



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Wayne G. Sanstead
State Superintendent
North Dakota Department of Public Instruction
600 E. Boulevard Ave., Dept 201
Bismarck, North Dakota 58505-0440

NOV - 3 2006

Dear Superintendent Sanstead:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) verification visit to North Dakota. As I explained in my March 24, 2006 letter to you, OSEP is conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with, and improving performance under, Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to North Dakota during the week of July 24, 2006. We appreciate the time that you took to meet with OSEP staff during the visit.

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

As part of the verification visit to the North Dakota Department of Public Instruction (NDDPI), OSEP staff met with Bob Rutten, Director of Special Education, and members of NDDPI's staff 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, performance of students with disabilities on statewide assessments. Prior to and during the visit, OSEP staff reviewed a number of documents¹, including the following: (1) North Dakota's Part B State Performance Plan; (2) The Annual Performance Reports (APR) for Federal Fiscal Years (FFY) 2002 and 2003; (3) NDDPI's Part B Program Improvement Monitoring document; (4) NDDPI's written response to the overarching questions around which OSEP is focusing its verification reviews; (5) NDDPI's tracking logs for complaints and due process hearings; and (6)

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.

information on NDDPI's website regarding the statewide assessment system. On June 8, 2006, OSEP conducted a conference call with members of the North Dakota IDEA Advisory Committee to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and statewide assessment.

The information that Bob Rutten and other NDDPI 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 NDDPI's systems for general supervision, data collection and reporting, and statewide assessment. We appreciate NDDPI's thorough preparation for our visit.

General Supervision

In reviewing the State's general supervision system, OSEP collected information regarding a number of elements, including whether the State: (1) has identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede the State's ability to identify and correct noncompliance; (2) has systemic, data-based, and reasonable approaches to identifying and correcting noncompliance; (3) utilizes guidance, technical assistance, follow-up, and -- if necessary -- sanctions, to ensure timely correction of noncompliance; (4) has dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) has mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.

Monitoring

In carrying out monitoring activities, NDDPI must ensure that the requirements of section 616(a)(2) of IDEA are met. That section states that,

The primary focus of Federal and State monitoring activities ... shall be on (A) improving educational results and functional outcomes for all children with disabilities and (B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results and functional outcomes for children with disabilities.

20 U.S.C. 1416(a)(2); see also §300.600(b)(2) of the final Part B regulations.

NDDPI's Special Education Director told OSEP that in recent years the State's monitoring process has been in a "constant state of transition." He characterized the shift as moving from a primary focus on inputs to a primary focus on functional outcomes and educational results, consistent with the monitoring requirements in section 616(a)(2)(A) of the reauthorized IDEA. The following is a summary of our understanding of that history:

Prior to 1999, NDDPI used a 5-year cyclical monitoring process. SEA monitoring teams made on-site visits during which they reviewed a sample of student files and conducted staff and student interviews. Data were collected to determine compliance with all special education requirements. Compliance reports were issued to school districts and corrective actions were required to correct noncompliance.

Subsequent to the 1999 OSEP monitoring report to NDDPI, the State developed a Continuous Improvement Monitoring Program (CIMP) that incorporated some features of OSEP's CIMP model. NDDPI's monitoring procedural manual (September 2001) states that each LEA is required to develop a self-assessment with stakeholder involvement. Each LEA is also required to conduct "internal monitoring" of its program. As part of the LEA eligibility requirements for receiving IDEA funds, each Special Education Unit (SEU) submits an assurance to NDDPI that its constituent LEAs have internal monitoring procedures in place. SEU administrators have oversight responsibility for each LEA's internal monitoring process.

During OSEP's verification visit, NDDPI staff explained that the State gives each SEU considerable flexibility in the development and implementation of its internal monitoring procedures, including format used and issues addressed. Each SEU may develop individual processes for internal monitoring, provided the following elements are included: annual (or more frequent) monitoring activities are conducted; noncompliance is identified; and noncompliance is corrected in a timely manner. However, the extent of annual monitoring activities is not specified, nor does the State specify any common requirements that must be reviewed as a part of that process.

