



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

MAY 27 2004

Honorable D. Kent King  
Commissioner  
Missouri Department of Elementary and Secondary Education  
P.O. Box 480  
Jefferson City, Missouri 65102-0480

Dear Commissioner King:

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 Missouri. As indicated in my letter to you of September 9, 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, Parts B and C of the Individuals with Disabilities Education Act (IDEA). OSEP conducted its visit to Missouri during the week of December 8, 2003. Enclosed along with this letter is OSEP's response to Missouri's July 3, 2004 submission of its Part B Improvement Plan (IP).

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 Missouri Department of Elementary and Secondary Education (DESE), OSEP staff met with Ms. Melodie Friedebach, Assistant Commissioner for Special Education, and members of DESE'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, including the following: (1) the State's Self-Assessment; (2) Missouri's Part B State Improvement Plan; (3) the State's Biennial Performance Report for grant years 1999-2000 and 2000-2001; (4) Missouri's State Improvement Grant application; (5) Missouri's response to the overarching questions around which OSEP is focusing its verification reviews; (6) DESE's tracking logs for complaints and due process hearings; (7) DESE's submissions of data under Section 618 of the IDEA; and (8) other information and numerous documents posted on the DESE's web site.<sup>1</sup>

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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.

OSEP also conducted a conference call on November 20, 2003 with members of the Missouri State Advisory Panel on Special Education, to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection and reporting, and State-wide Assessment. DESE staff also participated in the call and assisted OSEP by inviting the participants.

The information that Ms. Friedebach, other 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 DESE's systems for general supervision, data collection and reporting, and State-wide assessment.

### *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.

The compliance section of DESE's Division of Special Education manages all of the general supervision requirements for Part B of IDEA, which includes monitoring of all responsible agencies, investigating child complaints, assigning education surrogates, coordinating due process and mediation requests and responding to technical assistance requests. The section consists of a director, an assistant director, 7.5 full-time equivalent monitoring supervisors, a data specialist and a complaints specialist.

### *Identification of Noncompliance*

The Missouri School Improvement Program (MSIP) is Missouri's system for school accreditation. Since its inception, all State and federal programs, including special education, have conducted their monitoring activities in conjunction with the MSIP review. DESE staff explained that, using the MSIP process, DESE monitors responsible public agencies<sup>2</sup> on a five-year cycle regarding diverse programs, including special education, vocational education, Title 1, and a number of other programs. DESE monitors approximately 100 responsible public agencies each year.

In keeping with the MSIP model of a five-year cycle, special education compliance monitoring occurs on the same cycle. The Commissioner has made a commitment that all monitoring visits

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<sup>2</sup> DESE uses the term "responsible public agencies" to refer collectively to agencies that are responsible for the provision of a free appropriate public education to children with disabilities.

from DESE components will occur during the scheduled MSIP visit, to minimize the burden on responsible public agencies. MSIP has been in place for approximately 13 years, and DESE is in the third year of the third MSIP cycle. DESE staff informed OSEP that DESE tries to limit changes to the monitoring process during a monitoring cycle, and to make any major changes at the beginning of the next cycle. DESE staff explained that although the Division of Special Education must coordinate its monitoring process with the department-wide MSIP process, the special education process is unique and much more intensive than the general MSIP process.

Each responsible public agency enters the special education review cycle one year prior to its scheduled MSIP review. In 2001, DESE began requiring each district to develop and submit a Self-Assessment during the school year when the district will receive its MSIP visit. The Self-Assessments are due to DESE in April. In order to support agencies in conducting their Self-Assessments, DESE's Division of Special Education: (1) provides two days of training, on a regional basis in October, to the responsible public agencies that will be submitting Self-Assessments the following spring; (2) assigns a compliance section monitoring supervisor to provide technical assistance to each district; and (3) has created a "list-serv" that it uses to provide on-going guidance to agencies as they conduct their Self-Assessments. When DESE receives a Self-Assessment, support staff first review it to make sure that it is complete. Then, the compliance section assigns it to a monitoring supervisor for review, which occurs in May, June and July. Once the monitoring supervisor completes this more detailed review, DESE develops a composite using diverse data sources, including the self-assessment, a review of the student files that the agency submitted with its Self-Assessment, complaint data from the complaint systems, any anecdotal data that DESE has collected regarding the agency, and 618 and other performance data. In early August, the compliance section meets as a group to review all of the Self-Assessments that DESE receives, to determine—as a group—to which of three levels the compliance section will assign the agency.

