



# MICHIGAN

OFFICE OF THE AUDITOR GENERAL

## AUDIT REPORT

PERFORMANCE AUDIT  
OF THE

OFFICE OF SPECIAL EDUCATION

MICHIGAN DEPARTMENT OF EDUCATION

November 2014



Doug A. Ringler, C.P.A., C.I.A.  
AUDITOR GENERAL

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

– Article IV, Section 53 of the Michigan Constitution

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## Report Summary

### *Performance Audit*

### *Office of Special Education*

### *Michigan Department of Education*

**Report Number:**  
**313-0180-14**

**Released:**  
**November 2014**

The function of the Office of Special Education (OSE) is the general supervision, administration, and funding of special education programs and services for children and youth with disabilities. A free and appropriate public education is provided to eligible children and youth according to federal statute and regulations, State statute, administrative rules, and Michigan Department of Education procedures.

Audit Objective			Audit Conclusion
Objective 1: To assess the effectiveness of OSE's efforts to evaluate the special education services provided by the school districts.			Moderately effective
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
OSE did not sufficiently conduct its monitoring process ( <a href="#">Finding 1</a> ).		X	Agrees
OSE did not review the contents of results transmittals or follow up with school districts ( <a href="#">Finding 2</a> ).		X	Disagrees
OSE did not review waivers to Michigan Administrative Rules for Special Education Part 3, included in intermediate school district plans, in a timely manner ( <a href="#">Finding 3</a> ).		X	Agrees

Audit Objective			Audit Conclusion
Objective 2: To assess the effectiveness of OSE's efforts to perform on-site program fiscal reviews.			Moderately effective
Finding Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
OSE needs to complete additional on-site program fiscal reviews and establish policies and procedures to follow up on internal control weaknesses ( <a href="#">Finding 4</a> ).		X	Agrees

<b>Audit Objective</b>			<b>Audit Conclusion</b>
Objective 3: To assess the effectiveness of OSE's efforts to investigate and resolve complaints related to special education services.			Effective
<b>Finding Related to This Audit Objective</b>	<b>Material Condition</b>	<b>Reportable Condition</b>	<b>Agency Preliminary Response</b>
OSE did not have an effective monitoring process to accurately determine when school districts held due process complaint resolution sessions ( <u>Finding 5</u> ).		X	Agrees

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Auditor General

November 26, 2014

Mr. Michael P. Flanagan  
Superintendent of Public Instruction  
Michigan Department of Education  
John A. Hannah Building  
Lansing, Michigan

Dear Mr. Flanagan:

This is our report on the performance audit of the Office of Special Education, Michigan Department of Education.

This report contains our report summary; a description of agency; our audit objectives, scope, and methodology and agency responses and prior audit follow-up; comments, findings, recommendations, and agency preliminary responses; and a glossary of abbreviations and terms.

Our comments, findings, and recommendations are organized by audit objective. The agency preliminary responses were taken from the agency's response at the end of our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a plan to comply with the audit recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

Doug Ringler  
Auditor General



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## Description of Agency

The Michigan Department of Education (MDE) was established by the Executive Organization Act of 1965 (Act 380, P.A. 1965). MDE is governed by an elected eight-member State Board of Education established by the Michigan Constitution. The principal executive officer is the Superintendent of Public Instruction, who is appointed by the Board. Article VIII, Section 3 of the Michigan Constitution vests in the State Board of Education the leadership and general supervision over all public education.

The authority for administering special education in Michigan is provided by the Revised School Code of 1976, as amended, which mandates special education and defines the responsibility of agencies for the delivery of services. The federal government identifies additional program regulations and requirements under the Individuals with Disabilities Education Act of 2004\* (IDEA).

The primary objective of the Office of Special Education (OSE) is to administer and fund Michigan's special education, which includes the identification of eligible young children and students with disabilities and the provision of appropriate intervention and educational services of Part B of IDEA. OSE coordinates special education programs with school districts\* to ensure that a free and appropriate public education is provided to eligible children and youth from age 3 through age 25 in accordance with federal and State requirements. Executive Order No. 2011-8, effective August 28, 2011, transferred all authority for Part C of IDEA from OSE to the Office of Great Start within MDE. The Office of Great Start coordinates early intervention services for infants and toddlers (birth through age 3) with disabilities and their families according to federal regulations and State standards. The State Board of Education promulgated Michigan Administrative Rules for Special Education to serve as program standards and help ensure consistency with federal laws and promote the quality of instruction.