During the visit, NDDPI provided OSEP with a CD featuring a sample of the State's SEU directors who described their SEUs' internal monitoring process. Their descriptions illustrate both the common elements as well as the considerable variation in monitoring procedures among SEUs across the State.

Some SEU procedures included ensuring that timelines were met for some special education requirements such as evaluations, reevaluations and the development of individualized education programs. Some units are able to monitor that these timeline requirements were met on an ongoing basis through review of electronic data. A common feature of SEU monitoring is that case managers with each LEA periodically review several student files to ensure that forms are completed properly. Where noncompliance is identified, SEU directors explained that, in the majority of cases, correction takes place immediately. Several SEU directors commented that more systemic issues are typically addressed through staff inservice training.

Speaking about the benefits of a focused internal monitoring approach, several SEU directors remarked that it allows them to target a smaller set of requirements, taking the emphasis away from compliance and shifting it to results. One SEU director said that internal monitoring "allows us to move from being police to making a more collaborative effort." SEUs reported that they find that they have more time to collect outcomes data, monitor achievement and provide technical assistance to district staff.

Each SEU director is contacted annually by their assigned NDDPI regional coordinator to review the SEU's internal monitoring results. NDDPI explained that they allow considerable latitude for this process. The review may include an onsite visit to the unit office, telephone contacts, submission of unit data to NDDPI, and summary worksheets completed by NDDPI coordinators. NDDPI coordinators maintain frequent contact with SEU special education administrators to discuss improvement strategies and provide technical assistance. Based on the results of the internal monitoring, SEUs develop and implement improvement plans. Annual reviews of unit improvement plans are conducted for every SEU by the assigned NDDPI coordinator.

Between 2004 and 2006, NDDPI's eight-member staff made on-site visits to SEUs based on the individual needs of the units. According to a log provided to OSEP by NDDPI, the frequency of NDDPI's coordinators' visits to assigned SEUs ranged from annually to every few years. Typically, NDDPI's onsite visits are used for purposes of providing technical assistance to SEU staff who conduct internal monitoring of LEAs. This technical assistance assists SEU staff to revise LEA improvement strategies intended to remediate noncompliance. In addition to onsite visits, NDDPI technical assistance may include phone contacts with SEU staff, correspondence, and SEA-sponsored training. NDDPI informed OSEP that, since 2005, on-site visits by NDDPI have been conducted almost exclusively at the six schools from the six school districts involved in the pilot program for consolidated monitoring as part of the State's 2003 General Supervision Enhancement Grant (GSEG).

NDDPI staff indicated that few SEUs issue written monitoring reports to their constituent LEAs. SEUs develop and implement improvement plans addressing compliance and performance issues identified through their internal monitoring of LEAs. The improvement plans NDDPI provided to OSEP, however, did not specify noncompliance issues and corrections for specific LEAs, but rather indicated the aggregated issues and corrections across the SEU.

Records provided to OSEP regarding identification and correction of noncompliance were minimal and varied across SEUs. NDDPI provided OSEP with tables on 16 of its 31 SEUs that had information on issues where noncompliance was identified. The tables contained the date the noncompliance was identified and corrected, and whether the correction occurred within one year of the date of identification. In 9 of the 16 tables reviewed, SEUs provided detailed summaries of the noncompliance issues identified and the nature of the corrective actions taken. The remaining SEUs provided much less detailed information.

For instance, records from the Buffalo Valley SEU listed two compliance issues identified for its six school districts during 2005-06. The records indicated that both issues – “Justification for LRE” and “Justification for ESY” had been corrected within one year of identification through “compliance measures built into computer system”.² No further information was provided regarding the measures that were taken to correct the noncompliance.

² A third issue was also included, but it did not involve an IDEA requirement.

The log for Grand Forks listed 117 noncompliance issues for the 2005-06 school year. The log did not identify the specific issues, but indicated that all noncompliance would be corrected by September 30, 2006.

In its List of Noncompliance Issues, the log for the Burleigh County SEU stated, in the column headed “Specific Issue and Number of Incidences”:

Previous noncompliance issues have been corrected through emails, telephone calls and conversations. . . Internal monitoring is conducted on an ongoing (daily) basis as staff send their reports to the Sp Ed Coordinators who review documents as they come into the office.

