



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

The Honorable Lyonel Tracy
Commissioner of Education
New Hampshire Department of Education
101 Pleasant Street South Office Park
Concord, New Hampshire 03301-3860

OCT 3 2006

Dear Commissioner Tracy:

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 New Hampshire. As indicated in my letter to you of April 13, 2006, 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 the Part B visit to New Hampshire during the week of July 17, 2006.

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 purposes of the verification visits are to: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify and correct noncompliance.

As part of the verification visit to the New Hampshire Department of Education (NHDOE), OSEP staff met with Santina Thibedeau, Director of the Bureau of Special Education and members of NHDOE's staff who were 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 statewide assessments.

Prior to and during the visit, OSEP staff reviewed a number of documents,¹ including the following: (1) New Hampshire's Part B Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR); (2) New Hampshire's Part B State Performance Plan (SPP) submitted December 31, 2005 (3) New Hampshire's FFY 2006 Annual Grant Award; (4) New Hampshire Department of Education Special Education Program Approval Visitation Final Summary Report (SAU #61); (5) Special Education Complaint Call Protocol including complaint form, letters to parties, investigator training, complaint log, and list of the number and frequency of allegations; (6) project structure for Successful Early Childhood Transitions; (7) Impartial Due Process History and Disposition of Administrative Proceeding; (8) Fall 2005 NECAP Tests State Summary Report; and (9) NHDOE's website, including information about the statewide assessment system. OSEP also conducted a conference call on June 29, 2006 with several members from New Hampshire's State Advisory

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.

Committee to hear their perspectives on the strengths and weaknesses of the State's system for general supervision, data collections and statewide assessment.

OSEP's July 3, 2006 letter informed the State that NHDOE would receive the FFY 2006 grant award under Part B with special conditions. The special conditions were placed on the grant award because OSEP determined that the State was out of compliance with timely evaluations and reevaluations (20 U.S.C. 1414(a)(1)(C) and 1414 (a)(2)). While conducting the verification visit, OSEP staff examined documents and data analyses related to these special conditions and noted that the data represent improved performance.

The information that Ms. Thibedeau and other NHDOE 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 NHDOE's systems for general supervision, data collection and reporting, and statewide assessment.

General Supervision

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

State Monitoring Process

NHDOE reported that it conducted on-site monitoring of programs of school administrative units (SAU), local educational agencies (LEAs), charter schools, special school districts and non-public approved special education programs on a five-year cyclical basis. The on-site monitoring, based on the National Study of School Evaluation model (NSSE), encompassed both procedural requirements and performance outcomes. The State contracted with the Southeastern Regional Education Service Center, Inc. (SERESC) to conduct the State's on-site monitoring reviews. The on-site monitoring teams used a case study approach and a variety of additional review processes to gain an overall understanding of programs, to identify noncompliance, and to assist LEAs in the development of corrective action plans and program improvement activities. The monitoring process team reviewed local policies and procedures and prepared a year-end report that included an analysis of trends, and provided a combined report to the State, SAUs and LEAs. Following the SERESC on-site reviews, the State monitored for correction of noncompliance.

When making a determination of compliance with Part B regulations, the on-site team examined: (1) LEA program-level self-studies; (2) student files (including a review of Individual Education Programs (IEPs)); (3) LEA enrollment and performance data for children with disabilities in out-of-district placements; (4) school leadership and verification of personnel rosters; (5) classroom observation; (6) results of the local self-study data collection and analysis process; (7) interviews

with stakeholders, school administrators, parents and students; and (8) results of local parent surveys.

NHDOE approaches to correct citations of noncompliance included: (1) an electronic database to track noncompliance; (2) a corrective action template for all programs with issues of noncompliance (the template has been in place for three years and linked with the database that tracked all corrective action activities in the State); (3) a process for agencies to explain how the noncompliance will be corrected within one year of identification; (4) a memorandum that informed local and State staff that all noncompliance must be corrected within one year of identification; (5) closeout letters for programs that completed all corrective action requirements; (6) assignment of State staff to monitor the timely and accurate implementation of corrective action plans to ensure compliance; and (7) the use of the enforcement authority of New Hampshire Rules for the Education of Children with Disabilities.

