPs but did not meet those requirements in its 618 count of students receiving a regular diploma. During the verification visit, the State agreed to correct this problem by the time that it makes its next data submission. In its September 2004 letter, MDE described how it would ensure this correction by not including MARSS Status End Code 9 ("graduated with IEP Objectives Completed") in its 618 data on graduation. In its FFY 2003 Part B APR, the State must report on its progress in ensuring that the graduation data that it reports under Section 618 of the IDEA are consistent with OSEP's instructions.

MDE acknowledged in its FFY 2002 APR that its existing system for reporting discipline data did not ensure accurate reporting of data. MDE informed OSEP during the verification visit that it has designed a new State-wide data system (the Disciplinary Incident Reporting System (DIRS)) to collect discipline data for both regular and special education students, and that reporting on the new system will begin in the Fall 2004.

MDE further explained that it does not expect that the discipline data collected during the 2004-2005 school year will be fully accurate because: (1) although school districts were required to use the new system for reporting discipline data throughout the 2004-2005 school year, the software would not be available to school districts until the latter part of September, and districts will need to collect data manually for the first few weeks of the school year; and (2) the first semester of the school year will be a "ramp-up" period during which MDE works closely with districts to train them in using the new system, and the data from the first semester are not likely to be as accurate as they will be starting in the second semester. In its September 2004 letter, the State indicated that its new web-based collection of discipline data will address OSEP's concerns, and MDE would stress the need for, and support LEAs to, report accurate data even during the start-up of the new system. In its FFY 2003 Part B APR, the State must report on its progress in ensuring that the discipline data that it reports under Section 618 of the IDEA are accurate.

MDE reported that school districts enter the fulltime equivalent of the amount of time that each staff person provides special education or related services into the MDE's Electronic Data Reporting System (EDRS), and MDE generates its State report on Part B personnel data directly from those data. MDE reported a high level of confidence in the accuracy of these data. MDE further informed OSEP, however, that the State does not currently have an electronic system for collecting Part C services and personnel data. MDE explained that school districts manually pull these data by reviewing each IFSP, and then inserting the district-wide totals into a form that they then send to MDE (who, in turn, aggregates those data and reports them to OSEP). MDE acknowledged that this manual method for collecting these data is not an effective method for ensuring the reporting of accurate data to OSEP. MDE explained that it has developed a plan for ensuring the accurate reporting of Part C services data, and expected to implement a new system for collecting these data electronically by November 1, 2004. MDE further stated that it has begun work on a plan to ensure the accurate reporting of Part C personnel data. In its September 2004 letter, the State indicated that: (1) MDE would amend EDRS to include teacher FTE by child ages ranges, i.e., birth to age 3, 3-5, 6-21 effective 2005-06; and (2) MDE would develop and implement a Staff and Services Data System and Part C electronic Personnel Reporting System for the next fiscal year (with a workgroup of the Part C State Agency Committee and various agency divisions making recommendations by December 2004). In its FFY 2003 Part C APR, the State must report on its progress in ensuring that the Part C personnel and services data that it reports under Section 618 of the IDEA are accurate.

State-wide Assessment

In looking at 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 assessments 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 your system for State-wide assessment, OSEP also discussed with your staff how the alternate assessment is aligned with grade-level content standards.

Minnesota has two State-wide assessment programs: (1) the Basic Skills Tests (BSTs); and (2) the Minnesota Comprehensive Assessments (MCAs). MDE explained that the State uses the BSTs for student accountability, and the MCAs for system accountability.

MDE reported that there is an option for the parent of any child with or without a disability to refuse participation in either assessment program. Although the State's testing guidelines provide for "exemption" for students whose goals and objectives on their IEP or 504 plan are not consistent with or do not address the test content or standard, MDE explained that the use of the term "exemption" is misleading. It means that a child whom the IEP team determines cannot participate in the general assessment will participate in the alternate assessment, rather than that child will not participate in the assessment program. MDE indicated that it would review and revise its documents, including its guidance documents and the State's model IEP form, to address this misleading use of the term "exemption." In its September 2004 letter, the State indicated that it removed the "exemption" language from the Accommodation/Modification document and the State recommended IEP forms and directions. MDE reported that it: (1) completed this change on September 13, 2004, in time for State-wide training for assessment coordinators, special education directors, and principals; (2) would post the changes on MDE's website; and (3) planned to contact the Parent Advocacy Coalition for Educational Rights (PACER) to provide parallel training to parents.

MCA. MDE explained that it began administering the MCAs in 1998 to test the performance of districts, schools, and students on the State's Profiles of Learning standards. The Profile of Learning standards contained 10 learning areas, plus a requirement for vocational education, with detailed content standards for each learning area. In 2003, the State replaced the Profile of Learning standards with the Minnesota Academic Standards. In 2003, the State Legislature established core academic content standards areas in three areas: language arts, mathematics, and the arts. The Legislature added standards for science and social studies in 2004. Each of the academic standards will be supplemented by grade-level benchmarks, which will specify the academic knowledge and skills that students must achieve to meet the standard. The State will review the standards and benchmarks on a four-year cycle, beginning in the 2006-2007 school year.