The list did not specify the noncompliance found or the nature of the corrective actions.

The log prepared by the East Central SEU included no specific information on the type or number of compliance issues it identified. It stated “Corrected when identified. Actual number not kept.”

The focused monitoring model was piloted in six schools in six school districts during the 2004-05 school year. This model included the following features:

- Limited number of priority areas
- Limited number of indicators within each priority
- Standard and uniform benchmarks used for inquiry when making monitoring decisions
- Clear and predictable triggers for intervention
- Additional supports to identify poorly functioning schools and/or sanctions if needed
- Technical assistance to vulnerable populations
- Resources allocated to areas of highest need
- Interventions linked to identified problems.

NDDPI staff explained that NDDPI is in the process of developing a focused monitoring model as a part of a consolidated monitoring approach that places its primary emphasis on student outcomes. NDDPI explained that No Child Left Behind (NCLB) provided the impetus for the development of the consolidated monitoring system that promotes a unified system of operation. Consolidated monitoring is intended to merge quality assurance for multiple Federal education laws, including IDEA and NCLB. According to the State, consolidated monitoring will improve shared data collection, data analysis, and reporting at the State, district, and building levels.

According to NDDPI staff, in Fall 2006, consolidated monitoring is being implemented in 22 SEUs. NDDPI will gather data on implementation problems and successes that each site may be experiencing. Statewide consolidated monitoring is expected to be fully implemented in school year (SY) 2007-2008. NDDPI staff told us that NDDPI anticipates

that consolidated monitoring will allow for a more frequent review of data and allow the State to be more proactive in providing technical assistance to its SEUs.

Identification and Timely Correction of Noncompliance

NDDPI staff reported that they are in the process of implementing the measurable and rigorous targets and improvement activities contained in North Dakota's State Performance Plan (SPP) that meet the requirements of section 616(b)(2) of the IDEA. In the SPP, the State reported an 87.8% level of compliance for Indicator 15A (percent of noncompliance related to monitoring priority areas and indicators corrected within one year of identification), as required by 34 CFR §300.600, re-designated as §300.149 in the final Part B regulations. In the SPP response letter, OSEP required NDDPI to provide data in the APR, due February 1, 2007, that demonstrate full compliance with this requirement. During the verification visit it became apparent to OSEP that North Dakota's baseline information in its SPP was calculated using data from 26 school districts, which included the six schools from the six school districts included in the focused monitoring pilot monitored during 2004-2005.³ Six school districts were involved in the focused monitoring pilot, while data for the remaining 20 school districts were generated through the State's Title IV monitoring process.⁴ North Dakota calculated that 87.8% of its noncompliance was corrected within one year.

In its SPP, the State reported that it is implementing corrective actions that include: (1) structuring NDDPI staff into teams to be more accessible and to provide greater professional development; (2) incorporating best practices in the trainings; (3) updating the Online Reporting System (ORS) to include needed data to support targets for the SPP; and (4) implementing a new monitoring improvement system (CIFMS). The State reported during the verification visit that it is implementing these activities to improve the State's 87.8% rate of correcting noncompliance within one year from the date of identification. However, as explained below, OSEP is also concerned that the above corrective measures are inadequate and that NDDPI's monitoring may not be sufficiently comprehensive to enable the State to collect sufficient data for its APR for Indicator 15A, regarding the percent of noncompliance related to monitoring priority areas and indicators corrected within one year of identification.

OSEP supports NDDPI's efforts to focus on improved educational results and outcomes for children with disabilities. Its emphasis on improved learning outcomes is consistent with the intent of IDEA as well as NCLB. It has been OSEP's experience that North Dakota has had a high level of IDEA compliance. However, based on the verification visit, OSEP has identified a number of concerns with NDDPI's monitoring system,

³ At the time of OSEP's visit, North Dakota's system was comprised of 204 school districts, organized into 31 Special Education Units.