These three levels are:

**Level 1:** DESE determines that the district's review is complete and that a final report can be issued. DESE explained that it considers a district's review to be "complete" when DESE finds that the district has effectively self-identified any areas of noncompliance.

**Level 2:** DESE determines that additional information is needed from the agency before a final report can be issued (but where DESE believes that such information can be obtained without the need for a DESE visit).

**Level 3:** DESE determines that gaps or inconsistencies in the Self-Assessment cannot be resolved without a comprehensive on-site visit prior to the issuance of a final report.

Then, depending on the level to which DESE assigns a responsible public agency, DESE takes the following actions:

**Level 1 Agencies:** DESE issues a final report to the agency. If the report includes findings of noncompliance, the agency must submit a Corrective Action Assurance Statement, and develop an Improvement Plan as part of the agency's Annual Program

Evaluation and Comprehensive School Improvement Plan (CSIP). DESE conducts a follow-up review within one year to review any areas of noncompliance.

**Level II Agencies:** DESE requires the agency to submit additional verification. Once DESE has reviewed this additional information and made final compliance determinations, DESE issues a final report. If the report includes findings of noncompliance, the agency must submit a Corrective Action Assurance Statement, and develop an Improvement Plan as part of the agency's Annual Program Evaluation and Comprehensive School Improvement Plan (CSIP). DESE conducts a follow-up review within one year to review any areas of noncompliance.

**Level III Agencies:** DESE conducts a comprehensive on-site review of the agency, in conjunction with the MSIP review for the agency. At the conclusion of the review, a final report is issued. If there are any areas of noncompliance identified, a Corrective Action Assurance Statement is submitted and an Improvement Plan is developed through the agency's annual program Evaluation and CSIP. A follow-up is conducted within one year to review any areas of noncompliance.

**Random Agencies:** Using a lottery system, DESE also randomly selects one agency from each of the State's nine regional training areas for on-site review, which is similar to the reviews that DESE conducts in agencies that DESE has designated "Level III." DESE conducts these reviews in randomly selected agencies to help verify the effectiveness of the Self-Assessment process in identifying noncompliance.

Missouri has 26 charter schools (eighteen in Kansas City and eight in St. Louis), each of which is an LEA. Although these charter schools are exempt from the MSIP process, DESE includes them in its five-year special education monitoring cycle; thus, like other responsible public agencies, each charter school submits a Self-Assessment once every five years, and the compliance section uses the same three level selection process to determine whether each charter school will receive an on-site visit.

Missouri has 39 State Board-Operated Schools, all of which DESE includes in its MSIP cycle: (1) the Missouri School for the Blind (MSB) (2004-2005); (2) the Missouri School for the Deaf (MSD) (2004-2005); and (3) 37 State Schools for the Severely Handicapped (2005-2006). Like other responsible public agencies, the State Board-Operated Schools submit a Self-Assessment once every five years, and the compliance section uses the same three level selection process to determine whether they will receive an on-site visit. In addition, when DESE conducts an on-site special education monitoring review to a school district, it collects data from the district to support a determination as to whether the district's placement of children at one of the State Board-Operated Schools is consistent with Part B requirements.

The Department of Mental Health (DMH) is responsible for providing a free appropriate public education (FAPE) to children with disabilities in its facilities. Although DMH is exempt from the MSIP process, DESE includes DMH in its five-year special education monitoring cycle; thus, like other responsible public agencies, DMH submits a Self-Assessment once every five years, and DESE uses the same three-level selection process to determine whether DMH will receive an on-site visit.