During the verification visit, OSEP reviewed the corrective action template and the NHDOE noncompliance tracking logs. OSEP also reviewed a final summary report for the Inter-Lakes school district including the citations of noncompliance, the corrective action plan, and the closeout letter.

NHDOE reported that it piloted a new special education data management and information system, the New Hampshire Special Education Information System (NHSEIS) to track noncompliance and to create school, district, and state reports. (See the next section of this letter for additional information.) The NHSEIS is an electronic database, updated annually, that is used to further identify systemic issues of noncompliance. With the information from the database, the State issued policy letters in response to high frequency topics.

NHDOE recently created a new staff position to monitor the correction of noncompliance, implementation of corrective actions and the timely resolution of complaints and due process hearings. The new staff person also tracked the findings from monitoring visits and provided a coordinated “voice” for on-going issues in the State that needed to be corrected. The State planned to report all New Hampshire school improvement activities as a unified report of career and technical education, special education, and No Child Left Behind (NCLB).

The State reported that it planned to initiate enforcement procedures with an increased focus on sanctions that included possible involvement of the Commissioner of Education and incentives for improved results. One recent enforcement action taken by the State was under appeal at the time of OSEP’s visit.

In addition to the cyclical monitoring process, the State provided opportunities for LEAs, charter schools, special school districts, and non-public approved special education programs to participate in a yearlong program improvement process. The improvement process required the agency to establish an improvement team, select a focus question, determine necessary data, collect and analyze the data, present conclusions, and submit an improvement plan. The State required agencies to implement State-approved corrective action plans, within one year, as appropriate. State staff provided technical assistance for this process

In partnership with the National Center for Special Education Accountability Monitoring (NCSEAM), NHDOE has moved toward a focused monitoring system. The State piloted the new

focused monitoring in three LEAs. For this pilot, State Special Education Technical Assistance Consultants (SETAC) were assigned to work with the SAUs and LEAs. The SAU or LEA, as appropriate, convened a stakeholder leadership group to work with SETAC members to identify strategies to narrow the performance gap between children with disabilities and their nondisabled peers². Focused monitoring will continue in the next cycle of LEA and SAU on-site visits.

NHDOE reported that the general supervision system included professional development opportunities for schools, parents, and community members regarding “hot topics” and issues of concern as well as information on the State Improvement Grant, Catastrophic Aid, Court Ordered Placements, and the Annual Request for Federal Special Education Funds completed by the LEAs. NHDOE utilized the SETAC and the Preschool Technical Assistance Network (PTAN) to provide on-site targeted technical assistance, professional development, and information dissemination to LEAs. New Hampshire Connections, a program funded through the Parent Training Institute, promoted regional professional development activities for all members of the community.

Although NHDOE’s monitoring procedures appear reasonably designed to identify and correct noncompliance, data reported in the SPP indicated that NHDOE was not able to ensure correction of noncompliance with regard to early childhood transition and timely evaluations and reevaluations. NHDOE reported recent short-term trend data to OSEP for these two areas that represented improved performance. In addition, the percent of LEA corrective action plans that have recently been submitted and corrected within one year of identification also showed improvement.

As noted in OSEP’s March 20, 2006 response letter to the State’s SPP, the State must review and, if necessary, revise its improvement strategies to ensure that the State will be able to include data in the APR due February 1, 2007 that demonstrate compliance with the requirement that children participating in the early intervention programs under Part C of IDEA, and who will participate in preschool programs under Part B, have an IEP or IFSP, if appropriate, in effect by the child’s third birthday. (20 U.S.C. 1412(a)(9) and 1416(a)(3)(B)).

In addition, on July 3, 2006, OSEP imposed special conditions on New Hampshire’s FFY 2006 grant award related to NHDOE’s general supervisory responsibilities concerning the requirement for timely evaluations and reevaluations. (20 U.S.C. 1414(a)(1)(C) and 1414(a)(2)). The State should review OSEP’s July 3rd letter and comply with the terms of that letter.