⁴ In an October 30, 2006 conversation with OSEP, NDDPI verified that this is Part A of Title IV of the Elementary and Secondary Education Act, also known as the Safe and Drug Free Schools and Communities program. NDDPI staff also told OSEP that it culled from other programs' (Such as Title IV and Title I) monitoring data in order to identify cross-over issues (e.g. suspension/expulsion, graduation, dropouts) that could be used to establish the baseline for Indicator 15 of the SPP.

including that NDDPI exercises limited oversight on a statewide basis, places heavy reliance on SEU internal monitoring procedures, which vary significantly across SEUs, and does not require SEUs to document the specific noncompliance identified and the evidence of what measures have been taken to correct identified noncompliance.

Therefore, OSEP cannot ascertain whether NDDPI's monitoring procedures are reasonably designed to ensure the identification and timely correction of noncompliance with Part B requirements, with a particular emphasis on the priority areas and indicators most closely related to improving educational results and functional outcomes for all children with disabilities.

In the FFY 2005 APR, due February 1, 2007, NDDPI must include an analysis demonstrating either (1) that its monitoring system is sufficient to enable the State to monitor implementation of Part B, with a particular emphasis on monitoring priority areas and indicators; or (2) the corrective measures NDDPI is taking to ensure that its monitoring procedures are adequate to identify noncompliance with Part B requirements by all LEAs in the State and to correct identified noncompliance within one year of identification, with a particular emphasis on monitoring priority areas and indicators that are most closely related to improving educational results and functional outcomes for all children with disabilities in the State. The SPP requirements specify that data for all LEAs must be included during the six-year period covered by the SPP. See also, 34 CFR §300.601(b)(2). OSEP addressed this requirement in its March 20, 2006 letter approving the State's SPP as well as at the National Accountability Conference that took place in Denver on September 18 and 19, 2006. With its FFY 2005 APR, due on February 1, 2007, NDDPI must include a description of how it will collect data for all LEAs during the six year period covered by the SPP to ensure that they meet the program requirements of Part B of the Act.

Complaints, Mediation and Due Process Hearings

Complaints In North Dakota, the Dispute Resolution Coordinator is responsible for the management of complaints, mediation, and due process hearings. NDDPI has provided training in the area of dispute resolution regarding the statutory changes in IDEA 2004 and the State's early intervention dispute resolution options and procedures to the following: (1) IDEA Advisory Committee; (2) Head Start staff; (3) Special Education Directors; and (4) Pathfinders (the State's Parent Training and Information (PTI) center). NDDPI has developed a complaint form which can be accessed by mail or through its website. During the verification visit, OSEP reviewed the special education complaint logs, which are maintained by the Dispute Resolution Coordinator for School Year (SY) 2003 to SY 2005. The Part B regulations require that NDDPI issue a written decision within 60 days after the date that the complaint was filed, unless the timeline is extended due to exceptional circumstances that exist with regard to a particular complaint. §300.152(a) and (b)(1) in the final Part B regulations (previously 34 CFR §300.661(a) and (b)(1) of the final Part B regulations). Of the 21 complaints filed during SYs 2003 through 2005, 19 complaint decisions were issued within the 60-day timeline, and 2 complaint decisions were issued within allowable extensions. For SY 2003 and SY 2004, NDDPI made findings of noncompliance in 10 complaints; corrective actions for each of these complaints were completed within one year. For SY 2005, five findings of noncompliance were made;

corrective actions for these are pending, but the one-year timeline for correction has not yet expired. As deemed necessary, the complaint investigator makes on-site visits as part of complaint investigation.

Mediations and Due Process NDDPI encourages SEU staff to informally resolve disputes with parents. If parents are not satisfied with those efforts, they can request formal mediation. From July 2003 to July 2005, NDDPI received eight requests for mediation (one request related to a due process hearing request); four resulted in a mediation agreement; in three requests parents declined mediation after they reconsidered or felt that the issues had been addressed; and in one request a due process complaint was filed.

In North Dakota, the Office of Administrative Hearings (OAH) is an independent State agency that has been created to conduct impartial hearings for State agencies. NDDPI contracts with OAH for Administrative Law Judges (ALJs) to conduct due process hearings, issue findings of fact, conclusions of law, and final orders. Since SY 2000-2001, NDDPI has received 17 due process hearing requests. Of the 17, four were fully adjudicated and 13 requests were withdrawn or resolved prior to the hearing. Of the four cases that went to due process hearings, 2 decisions were issued within the 45-day timeline, and 2 decisions were issued within properly-extended timelines.