The Department of Youth Services (DYS) is responsible for providing FAPE to children with disabilities in its facilities. DYS is included in the MSIP process; thus, like other responsible public agencies, DYS submits a Self-Assessment once every five years, and DESE uses the same three-level selection process to determine whether DYS will receive an on-site visit.

### *Monitoring Special Education Programs for Youth in City and County Jails*

Part B requires, at 34 CFR §300.600 and 20 U.S.C. §1232d, that DESE have a proper method of monitoring, and ensuring compliance in, all programs providing special education and related services to children with disabilities, including eligible youth with disabilities in city and county jails. The State acknowledged in its October 2002 Self-Assessment (page 19, General Supervision Section) that, “DESE has not monitored local districts for the provision of FAPE in city/county jails.” This issue is addressed in the enclosed letter responding to the State’s July 3, 2004 revised IP. Specifically, OSEP is accepting the State’s Improvement Plan on this issue, but requiring interim and final reporting on correction of the noncompliance.

### *Correction of Noncompliance*

Under 20 U.S.C. §1232d (b)(3) and 34 CFR §300.600, DESE must ensure that public agencies correct noncompliance.

As noted above, DESE issues a final report to each responsible public agency. For agencies that submit a Self-Assessment but are not selected for an on-site special education visit, the DESE report specifies areas of noncompliance that the agency identified in its Self-Assessment, and any additional areas in which DESE identified noncompliance based on the Self-Assessment and the two agency files that the agency submitted to DESE with the Self-Assessment. For agencies receiving an on-site special education visit, the DESE report specifies areas of noncompliance that the agency identified in the Self-Assessment, and any additional areas in which DESE identified noncompliance based on the self-assessment and the two agency files that the agency submitted to DESE with the Self-Assessment, and through the on-site visit. The agency must then submit an assurance that it will correct any identified areas of noncompliance within one year. DESE does not require agencies to submit to DESE strategies or timelines for such correction. DESE then follows up on the noncompliance approximately one year later, through review of submitted documentation, another on-site visit, or a combination of the two, depending on the nature of the noncompliance.

During the 2000-2001 school year, DESE made findings of noncompliance in 87 of the 102 responsible public agencies in which it conducted on-site monitoring reviews. During the 2001-2002 school year, DESE completed a follow-up review of 68 of those 87 agencies to determine the extent of correction one year after DESE had identified the noncompliance. DESE found that 23 of those 68 agencies had not corrected the noncompliance within one year, and DESE informed OSEP that it planned to conduct a second follow-up of those agencies by the end of the 2003-2004 school year. DESE informed OSEP on February 19, 2004 that these second follow-up reviews were in process. Thus, as of that date, DESE did not yet have documentation that those 23 agencies had corrected the noncompliance that DESE identified during the 2001-2002 school year. Further, as of February 19, 2004, DESE was still in the process of conducting the

first follow-up of 19 of the agencies in which DESE had found noncompliance during the 2001-2002 school year, and did not have documentation of the extent of correction in those agencies. Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that DESE is implementing effective procedures for ensuring the timely (i.e., no later than one year after DESE 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 DESE is effectively ensuring correction of noncompliance within the one year timeframe.

As part of its special education monitoring, DESE has established a standard for requiring correction, which is inconsistent with the requirements of 20 U.S.C. §1232d(b)(3) and 34 CFR §300.600. DESE informed OSEP that DESE does not require a responsible public agency to correct noncompliance if DESE (or the agency in the case of a Self-Assessment) finds 80% compliance with the requirement in question. Thus, if DESE reviews 30 files and finds that 25 of those files meet a particular requirement and five do not, DESE does not require the agency to take any corrective action in regard to that requirement. Similarly, if an agency is failing to reevaluate 20% of its students with disabilities at least once every three years (i.e., is meeting the requirement for 80%), DESE does not require the agency to take any corrective action in regard to that requirement. Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that DESE 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 DESE is ensuring correction of all noncompliance.