The State administers MCAs in reading and mathematics in the 3rd, 5th, and 7th grades, reading in 10th, and mathematics in 11th. The writing tests are administered in the 5th and 10th grades, and are not included in the accountability system. Students receive scale scores for each test, at one of five levels.⁵

⁵ Students in *Level 1* have gaps in the knowledge and skills necessary for satisfactory work with the State's content standards. Students in *Level 2* have partial knowledge and skills necessary for satisfactory work with the State's

BST. MDE informed OSEP that the State began administering the reading, math and writing BSTs in 1998, to assess the minimum standards that a student must achieve on each of the three tests in order to receive a high school diploma. (As noted in the discussion above regarding the State's Part B exiting data, however, the IEP team may determine a different passing score for a student with a disability.) Students first take the reading and math tests in 8th grade, and the writing test in 10th grade, and may retake these tests in later grades if additional administrations are needed to obtain a passing score. MDE further explained that State does not use the BSTs for systems accountability purposes.

Alternate Assessments. MDE informed OSEP that the State established the Minnesota Alternate Assessments (MAA) to meet the requirements of IDEA 1997, and that there have been many changes since its inception. MDE explained that it requires that IEP teams make decisions regarding whether a child will participate in the general MCA and BST assessments, or in the MAA for part or all of an assessment. MDE staff reported that the State does not currently have alternate achievement standards, but rather grade-level specific standards, and districts are required to use the existing alternate assessments until realignment occurs in 2005. In its September 2004 letter, the State indicated that the districts are accountable for the new standards in 2005-2006 school year and so any alignment will follow the same timeframe, and that MDE has formed a workgroup, including Assessment, NCLB, and special education personnel, to develop and implement a work plan.

If an IEP team determines that a child cannot participate in a general assessment, and will, therefore, participate in the MAA, the team then determines whether the child will participate in the MAA for Developmental Academic Skills (which includes reading, mathematics and writing) or the MAA for Functional Living Skills. In either case, the teacher uses a Likert rating scale to assess the child's performance.

For the Developmental Academic Skills assessment, the teacher will assign separate scores in the areas of reading, mathematics and written composition. The scale goes from awareness (1-2), to understanding (3-5), to application (6-7).

MDE explained that some students are working on functional living skills rather than developmental academic skills. When the IEP team determines that the Functional Living Skills assessment is appropriate, the student's teachers rate the child's progress in home living, recreation, leisure, community participation, jobs and training, social skills, communication, and academics. Each attribute has indicators to rate students based on the level of student participation and student support. The scale goes from no participation/full support (1-2), moderate participation/moderate support (3-5) to full participation/no support (6-7).

content standards. Most students in *Level 3* are working on grade-level material and are usually demonstrating satisfactory work in the State's content standards. Students at *Level 4* are working above grade level and demonstrate solid performance and competence in the knowledge and skills necessary for satisfactory work in the State's content standards. Students scoring in *Level 5* demonstrate evidence of advanced academic performance, knowledge, and skills well beyond what is expected at grade level.

Reporting. As MDE informed OSEP and OSEP confirmed by viewing MDE's web-site, MDE annually posts student performance and participation data, for both students with and without disabilities, for the BSTs and MCAs. MDE disaggregates these data by grade, disability, gender, and ethnicity. In the FFY 2002 Part B APR that MDE submitted in March 2004, it reported that: (1) data on the percentage of 3rd and 5th grade children with disabilities who performed at the proficient range on the April 2003 MCA in reading and mathematics were not available; (2) data on the performance of all children who participated in the MCA, including children with disabilities, were artificially inflated by an inappropriate alignment of the performance data with State standards for proficient performance; and (3) the 2003 MCA data were currently being realigned and recalculated. In June 2004, the State submitted a revised APR that included data on the participation and performance of children with disabilities in grades 3 and 5 in the areas of reading and mathematics.

Conclusion

As noted above, in the next APR, MDE must submit to OSEP its plan for correcting each of the following areas of noncompliance:

1. Not monitoring for compliance with all Part B and Part C requirements;
2. Not implementing eligibility criteria that are consistent with the State's approved Part C application and the requirements of 34 CFR §§303.16(a) and §303.300, and not monitoring for compliance with those requirements in a way that is consistent with Part C;
3. Not ensuring the correction of all identified noncompliance; and
4. Not ensuring the *timely* correction of all identified noncompliance (i.e., within one year from identification of identified noncompliance).

The State's plan must include strategies, proposed evidence of change, targets and timelines that will ensure correction of this noncompliance within a reasonable period of time not to exceed one year from the date when OSEP accepts the plan. In its FFY 2003 Part B and Part C APRs, the State must also include data and analysis demonstrating progress toward compliance; and provide a final report to OSEP with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline. As further noted above, OSEP has extended the timeline for the APRs from March 31, 2005 to 60 days from the date of this letter.

As further noted above, the State must, with regard to the failure to meet the due process hearing timelines of 34 CFR §300.511(a) and (c) and the complaint decision timelines of 34 CFR §300.661(a) and (b)(1)), as identified in OSEP's August 2004 response to the State's FFY 2002 Part B APR and above: (1) ensure, within one year from the date of this letter, that it is meeting those requirements; (2) provide documentation of such compliance by 30 days after that one-year timeline; and (3) provide an interim Progress Report in its FFY 2003 Part B APR.

We appreciate the cooperation and assistance provided by you and your staff during our visit. We look forward to collaborating with Minnesota as you continue to work to improve results for children with disabilities and their families.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Guard". The signature is written in a cursive style with a large initial "P".

Patricia J. Guard
Acting Director
Office of Special Education Programs

cc: Deputy Commissioner Chas Anderson
Assistant Commissioner Rollie Morud
Karen Carlson
Dr. Norena Hale