Under IDEA 2004, a resolution meeting must occur after the parent files a due process complaint before the initiation of a due process hearing, unless the parent and the LEA agree in writing to waive the meeting or the parent and the LEA agree to use the mediation process. 20 U.S.C. 1415(f)(1)(B) and §300.510 of the final Part B regulations. NDDPI oversees resolutions sessions by: (1) arranging for resolution facilitators (generally, resolution sessions have been facilitated by the IEP team chairperson); (2) maintaining necessary paperwork and monitoring timelines; and (3) ensuring timely transition between dispute resolution processes. For the two due process hearings fully adjudicated in 2005-06, only one resolution session was held. For the other fully-adjudicated hearing, the parties agreed in writing to waive the resolution session. During the verification visit, NDDPI informed OSEP that the State uses dispute resolution data in decision-making and in determining staff development activities. Each September a summary of dispute resolution data is presented to the IDEA Advisory Committee, along with a full copy of each complaint received during the year. Dispute resolution data are analyzed for systemic issues, which are addressed by NDDPI staff and the IDEA Advisory Committee.

Collection of Data Under Section 618 of the IDEA

In reviewing the State's system for data collection and reporting under section 618 of the IDEA, 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 corrects 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 of the IDEA.

During the verification visit, NDDPI explained that data collection and analysis is a shared responsibility within three Department of Public Instruction Units: Special Education, Management Information Systems and Standards and Achievement. Since SY 2004, NDDPI has utilized a web-based system for collecting, storing, managing and disseminating data. The North Dakota On-line Reporting System (ORS) is utilized by NDDPI to collect, store, manage and distribute special education data for use in decision-making as well as meeting the Federal reporting requirements of IDEA and NCLB. The ORS uses unique student identifiers as the critical link to the Special Education Membership Report. Various Special Education Federal reporting data, including APR requirements, are collected automatically by the ORS via Excel templates. These data include: Table 1, Child Count Data; Table 3, Placement Data; and Table 4, Exiting Data. Table 2, Personnel Data, are collected by hand; and the Coordinated School Health unit within DPI collects Table 5, Discipline Data. The ORS provides the NDDPI and administrative units with data organized around the service delivery system for special education services. NDDPI plans to begin implementing the State Automated Reporting System (STARS) in SY 2007.

During the verification visit, NDDPI informed OSEP that ORS data are used to develop a Special Education Membership Report. The report is closed at the end of the workday on December 1 of each year. NDDPI utilizes a Comprehensive Student list spreadsheet that is reviewed by the Membership Access Xchange (MAX) to find duplicates and missing special education data. The ORS has a data validation element, which requires that a student's primary disability, educational setting, including if the student is in a correctional facility, be completed prior to submission to NDDPI. When student data are missing or inaccurate, the Special Education Office Manager contacts the LEA to evaluate and correct the data in question. If two school districts claim the same student, both units are contacted and asked to clarify the discrepancy in the duplicate record. The corrected data are submitted to the Special Education Office Manager for final edit changes to the Special Education Membership Report. When all edits have been corrected, a new Comprehensive Student list is queried. Once final edits are made, the data are shared with the NDDPI Education Data Exchange Network (EDEN) coordinator. NDDPI reports that duplications have been significantly reduced since the implementation of ORS. If an LEA fails to meet any requirements, the Special Education Office Manager contacts the LEA administrator to collect and verify required data. The EDEN coordinator submits the December 1 child count to the Department. Child count data are compared with data from previous years to show trends.

In interviews with NDDPI staff, OSEP was informed that each fall the Management Information Systems unit at NDDPI conducts training for all individuals using the ORS. The training covers all new additions to the ORS and is offered to all new users. The IDEA Part B data manager and the Special Education Office Manager also conduct individual training for SEUs upon request. NDDPI informed OSEP that data are used to drive decision making, particularly in the areas of training and staff development. The

IDEA Advisory Committee reviews data tables regularly and uses these data to develop strategies and recommendations for improvements. NDDPI stated that the transfer of data from the Part C Lead Agency, the Department of Human Services (DHS), to the Part B Lead Agency (NDDPI) remains a challenge because the two agencies use different data collection systems, which are currently incompatible.