### *State Complaints and Due Process Hearings*

DESE's tracking log for due process hearings showed that, in most instances, DESE was meeting the timeline requirements in 34 CFR §300.511. In all but one of the 36 cases in which a due process hearing decision was rendered between July 1, 2000 and November 30, 2003, the hearing officers either: (1) issued the decision within 45 days from the date on which DESE received the hearing request, or (2) extended the timeline for the decision at the request of a party for a specific period of time, and issued the decision within the extended timeline. DESE informed OSEP that although it previously had problems with meeting hearing timelines, it has taken specific measures to correct that problem: (1) requiring hearing officers to include in each hearing decision documentation of any extensions, the party who requested the extension(s), and the new extended timeline; (2) revising the contract with hearing officers to require compliance with timeline requirements; and (3) fining the chair of the hearing panel in the one case in which the panel did not comply with the timeline requirements.

DESE also provided documentation that supports compliance with the 60-day timeline requirement for State complaints. Of the 365 complaints that DESE received between the period from July 1, 2001 and November 30, 2003: (1) DESE issued decisions for 293 within 60 days from the date on which DESE received the complaint; (2) DESE extended the timeline for 15 complaints, due to exceptional circumstances with respect to each particular complaint, and issued a decision within the extended timeline; (3) the complainants withdrew 30 complaints before 60 days had elapsed; and (4) the 60-day timeline had not yet elapsed for 27 complaints at the time of OSEP's visit.

### *Mediation*

DESE has only received three mediation requests within the last year.

The Part B regulations set forth, at 34 CFR §300.506(c), the requirements for impartiality of individuals who serve as mediators. That regulation specifically provides that an employee of any local education agency (LEA) may not serve as mediator under Part B, whether or not that LEA provides services to the child involved in the mediation. DESE staff informed OSEP that its procedures permit LEA employees to serve as mediators, so long as they do not mediate within their own LEA. As OSEP explained during the visit, this procedure is inconsistent with the requirements of 34 CFR §300.506(c)(1). On April 30, 2004, DESE provided documentation to OSEP that, following OSEP's verification visit, DESE: (1) removed all LEA employees from its list of Part B mediators; and (2) informed all of those individuals that they could no longer serve as mediators under Part B.

### *Collection of Data Under Section 618 of IDEA*

In looking at the State's system of 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/responsible public agencies regarding requirements and procedures for reporting data under section 618 of 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.

DESE staff informed OSEP that responsible public agencies submit their 618 data<sup>3</sup> to DESE electronically, using DESE's Core Data Collection System, a web-based data collection system that DESE uses for both special education and regular education data. To help ensure uniformity of the data that agencies submit, DESE has created a Core Data Collection Manual, which describes the parameters for data entry. DESE explained that it has incorporated error defaults into the web-based data collection system; when an agency enters data with certain kinds of errors, the data entry screen displays an "edit button," which signals the agency that those data contain errors and must be corrected. When agencies make their data submissions, DESE's mainframe generates error reports, which list reporting errors by agency. DESE's Data Coordination personnel review these reports for errors, and, when necessary, notify the affected agency. The agency must then correct any error(s) on the designated screen, and inform DESE that it has made the correction. In addition to making corrections when directed by DESE,

<sup>3</sup> Pursuant to section 618 of the IDEA, DESE collects and reports five types of Part B data: (1) child count data (number of students receiving special education services); (2) personnel data (number of fulltime equivalent (FTE) positions for the provision of special education and related services, (3) educational environments (placement) data (count of students on basis of placement); (4) exit data (count of students exiting and the basis of exit); and (5) discipline incidents data (count of students and/or incidents and the basis of removal).

agencies may access DESE's database at any time and make changes whenever they choose, with no requirement that they notify DESE of the change(s) or the reason for any change; therefore, DESE does not know the rate of errors or revisions in data.

DESE staff notified OSEP that DESE provides training to personnel who are responsible for data entry, and that they have established a "list-serv" for all responsible public agencies, as a way to disseminate information regarding data submission and highlight any changes to the data collection and reporting requirements. They also explained that DESE provides periodic "data profiles" to each agency, that allow the agency to identify any significant discrepancies between the data in the Core Data Collection System and the agency's understanding of its own data.