OSE consists of four units:

1. The Performance Reporting Unit is responsible for the development and implementation of the State performance plan, annual performance report, and other federal and State data reports and for the monitoring of and technical

\* See glossary at end of report for definition.



assistance to school districts and other stakeholder groups in order to improve the performance of students with an individualized education program\* (IEP).

2. The Administration Unit is responsible for the leadership and oversight of the office and for all programs and services for students with disabilities across the State as well as those at the Michigan School for the Deaf.
3. The Program Finance Unit is responsible for the oversight and effective use of \$390 million in federal grants and \$996 million in school aid funds.
4. The Program Accountability Unit is responsible for ensuring compliance with federal and State regulations, policies, and procedures through the administration of due process and the development and implementation of policy.

Annually, MDE provides formula grants from its IDEA-Part B funding to Michigan's 56 intermediate school districts\* (ISDs) to provide and/or direct the provision of special education services in each of their respective local educational agencies\* (LEAs). ISDs develop a written plan for the provision of services to young children and students with disabilities within their boundaries. School districts and State agencies provide direct special education services to young children and students with disabilities.

State funding is appropriated annually through the State School Aid Act and MDE's appropriations act. Federal funding is appropriated through various sections of IDEA, including Part B, for administration and federal requirements, grants, and special education services. In fiscal year 2012-13, MDE distributed \$1.3 billion to the 895 school districts for special education services. As of April 30, 2014, OSE had 40 full-time equated employees to administer its programs.

\* See glossary at end of report for definition.

## Audit Objectives, Scope, and Methodology and Agency Responses and Prior Audit Follow-Up

### Audit Objectives

Our performance audit\* of the Office of Special Education (OSE), Michigan Department of Education (MDE), had the following objectives:

1. To assess the effectiveness\* of OSE's efforts to evaluate the special education services provided by the school districts.
2. To assess the effectiveness of OSE's efforts to perform on-site program fiscal reviews.
3. To assess the effectiveness of OSE's efforts to investigate and resolve complaints related to special education services.

### Audit Scope

Our audit scope was to examine the program and other records related to the Office of Special Education. We did not observe the provision of services to special education students; therefore, we make no conclusions regarding the adequacy of special education services provided. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered the period October 1, 2011 through April 30, 2014.

\* See glossary at end of report for definition.

## Audit Methodology

We conducted a preliminary survey of OSE operations to formulate a basis for establishing our audit objectives and scope. During our preliminary survey, we:

- Interviewed OSE management and staff to obtain an overall understanding of special education, including OSE's processes, controls, and monitoring systems.
- Reviewed OSE policies and procedures.
- Reviewed OSE's monitoring of school districts' compliance with program requirements and provision of technical assistance.
- Reviewed an intermediate school district (ISD) plan reviewed by OSE and recommended for approval.
- Reviewed OSE fiscal reviews.
- Reviewed the special education due process, State complaints processes, and OSE's administrative rule promulgation process.
- Analyzed available OSE program records, data, and statistics to obtain an understanding of OSE operational activities and internal control\*.
- Reviewed applicable federal and State laws, rules, policies and procedures, contracts, grant agreements, and special education State performance plans and annual performance reports.
- Examined reports from external audits of OSE and similar programs from other states.

To accomplish our first audit objective, we:

- Identified key federal and State standards.

\* See glossary at end of report for definition.

- Reviewed contract and grant agreements to gain an understanding of monitoring requirements.
- Accompanied OSE monitors on two current on-site monitoring visits to observe the monitors' compliance with established policies and procedures.
- Interviewed key MDE staff and local staff at seven judgmentally selected school districts to obtain an understanding of State and local procedures and controls for monitoring compliance with the Individuals with Disabilities Education Act of 2004 (IDEA) and Michigan Administrative Rules for Special Education (MARSE), developing and reviewing individualized education programs (IEPs), and reviewing and approving ISD plans.
- Reviewed records of randomly selected special education students at seven judgmentally selected school districts subjected to general supervision monitoring to determine if the procedures and controls operated as intended. During our visit, we examined student records, such as IEPs, to determine the monitors' compliance with selected priority monitoring criteria and follow-up of corrective action.
- Reviewed selected provider caseloads at seven judgmentally selected school districts subjected to general supervision monitoring to determine if caseloads exceeded the maximums set forth within MARSE and the associated ISD plans.
- Obtained an understanding of IDEA-Part B performance indicators. The federal performance indicators are categorized as results or compliance indicators. Michigan sets the targets for results indicators, and the U.S. Department of Education sets the targets for compliance indicators.
- Reviewed results indicator data and compared outcomes to State targets to determine patterns of regression or progression.
- Obtained an understanding of ISD plan content, the review process of ISD plans and waivers, and the relationship between ISD plans and waivers.