Early Childhood Transition Data On page 54 of its SPP, North Dakota indicated that the State did not have the capabilities to analyze and establish the required baselines for Indicator 12 relating to early childhood transition. Therefore, in its March 20, 2006 letter responding to the State's SPP submission, OSEP determined that the State did not demonstrate that it has ensured that an IEP or, if appropriate, an IFSP has been developed and is being implemented, for a child transitioning from the Part C to the Part B program by the child's third birthday (34 CFR §300.132(b), redesignated as §300.124(b) in the final Part B regulations), and required North Dakota to ensure correction of this noncompliance. During the OSEP verification visit, a joint meeting was held with NDDPI and DHS regarding early childhood transition issues. At that meeting, both NDDPI and DHS confirmed that challenges still exist in the area of early childhood transition. Currently, NDDPI and DHS data are shared through printed reports because the data systems are not compatible. Preschool data collected by school districts within the ORS system cannot be merged with Part C data.

There is an interagency agreement in place between NDDPI and DHS. During the verification visit, OSEP learned that both agencies are working to address related issues. NDDPI may wish to review, and, if necessary, revise the improvement strategies relating to this indicator that were included in its SPP, so that it is able to include data demonstrating compliance with the requirements of 34 CFR §300.124(b) of the final Part B regulations (previously 34 CFR §300.132(b)) in the State's APR due February 1, 2007. Failure to demonstrate compliance at that time may affect OSEP's determination of the State's status under section 616(d) of the Act.

Statewide Assessment

In reviewing NDDPI's system for statewide 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, 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 NDDPI's system for statewide assessment, OSEP also discussed with NDDPI's staff how the alternate assessment is aligned with grade-appropriate content standards.

North Dakota's statewide assessment includes the North Dakota State Assessment (NDSA). Students are assessed in grades 3, 4, 5, 6, 7, 8, and 11 in Reading/Language Arts

and Math. Starting in Fall 2006, grades 4, 8, and 11 will be assessed in Science, Reading/Language Arts and Math. The North Dakota Alternate Assessment (NDALT) follows the same standards as the North Dakota State Assessment in alignment with the North Dakota State Content Standards. Parents can refuse to allow their children to participate. Students who do not participate are included in computation of participation ratio. North Dakota continues to exceed the 95% participation requirement (over 98% in 2004-05)⁵.

North Dakota reported that children with disabilities are included in all systems for accountability as required by NCLB. Every child is assigned a unique student identifier number. NDDPI conducts internal cross-checks to verify participation. The North Dakota State Assessment provides for a single, unified, statewide tool that measures the performance of all students in terms of the State's content and achievement standards. North Dakota uses a single assessment vendor to coordinate the development and scoring of the State Assessment. North Dakota prohibits the use of any assessment alternatives administered by any other local school district, school, or outside entity, other than the statewide assessment prescribed by the State Superintendent.

Children with disabilities who are unable to participate in the standard assessment participate in the NDALT. For the State, 2.1 percent of the students tested in grades 3, 4, 5, 6, 7, 8, and 11 participated in the NDALT. IEP teams determine the participation of children with disabilities in the statewide assessment and whether accommodations and/or modifications are needed to enable participation in assessments. NDDPI has established accommodation guidelines and ensures that a range of appropriate accommodations are made available to students with disabilities.

NDDPI provides annual training for LEA testing coordinators and all special education personnel who administer the alternate assessment. Training CDs and ongoing technical assistance are provided. NDDPI uses internal cross-checks among student enrollment data and child count information submitted via the Online Reporting System. The State IEP form includes a section that must be completed with information on participation in assessment.

In North Dakota, students with disabilities are included in all reporting to the public. Assessment results are reported on the State Report Card and website. North Dakota reports the results of students with disabilities participating at the State, district, and school levels. Individual student results are reported to individual schools. Since March 2002, the State has reported disaggregated assessment data for students with disabilities at the district and school levels. During our verification visit, North Dakota provided the following information regarding the participation and proficiency rates for students with IEPs from 2001-2005.