DESE staff further informed OSEP that DESE does not review data accuracy as part of its on-site monitoring of agencies. They explained that—having provided the data manual, training, guidance, data profiles, and the edit checks embedded in the reporting software—DESE relies on each agency to ensure the accuracy of its data. They further explained that the State does not use a unique student identifier system, and each responsible public agency enters aggregated data into the data system, rather than individual data for each student. Therefore, it is not possible to monitor the accuracy of data by comparing reported data with a sample of student files. OSEP suggests that DESE carefully evaluate the effectiveness of its procedures for ensuring data accuracy to determine whether additional or revised procedures are necessary.

With one exception<sup>4</sup>, Missouri uses the definitions and parameters set forth in OSEP's guidance in collecting and reporting data for child count, placement, and exiting. As noted above, responsible public agencies enter numbers of students in specified categories into the web-based data system, and DESE does not receive any child-specific data. Therefore, DESE cannot ensure that there are no duplications in the data that DESE receives from agencies and reports to OSEP, and district-to-district transfers may result in some duplications. DESE staff explained that the State's exiting data do not include students from DYS facilities, due to the transiency of the population.

Responsible public agencies enter their discipline data for both children with and without disabilities in the same screen of the web-based system. DESE then uses an ACCESS program that queries the system to "grab" discipline data for children with disabilities.

DESE staff reported that the Core Data Collection System allows them to collect data regarding individuals in the various special education and related service positions, and the portion of a full-time equivalent (FTE) that each individual works. However, for individuals who provide both special education and related services and regular education services, the system does not enable DESE to determine the special education FTE for that individual. DESE informed OSEP that its early childhood special education data are taken from the Early Childhood Special Education (ECSE) application, rather than data regarding personnel that are actually providing services on the required reporting date.

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<sup>4</sup> While OSEP has directed States to report five-year-old children as being served in an early childhood placement, responsible public agencies in Missouri report these children as being served in a school-aged setting. The State uses "crosswalks" to report these data to OSEP. DESE has developed a table that lists these crosswalks, showing which school-age placement categories are equivalent to which early childhood placement category.



As explained above, in order to ensure the accuracy of its data, DESE has provided responsible public agencies with a data manual, training, guidance, data profiles, and has embedded edit checks into the reporting software, and relies on each agency to ensure the accuracy of its data. DESE does not review data accuracy as part of its on-site monitoring of agencies. OSEP believes that the State has, in general, implemented a reasonable approach to the collection and reporting of data under section 618; OSEP cannot, however, without collecting data at the local level, determine the extent to which the State has been effective in ensuring the accuracy of those data.

### *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 assessment that meet the participation, alternate assessment, and reporting requirements of Part B, including ensuring the participation of all students, 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 DESE staff how Missouri's alternate assessment is aligned with grade-appropriate content standards.

As detailed below, DESE is not meeting the requirements of 34 CFR §§300.138, 300.139, and 300.347(a)(5), regarding State-wide assessments.

### *Structure of Missouri's Assessment System*

DESE informed OSEP that the Missouri Assessment Program (MAP) is aligned with the State's Show-Me Standards, and includes the following areas:

- Mathematics – The MAP for mathematics began in 1997 and includes grades four, eight, and ten.
- Communication Arts -- The MAP for communication arts began in 1998 and includes grades three, seven, and eleven.
- Science – The MAP for science began in 1998 and includes grades three, seven, and eleven. Districts may choose which, if any, of the grades they will assess. If a district chooses to assess some students in one of those grades, it must assess all children in that grade (with the exception described below, regarding children who participate in alternate assessments).
- Social Studies – The MAP for social studies began in 1999 and includes grades four, eight, and eleven. Agencies may choose which, if any, of the grades they will assess. If an agency chooses to assess some students in one of those grades, it must assess all

children in that grade (with the exception described below, regarding children who participate in alternate assessments).

- Health/Physical Education and Fine Arts – As described below, State procedures provide that the IEP team may choose either or both of these two areas as part of the four areas in which a child participating in the State's alternate assessment, the Missouri Assessment Program-Alternate (MAP-A), will be assessed. However, while both of these areas are included in the Show-Me Standards, neither area is currently included in the MAP general assessment program.