Dispute Resolution System

NHDOE reported that its dispute resolution system included five components: (1) formal complaint investigations; (2) mediation; (3) due process hearings; (4) an IEP Facilitator Program; and (5) neutral conferences. The Facilitator Program and neutral conferences were proactive attempts to reduce areas of dispute before they became major issues. The State assigned consultants, as needed, to ensure each component was implemented in a timely manner.

During the verification visit, NHDOE described modifications to its system for processing, investigating, and resolving complaints as required by IDEA 2004. The modifications focused on LEA practices to meet compliance requirements and improve general education outcomes for

² The focused monitoring process identified narrowing the performance gap as a priority. The process informed the overall improvement of student performance, including the State’s efforts to increase performance of students with disabilities in the statewide assessment process. See also the section of this letter that addresses statewide assessment.

students. Components of the complaint system implemented in 2003 included an electronic spreadsheet to track issues, decisions, and corrective actions and the development of on-site monitoring protocols to review the status of corrective actions. Additionally, the LEA provided documentation to demonstrate completion of corrective action requirements. Prior to conducting the cyclical on-site monitoring reviews, the State also provided the review team with the number and frequency of substantiated complaint allegations in the respective SAU or LEA. The State used results of the complaint investigations to determine topics for professional development offerings and for analysis of trends in the State.

OSEP's March 20, 2006 letter required NHDOE to submit data demonstrating compliance with the requirement that Part B complaints received during FFY 2004 were resolved within the 60-day timeline or within a properly extended timeline, as required by 34 CFR §300.661.³ On May 22, 2006, NHDOE submitted a report to OSEP that accounted for all complaints filed in FFY 2004 and indicated that the State resolved 100% of the 101 complaints within the 60-day timeline or within a properly extended timeline. During the verification visit, OSEP reviewed information that confirmed that NHDOE met the requirements at 34 CFR §300.661.

NHDOE's Office of Legislative Hearings (OLH) managed the State's mediation and due process hearing programs. The mediation process was not mandatory and did not delay due process hearings. The State reported that of 62 mediations requested from July 1, 2004 to June 30, 2005, 42% resulted in agreements. During the verification visit, NHDOE provided OSEP with a log for hearing requests received between July 1, 2004 and June 30, 2005. OSEP's review of the State's records showed that NHDOE met the requirements at 34 CFR §300.511.

Collection of Data under Section 618 of the IDEA

In reviewing 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 618 of the IDEA; (2) implements procedures to determine whether the individuals who enter and report data at the local or regional level do so accurately and in a manner that is consistent with the State's procedures, OSEP guidance, and section 618; (3) 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; and (4) implements procedures for identifying anomalies in data that are reported, and correcting any inaccuracies.

The State reported that it collected 618 data on an ongoing basis using the Special Education Information System (SPEDIS) to meet Part B and Part C data collection and reporting requirements. The LEAs entered data through the Internet and dial-up modems to the University of New Hampshire's Computer Center, which housed the mainframe. SPEDIS required all data elements to be entered sequentially before moving to the next step of the process. Special education directors, superintendents, and NHDOE staff reviewed the data to ensure accuracy of the information. Edit and integrity reviews were made at the time of input. NHDOE reported the State offered yearly

³ All citations to the Part B regulations in this letter refer to the regulations in effect during the verification visit. Final regulations implementing the Individuals with Disabilities Education Improvement Act of 2004 are effective October 13, 2006.

training for data entry personnel and special education directors to ensure the data were entered consistently with the requirements of State and Federal Laws.

NHDOE reported to OSEP that in 2005 the State recognized the need for a more comprehensive data collection system because SPEDIS did not collect and report all the data necessary for reporting on the SPP Indicators. In response to this barrier, the State contracted for development of the New Hampshire Special Education Information System (NHSEIS). NHDOE shared with OSEP the key factors of the NHSEIS that included a unique student identifier, a model IEP form, and a security protocol that allowed LEA and SEA personnel to both view and/or correct data fields and to track areas of noncompliance within schools. In addition, the system software generated school, LEA and state reports. NHDOE believed NHSEIS would be more compatible with LEA data collection systems and would provide required data fields, integrity checks, compliance requirements, and convenient reporting.

