



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

June 26, 2012

Lynn C. Woolsey
Member of Congress
6th District, California
U.S. House of Representatives
2263 Rayburn Building
Washington, DC 20515

Dear Congresswoman Woolsey:

This is in response to your December 7, 2011 letter to me addressing concerns raised by California's Special Education Local Plan Area (SELPA) Administrators regarding the reporting requirements established by the Office of Special Education and Rehabilitative Services (OSERS), Office of Special Education Programs (OSEP), to monitor compliance with the Individuals with Disabilities Education Act (IDEA or Act). With your letter, you attached a position paper from the SELPA Administrators and asked that we respond to the concerns stated there.

Specifically, the SELPA Administrators expressed concerns with: (1) OSEP Memorandum 09-02, *Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act*, dated October 17, 2008 (OSEP Memo 09-02), which reiterates the steps a State must take in order to report that previously identified noncompliance has been corrected; (2) the requirement that recipients of IDEA Part B funds demonstrate 100% compliance with IDEA statutory and regulatory provisions; and (3) the provision in IDEA section 618(d) that a State must require any local educational agency (LEA) identified with significant disproportionality based on race and ethnicity with respect to identification, placement or discipline of children with disabilities, to reserve the maximum amount of funds under IDEA section 613(f) to provide coordinated early intervening services (CEIS). I appreciate the opportunity to respond to the Administrators' concerns and also share with you the beginnings of OSEP's next generation accountability system—*Results Driven Accountability*.

OSEP's current accountability system is multifaceted and aligned with the requirements of the Act. As set forth in IDEA section 616(a)(2), the primary focus of Federal and State monitoring is on: (a) improving educational results and functional outcomes for all children with disabilities; and (b) ensuring that States meet the program requirements under Part B, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities. Section 616(a)(3) of the Act requires the Secretary to monitor the States, and the States to monitor LEAs, using quantifiable indicators in each of the

following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas: (a) the provision of a free appropriate education (FAPE) in the least restrictive environment (LRE); (b) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediations, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9) of the Act; and (c) disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

In accordance with section 616(b) of the IDEA, each State was required to submit a State Performance Plan (SPP) evaluating the State's efforts to implement the requirements and purposes of IDEA Part B and describing how the State will improve such implementation.¹ The SPP, submitted by each State in December 2005, is comprised of 20 indicators, developed by OSEP with broad stakeholder input, that reflect the monitoring priorities outlined above. The indicators measure either compliance with specific statutory or regulatory requirements of the IDEA or results and outcomes for children with disabilities and their families. Section 616(b)(2)(C)(ii)(II) requires the State to report annually to the Secretary on the State's performance under the SPP—the annual performance report, or APR. The SPP/APR is one facet of OSEP's accountability system.

SPP/APR Indicator 15 measures the percent of noncompliance corrected within one year of identification. The regulations in 34 CFR §300.600(e) require that the State ensure, when it identifies noncompliance with the requirements of Part B of the IDEA by its LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. As noted above, OSEP Memo 09-02 reiterates the steps, set out in past monitoring reports and verification letters, that a State must take in order to report that previously identified noncompliance has been corrected. The State must verify that the identified noncompliance has been corrected at both the systemic and child-specific level. Specifically, the State must verify that each LEA with noncompliance: (1) is correctly implementing the specific regulatory requirements based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the LEA. Timely correction of noncompliance in accordance with OSEP Memo 09-02 ensures that children with disabilities are provided with the FAPE to which they are entitled so that they are able to make progress towards meeting individualized education program goals and statewide achievement standards. Given its important relationship to student outcomes, OSEP has provided significant technical assistance to stakeholders regarding the timely identification and correction of noncompliance.

The SELPA Administrators' position paper also expresses concern with the requirement that States, and LEAs, demonstrate 100% compliance with the provisions of IDEA. OSEP recognizes that a State educational agency (SEA), or an LEA, may not be able to ensure that it is

¹ The IDEA also requires that States receiving funds under Part C of the Act submit an SPP and APR; however, this response will focus on Part B requirements since the SELPA Administrators implement Part B of the Act.

in full, continuous compliance with IDEA Part B requirements at all times. However, because the rights under IDEA must be afforded to every eligible child with a disability, the Act does not make allowances for noncompliance with the requirements of the Act. Therefore, it is critical that SEAs and LEAs have systems in place that are reasonably calculated to ensure the timely identification and correction of noncompliance with IDEA requirements. Some States, like California, have created a checklist or compliance table that informs LEAs of the statutory or regulatory requirements that the State will review as part of its monitoring system. Such checklists and monitoring tools differ from State to State.

Finally, the Administrators write that OSERS requires that the SEA “develop a formula and require an early intervening services plan (with a 15 percent use of IDEA funds) for every LEA that is significantly disproportionate in its identification of racial and ethnic groups in special education.” They also state that OSERS requires “every ethnic group in every disability be proportionate regardless of the appropriate application of LEA assessment and identification procedures.” Section 618(d)(1) requires each State to collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration and type of disciplinary actions.

Each State has the discretion to define significant disproportionality for the LEAs and for the State in general. The State’s definition needs to be based on an analysis of numerical information, and may not include consideration of the State’s or LEA’s policies, procedures, or practices. This is because IDEA section 618(d)(2) is clear that a review of policies, procedures, or practices is a consequence of, rather than a part of, a determination of significant disproportionality. Under IDEA section 618(d)(2), when the SEA identifies an LEA with significant disproportionality in any of the areas identified above, the State must: (1) provide for the review and, if appropriate, revision of its policies, procedures, and practices; (2) require the LEA to reserve the maximum amount of funds under section 613(f) to provide CEIS to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified; and (3) require the LEA to report publicly on the revision of policies, procedures, and practices. The requirement that LEAs identified with significant disproportionality use Part B funds for early intervening services is in recognition of the fact that significant disproportionality in special education may be the result of inappropriate regular education responses to academic or behavioral issues.

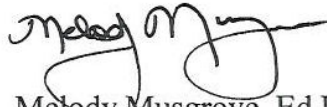
As I mentioned in my opening paragraph, our accountability system is evolving. OSEP’s current system comprises both compliance and results components, but has tended to focus more on compliance with the Act. Secretary Duncan recently announced that throughout the coming year, the Department will work closely with stakeholders to develop and implement a new review system that, considering both current statutory and regulatory provisions, takes a more balanced, results-driven approach to assessing how States are educating students with disabilities and better targets monitoring to where it is needed most. This is important and exciting work that will require significant input from all those invested in ensuring improved educational

results and functional outcomes for students with disabilities. We will certainly consider the thoughtful recommendations of the SELPA Administrators as we move forward in this effort.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

Thank you for your continued work, and that of the SELPA Administrators, on behalf of students with disabilities and their families. Please do not hesitate to contact me if you have further concerns or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melody Musgrove', with a stylized flourish at the end.

Melody Musgrove, Ed.D.

Director
Office of Special Education Programs

cc: State Director of Special Education