DESE staff informed OSEP that the State has developed an Alternative Curriculum Framework, which addresses the same areas as the Show-Me Standards for children with significant disabilities in a more functional way. The MAP-A, which the State first implemented during the 1999-2000 school year, is a portfolio, IEP-based assessment, which the State has aligned with the Alternative Curriculum Framework.

***Including Children with Disabilities in State-wide Assessments and Reporting on their Performance***

The Part B regulations, at 34 CFR §300.138, require that all children with disabilities participate in State-wide assessments and any district-wide assessments. If the IEP team determines that a child with a disability will not participate in a particular State-wide or district-wide assessment of student achievement (or part of an assessment), the child's IEP must include a statement of why the assessment is not appropriate for the child and how the child will be assessed. As explained below, DESE is not ensuring that children with disabilities participate, through either the general assessment or the alternate assessment, in all parts of the State-wide assessments.

DESE explained to OSEP that, in order to meet the requirements of 34 CFR §300.347(a)(5), the IEP team for each child determines whether a child with a disability will participate in the MAP or the MAP-A. Then, without convening an IEP meeting, the child's special education teacher selects four of the six assessment areas described above (i.e., communication arts, mathematics, social studies, science, health /physical education, and fine arts), and—for each of those four areas—selects a goal from the child's IEP that will be used for the MAP-A. Thus, although third-grade children participate in the third grade general communication arts MAP, the State does not require that each third-grade child with a disability who does not participate in the general communication arts assessment, participate in the communications arts MAP-A. The teacher could, instead, choose to assess the child on goals that relate to: (1) mathematics (although there is no third grade mathematics MAP); (2) science (even if the district has not elected to assess third grade students in the general science MAP); (3) social studies (although there is no third grade social studies MAP); and (4) fine arts (although there is no current administration, at any grade, of a fine arts MAP).

The Part B regulations require, at 34 CFR §300.139(a), that the State must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children: (1) the number of children with disabilities in regular assessments and in alternate assessments; and (2) the performance of those children if doing so

would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

The State has not complied with the requirements of 34 CFR §300.139 regarding reporting on the performance of children with disabilities on the the MAP-A, the State's alternate assessment. DESE staff informed OSEP that the State's Part B Biennial Performance Report (BPR) submitted in May 2002 included data on the performance of students with disabilities on the MAP-A, and that DESE posted that BPR on the Division of Special Education's web-site. DESE further informed OSEP, however, that DESE reports each year to the public on the performance of children on the general MAP through its web-site and press releases, but has not, since the 2002 BPR, included the performance of students with disabilities on the MAP-A in this public reporting, or reported to the public on their performance in any other manner.

Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that DESE has corrected all of the noncompliance described above with the requirements of 34 CFR §§300.347(a)(5) and 300.139; or (2) the State's plan for documenting, within one year from the date on which OSEP accepts the plan, that the State has corrected such noncompliance. Any plan should include provisions for providing OSEP with an interim report (six months from OSEP's acceptance) and a final report (within 30 days of the one year timeline noted above).

#### *Assessment of Youth with Disabilities in DYS*

As noted above in the General Supervision section of this letter, DYS is responsible for providing FAPE to youth with disabilities in DYS facilities. DESE officials informed OSEP, however, that youth in DYS facilities (both youth with and without disabilities) do not participate in the MAP or MAP-A.<sup>5</sup> This failure to include youth with disabilities in DYS facilities in the State's assessment program and to report on their performance on the assessments, is inconsistent with 34 CFR §§300.138, 300.139 and 300.347(a)(5).<sup>6</sup> In a December 18, 2003 letter to DESE Assistant Commissioner Melodie Friedebach, DYS Assistant Deputy Commissioner Dennis M. Gregg confirmed that DYS will administer the MAP to "approximately 400 youth [in the spring of 2004]." Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that DESE has corrected all of the noncompliance described above with the requirements of 34 CFR §§300.138 and 300.139 and 300.347(a)(5) for youth with disabilities in DYS facilities; or (2) the State's plan for demonstrating, within one year from the date of this letter, that it is monitoring DYS on, and that DYS is complying with, the following requirements: 34 CFR §§300.138, 300.139 and 300.347(a)(5). Any plan should include provisions for providing OSEP with an interim report

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<sup>5</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 and without 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. This letter does not, and should not be interpreted to, address Missouri's compliance with requirements of Title I.