NHDOE reported that it provided comprehensive training to LEAs, SAUs, parents, and other groups who used NHSEIS. The State piloted NHSEIS in five SAUs and LEAs during the 2005-2006 school year. Based on the results of the pilot, NHDOE modified NHSEIS in the summer of 2006. The rollout of NHSEIS will continue this year and SETAC consultants will offer training sessions and other assistance for NHSEIS users. The NHDOE staff anticipated that NHSEIS would be fully operational at the State, regional, and local levels no later than June 2007 and would interact effectively with other NHDOE data systems within the Bureau of Information Services and Bureau of Accountability and the Department of Health and Human Services databases.⁴

NHDOE staff reported that the State relied heavily on 618 data for monitoring and determining trends in student performance. Staff explained that these data provided districts with a tool for use in program improvement. The State planned to continue using trend analysis as part of its annual reporting to OSEP in the SPP.

The State's new data collection, analysis, and reporting systems should further advance the State's capacity to utilize data as a quality assurance measure to ensure educational quality and excellence. OSEP believes that NHDOE's system for collecting and reporting data is reasonably calculated to ensure the accuracy of the data that NHDOE reports to OSEP under section 618 of the IDEA.

Statewide Assessment

In looking at the State's system for statewide assessment, OSEP collected information regarding a number of elements, including whether the State: (1) establishes procedures for statewide assessments that meet the participation, alternate assessment, and reporting requirements of Part B, to ensure 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.

New Hampshire previously tested students in the third, sixth, and tenth grades on an annual basis using the New Hampshire Improvement and Assessment Program (NHEIAP). However, the State

⁴ The New Hampshire Department of Health and Human Services is the Lead Agency for IDEA Part C Programs.

reported to OSEP that the New Hampshire, Rhode Island and Vermont Departments of Education developed a common set of Grade-Level Expectations, known as the New England Common Assessment Program (NECAP) in Mathematics, Reading and Writing. NHDOE informed OSEP that the State did not provide assessment data for the 2004-2005 school year because it moved from a spring to a fall testing schedule while adopting the assessment requirements of NCLB. Assessment data was not reported for general education students as well. A July 19, 2005 letter from the Secretary to the New Hampshire Commissioner of Education acknowledged this issue.

The NHDOE reported that NECAP was piloted in October 2004 in Grades 3-8 and was administered in all schools in the 2005-2006 school year. NHDOE continued to administer the former statewide assessment for tenth graders (Spring 2005) and planned to revise the assessment and pilot the new assessment in the fall of 2006. The full assessment for eleventh graders will be administered in the fall of 2007-08.

All students with disabilities must be included in all general State and districtwide assessment programs, including alternate assessments where necessary. (20 U.S.C. 1412(a)(16)(A)). When an IEP Team determined that a student could not participate in the regular statewide assessment, the student was assessed through the New Hampshire Alternate State Assessment (NH-ALT). The NH-ALT uses a portfolio assessment of student work collected over the course of the school year. The State reported in its SPP filed on December 31, 2005 that 100% of students with disabilities participated in the statewide assessment during the 2004-2005 Adequate Yearly Progress (AYP) year.⁵

However, prior to OSEP's verification visit, a question was raised during the conference call with the State Advisory Council regarding the participation rate of students with disabilities in statewide assessments. In response to this question, the State described its methodology for determining the participation rate of children with IEPs in statewide assessments. The State's explanation of its measurement differed from the methodology required by OSEP. The State misunderstood the directions in the SPP and did not account for any student with an IEP who did not participate in the statewide assessment. Thus, the 100% participation rate reported in the State's SPP is not accurate. Accordingly, NHDOE must recalculate the baseline data previously submitted in the New Hampshire SPP for Indicator 3B, evaluate whether the targets need to be modified, and submit the corrected data in the APR, due February 1, 2007.

