

DELAWARE

Table B – Part B

Previously-Identified Issues

Issue	State Submission	OSEP Analysis	Required Action
<p><b>Indicator 4 - Suspension &amp; Expulsion</b></p> <p>OSEP's September 21, 2004 APR response letter required DDOE to submit:</p> <ul style="list-style-type: none"> <li>Data demonstrating whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities.</li> <li>If significant discrepancies were identified, DDOE was required to report the results of its review and, if appropriate, revisions of policies, procedures and practices consistent with 34 CFR §300.146.</li> </ul> <p>In the FFY 2003 APR, DDOE did not include an analysis demonstrating compliance with 34 CFR §300.146. OSEP's September 8, 2005 letter required DDOE to submit a plan designed to ensure correction of noncompliance with these requirements.</p>	<p>DDOE's November 7, 2005 (updated on December 8, 2005) plan indicated that the State would include data and analysis in the SPP designed to ensure compliance with these requirements.</p> <p>On page 27 of the SPP, DDOE reported that 36.8% (7) of districts were identified as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than 10 days in a school year. DDOE required those districts to provide a description of the policies, procedures and practices related to the identification of appropriate services, including the use of functional behavioral assessments and behavioral interventions and procedural safeguards, in the development and implementation of IEPs.</p>	<p>The SPP indicated that, while the State was making progress, it did not demonstrate compliance with the requirements of 34 CFR §300.146(b). The State did not provide documentation that it reviewed and, if appropriate, revised (or required the affected LEAs to review and, if appropriate, revise) policies, procedures and practices relating to the identification of appropriate services, including the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with the Act.</p>	<p>The State must ensure that the noncompliance with 34 CFR §300.146(b) is corrected within one year of its identification and include data in the APR, due February 1, 2007, that demonstrate compliance with this requirement. Failure to demonstrate compliance at that time may affect OSEP's determination of the State's status under section 616(d) of the IDEA.</p>

Issue	State Submission	OSEP Analysis	Required Action
<p><b>Indicator 5 - Least Restrictive Environment (LRE)</b>  The appropriate placement of children in the least restrictive environment was initially identified as an issue in OSEP's 1995 Monitoring Report.</p> <p>In Delaware's 2001 State Improvement Plan and subsequent updates, Delaware identified the State's funding formula as a barrier toward ensuring that children with disabilities were being educated in regular classes to the maximum extent appropriate. The primary challenge is the 12.5 rule requiring that identified students receive at least 12.5 hours of weekly instruction from a certified special education teacher in order to be counted as a full time special education student for State funding purposes.</p> <p>The September 8, 2005 APR letter, required DDOE to provide either sufficient documentation demonstrating that placement decisions are made in accordance with the LRE provisions, or, alternatively, an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in inappropriate placements of children with disabilities.</p>	<p><b>State Submission</b></p> <ul style="list-style-type: none"> <li>DDOE's November 11, 2005 explained that the 12.5 hour rule "may influence placement decisions by IEP teams" and legislative action is required to fully implement a funding mechanism change. By the end of the 2006 legislative session, a decision will be made regarding funding special education and changing the funding mechanism.</li> <li>On pages 31-32 of the SPP, DDOE data show a steady increase in the percent of students placed in the regular class setting and a decline in the total percent of students receiving services outside of the regular class setting.</li> </ul>	<p><b>OSEP Analysis</b></p> <p>DDOE made progress, demonstrated by improved LRE data. However, the funding formula continues to be a barrier. OSEP's February 9, 2006 letter advised the State that failure to demonstrate compliance with 34 CFR §§300.130 and 300.550(b) regarding the appropriate placement of children in the LRE or, if a legislative change is needed to achieve compliance, an assurance that the State will revise its funding mechanism as soon as possible to ensure that it does not result in placements that violate LRE requirements, including submitting a proposed legislative amendment. The State must provide this information by June 1, 2006.</p> <p>Failure to provide information demonstrating compliance may result in the State's being designed as a "high risk" grantee or otherwise affect its FFY 2006 grant award.</p>	<p><b>Required Action</b></p> <p>As directed in OSEP's February 9, 2006 letter, DDOE must submit either documentation of correction of the noncompliance regarding placement of children in the LRE (monitoring data) or, if a legislative change is needed to achieve compliance, an assurance that the State will revise its funding mechanism as soon as possible to ensure that it does not result in placements that violate LRE requirements, including submitting a proposed legislative amendment. The State must provide this information by June 1, 2006.</p> <p>Failure to provide information demonstrating compliance may result in the State's being designed as a "high risk" grantee or otherwise affect its FFY 2006 grant award.</p>

Issue	State Submission	OSEP Analysis	Required Action
<p><b>Indicator 9 - Disproportionality</b>  OSEP's September 8, 2005 letter required DDOE to submit in the SPP, data and analysis demonstrating compliance with 34 CFR §300.755(b) regarding disproportionality.</p>	<p>On page 49 of the SPP (page 49), DDOE reported that it issued monitoring reports to two agencies with identified disproportionality and directed those agencies to review and, if appropriate, revise their policies, procedures and practices. DDOE reported that, at the time of the SPP submission, it was in the process of reviewing their responses. In addition, DDOE noted that local agencies were submitting annual performance reports addressing identification policies, procedures and practices.</p>	<p>The actions described in the SPP are responsive to the requirements of OSEP's September 8, 2005 letter.</p>	<p>OSEP looks forward to reviewing data in the APR, due February 1, 2007, demonstrating continued compliance with this requirement.</p>