<sup>6</sup> The assessment requirements in 34 CFR §§300.138 and 300.139 do not apply to students with disabilities who have been convicted as adults and incarcerated in adult prisons. This exception does not, however, apply to youth with disabilities in juvenile facilities.

(six months from OSEP's acceptance) and a final report (within 30 days of the one year timeline noted above).

### *District-wide Assessments*

DESE further informed OSEP that it has not ensured compliance with the requirements of 34 CFR §§300.138, 300.139, and 300.347(a)(5) as they apply to district-wide assessments. DESE special education and assessment administrators and staff informed OSEP that: (1) DESE does not monitor to ensure compliance with those requirements as they relate to district-wide assessments, and does not know to what extent districts that have district-wide assessments are in compliance with those requirements; and (2) DESE has informed school districts that it is not appropriate to use the MAP-A as an alternate for district-wide assessments, and does not know to what extent districts with district-wide assessments have developed alternate assessments for those assessments. DESE administrators and staff informed OSEP that they expected that many districts do not have alternate assessments in place for their district-wide assessments. DESE must include in its general supervision system, methods of monitoring on the requirements of 34 CFR §§300.138, 300.139, and 300.347(a)(5) as they apply to district-wide assessments. Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that DESE has corrected all of the noncompliance described above; or (2) the State's plan for demonstrating, within one year from the date of this letter, that DESE is monitoring public agencies on, and that those agencies are complying with, the following requirements: 34 CFR §§300.138, 300.139, and 300.347(a)(5) as they apply to district-wide assessments. DESE must report to OSEP on this issue within six months of this letter (interim report) and no later than 30 days after the one year timeline, noted above (final report).

### *Conclusions*

As noted above, within 60 days from the date of this letter, DESE must submit to OSEP:

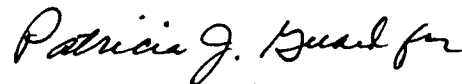
1. Either: (a) documentation that DESE is implementing effective procedures for ensuring the timely (i.e., no later than one year after DESE identifies the noncompliance) correction of noncompliance, including the effective use of enforcement sanctions and ensuring the correction of the long-standing noncompliance described above; or (b) the State's plan for documenting, within one year from the date on which OSEP accepts the plan, that DESE is effectively implementing such procedures.
2. Either: (a) documentation that DESE has revised its monitoring procedures and is requiring and ensuring the correction of all noncompliance; or (b) the State's plan for documenting, within one year from the date on which OSEP accepts the plan, that DESE is effectively implementing such procedures.
3. Either: (a) documentation that DESE has corrected all of the noncompliance described above with the requirements of 34 CFR §§300.138, 300.139, and 300.347(a)(5) as they apply to both State-wide and district-wide assessments; or (b) for each area of noncompliance that the State has not yet corrected, the State's plan for documenting, within one year from the date on which OSEP accepts the plan, that the State has

corrected such noncompliance, including interim (within six months) and final (within 30 days of the one year timeline) reports to OSEP.

Finally, the issue relating to the DESE's monitoring of special education programs for youth in city and county jails, will continue to be addressed as part of the State's IP. Specifically, DESE must: (1) within 6 months of the IP letter, provide OSEP with an interim progress report including data demonstrating that DESE is monitoring public agencies on all Part B requirements for youth with disabilities in city and county jails; and (2) within 30 days after one year from the date of this letter and OSEP's response of the same date to the State's to OSEP's July 3, 2004 IP, provide OSEP with a final report that demonstrates that DESE is monitoring public agencies on, and ensuring compliance with, all Part B requirements for youth with disabilities held in city and county jails.

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

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Ms. Melodie Friedebach