Despite this misunderstanding, as documented in the State's monitoring manuals, NHDOE monitored for compliance with requirements regarding statewide assessment and has a system in place for obtaining the correct data. The State reported that it conducts an electronic cross check between the student assessment participant list and the database for students with disabilities, so that

⁵ In a June 27, 2006 letter from the Office of Elementary and Secondary Education (OESE), New Hampshire was informed that the standards and assessment system administered in the 2005-2006 school year, in addition to other outstanding issues, had one fundamental component that was missing or did not meet the statutory and regulatory requirements, specifically that the NH-ALT was not linked to grade-level content standards. The current status of the NHDOE standards and assessment system was reported to be Approval Pending. NHDOE reported to OSEP that the State is working with OESE on meeting the statutory and regulatory requirements.

the State is able to identify all students with disabilities who did not participate in statewide assessments.

NHDOE reported that the State provided extensive training and website guidance regarding the participation of students with disabilities in statewide assessments. This training covered such topics as test administration protocols, the appropriate use of accommodations, IEP Team decision-making regarding participation in the alternate assessment, alternate assessment portfolio construction, and alignment of the assessment process with the general curriculum. The State reported that it had test integrity and security protocols that ensured assessments were administered correctly. In addition, NHDOE reported to OSEP that statewide assessment results for students with disabilities were reported to the public with the same frequency and with the same detail as reports on the assessment of nondisabled children. The State reported that waivers were not permitted; however, schools were permitted to apply for an exemption for students who had a verified medical emergency. The State required the schools to use nonparticipation data in determining performance of whole and subgroup NCLB accountability. The State used the NHDOE website to report assessment results to the public.⁶ OSEP's review of the NHDOE website confirmed that reports were provided to the public with the same frequency and with the same detail as reports on the assessment of nondisabled children.

Districtwide Assessment

NHDOE reported to OSEP that it did not monitor the participation and performance of students with disabilities on districtwide assessments, as required by 20 U.S.C. 1412(a)(16)(A). While NHDOE was aware that a small number of school districts administered districtwide assessments (in addition to the required statewide assessments), NHDOE has not monitored to ensure compliance with the requirements of 34 CFR §§300.138, 300.139 and 300.347(a)(5) as they apply to districtwide assessments. NHDOE reported to OSEP that it would correct this noncompliance by issuing a policy memorandum directing districts to follow the same procedures for districtwide assessments as those required for statewide assessments. In addition, NHDOE will monitor for compliance during on-site monitoring visits. NHDOE is required to submit documentation that the State corrected this noncompliance in the APR due February 1, 2007.

OSEP has determined, through its review of the State's written procedures for statewide assessments and the State's reports to the public and the Secretary on the participation and performance of children with disabilities on such assessments, that those procedures and reports are consistent with Part B requirements; however, NHDOE's methodology for determining the participation rate of children with IEPs differs from that of OSEP. As noted above, NHDOE must correct the calculation.

Conclusion

During the verification visit, OSEP identified one new area of noncompliance. OSEP found that NHDOE had not ensured compliance with the requirements of 20 U.S.C. 1412(a)(16)(A) and 34

⁶ If the cell size was less than 11, the State did not report to the general public in the report. However, parents of students in cells of less than 11 received a report and the results were reported at the district level if the district level cell size was larger than 11.

CFR §§300.138, 300.139 and 300.347(a)(5), as they apply to districtwide assessments. The State indicated that it intends to correct this noncompliance immediately. As directed above, the State must submit to OSEP in the APR, due February 1, 2007, documentation that NHDOE has corrected this noncompliance.

Additionally, in response to the previously identified noncompliance with the requirement for timely evaluation and re-evaluation, the State must comply with the requirements in OSEP's July 3, 2006 letter. With respect to the previously identified noncompliance regarding early childhood transition requirements, the State must submit to OSEP, in the APR due February 1, 2007, data that demonstrate correction of this noncompliance.

Finally, NHDOE must recalculate the baseline data previously submitted in the New Hampshire SPP for Indicator 3 regarding the number and percentage of children with disabilities who participated in statewide assessments, evaluate whether the targets need to be modified, and submit the corrected data in the APR, due February 1, 2007.

We appreciate the cooperation and assistance provided by your staff during our visit, and look forward to our continued collaboration with New Hampshire to support your work to improve results for children with disabilities and their families.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is fluid and cursive, written in a professional style.

Alexa Posny, Ph.D.

Director

Office of Special Education Programs

cc: Santina Thibedeau