⁵ The regulations under the No Child Left Behind Act (NCLB) provide, at 34 CFR §200.20(c), that in order to make adequate yearly progress (AYP), a school or LEA must ensure that not less than 95 percent of its children with disabilities in the grades tested participate in the State assessments under 34 CFR §200.2.

<i>Rate of IEP Students</i>	<i>20001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>
Participation				
Reading	95.1 %	98.6%	98%	98.6%
Math	95.2 %	98.3%	97.8%	98.5%
Proficiency				
Reading	26%	24.9%	39.7%	48.1%
Math	14.1%	12.5%	21.6%	43%

In the State, students with disabilities show continuous improvement in participation in assessments and in proficiency rates for the math and reading assessment. NDDPI reported the performance of children with disabilities on the alternate assessment (NDALT) for FFY 2004 in its SPP as required.

During our verification visit, NDDPI informed OSEP that the IDEA Advisory Committee reviews report summaries from assessment data. Teacher feedback obtained through surveys on the overall assessment process, including training and availability of materials, is also reviewed. The IDEA Advisory Committee uses assessment data to develop strategies and recommendations to improve assessment results for children with disabilities. OSEP has determined, through its interviews with NDDPI staff and a review of the State's written procedures for statewide assessments and its reports to the public and the Secretary on the participation and performance of children with disabilities on such assessments, that those procedures, as written, and those reports are consistent with Part B requirements, with the exception of public reporting on the number of children with disabilities who were provided accommodations in order to participate in regular assessments. Without also collecting data at the local level, OSEP cannot determine whether all public agencies for which the State is responsible implement NDDPI's procedures in a manner consistent with the requirements of Part B.

A new provision in IDEA's public reporting requirements on assessments added by IDEA 2004, which became effective on July 1, 2005, also requires States to report to the Secretary and to the public, both "[t]he number of children with disabilities participating in regular assessments," as well as "the number of those children who were provided accommodations in order to participate in those assessments." 20 U.S.C.

1412(a)(16)(D)(i). For the State Profile posted on North Dakota's website as of September 11, 2006, North Dakota did not include in its assessment data for SY 2005-06 data on the number of children with disabilities who took the regular assessment with accommodations, as required by section 612(a)(16)(D)(i) of IDEA. North Dakota must take the necessary steps to report this information to the public by June 1, 2007. Failure to publicly report this information by that time may affect the State's FFY 2007 Part B grant award.

Conclusion

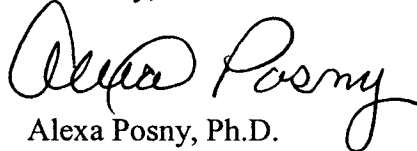
As noted above, with its FFY 2005 APR, due on February 1, 2007, NDDPI must submit the following:

- (1) an analysis demonstrating either that its monitoring system is sufficient to enable the State to monitor implementation of Part B, with a particular emphasis on monitoring priority areas and indicators or the corrective measures NDDPI is taking to ensure that its monitoring procedures are adequate to identify noncompliance with Part B requirements by all LEAs in the State and to correct identified noncompliance within one year of identification, with a particular emphasis on monitoring priority areas and indicators that are most closely related to improving educational results and functional outcomes for all children with disabilities in the State;
- (2) a description of how it will collect data for all LEAs during the six year period covered by the SPP to ensure that they meet the program requirements of Part B of the Act.

Regarding its data collection system, NDDPI may wish to review and revise its improvement strategies so that it includes data in its FFY 2005 APR, due February 1, 2007, that demonstrate that children transitioning from Part C to Part B have an IEP or IFSP in effect by the child's third birthday, as required by 34 CFR §300.124(b) of the final Part B regulations, previously 34 CFR §300.132(b). With respect to assessments, by June 1, 2007, NDDPI must report to the Secretary and to the public on the number of children with disabilities who were provided accommodations in order to participate in regular assessments in accordance with 20 U.S.C. 1412(a)(16)(D)(i). Failure to publicly report this data by that time may affect NDDPI's FFY 2007 Part B grant award.

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

Sincerely,



Alexa Posny, Ph.D.

Director

Office of Special Education Programs

cc: Robert Rutten