To accomplish our second audit objective, we:

- Reviewed policies and procedures related to desk audits of State expenditure reports.
- Reviewed desk audits of the reports for selected school districts to determine the appropriateness of reported expenditures and the propriety of expenditures disallowed.
- Reviewed OSE's on-site program fiscal reviews of federally funded and State-funded expenditures for selected ISDs, including the selection methodology for local educational agencies' (LEAs') fiscal reviews and the scope of review performed by OSE.

To accomplish our third audit objective, we:

- Interviewed OSE staff to obtain an understanding of the process used to receive and process complaints regarding special education.
- Reviewed and evaluated a sample of State complaints to assess whether OSE addressed the complaints in a timely manner and ensured that any required corrective action was completed in a timely manner.
- Reviewed and evaluated a sample of due process complaints to assess whether OSE ensured that the resolution session was held in a timely manner, held school districts in noncompliance when the resolution session was not held in a timely manner, and ensured that any required corrective action was completed in a timely manner.

We based our audit conclusions on our audit efforts as described in the preceding paragraphs and the resulting reportable conditions\* noted in the comments, findings, recommendations, and agency preliminary responses section. In our professional judgment, the reportable conditions are less severe than a material condition\* but represent opportunities for improvement.

\* See glossary at end of report for definition.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve the operations of State government. Consequently, we prepare our performance audit reports on an exception basis.

#### Agency Responses and Prior Audit Follow-Up

Our audit report contains 5 findings and 5 corresponding recommendations. MDE's preliminary response indicates that it agrees with 4 of the recommendations and disagrees with 1 recommendation.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require MDE to develop a plan to comply with the audit recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We released our prior performance audit of the Office of Special Education and Early Intervention Services, Department of Education (31-180-99), in November 2001. Within the scope of this audit, we followed up 7 of the 8 prior audit recommendations. OSE complied with 3 of the 7 prior audit recommendations. We rewrote the 4 other prior audit recommendations for inclusion in Findings 1 and 4 of this audit report.

COMMENTS, FINDINGS, RECOMMENDATIONS,  
AND AGENCY PRELIMINARY RESPONSES

## **EFFECTIVENESS OF EFFORTS TO EVALUATE SPECIAL EDUCATION SERVICES**

### **COMMENT**

**Background:** After an initial determination of eligibility for special education programs, a school district's individualized education program (IEP) team develops an IEP annually for each eligible student according to Michigan Administrative Rules for Special Education (MARSE). IEP teams usually consist of the student's parents, a general education teacher for the student (if the student participates in the general education environment), a special education teacher or provider for the student, the school principal or designee, and other individuals having knowledge or special expertise regarding the student, as necessary.

The IEP is a written plan that specifies the programs and services necessary to meet the unique educational needs of the student, including annual educational goals and objectives. The IEP considers the strengths of the student, the concerns of the student's parents for enhancing the student's education, and the results of an initial or recent evaluation of the student, along with other factors. IEPs are written for a one-year period but may be revised or rewritten more frequently depending upon individual circumstances, such as the early attainment of a goal. Each IEP should build on the results of the individual student's progress since the prior IEP. Complete and useful IEPs are critical to the achievement of optimal student progress, the evaluation of student progress, the preparation of subsequent IEPs, and the evaluation of overall program effectiveness.

**Audit Objective:** To assess the effectiveness of the Office of Special Education's (OSE's) efforts to evaluate the special education services provided by the school districts.

**Audit Conclusion:** We concluded that OSE's efforts to evaluate the special education services provided by the school districts were moderately effective.

Factors leading to this conclusion included the:

- Critical nature of monitoring compliance with the Individuals with Disabilities Education Act of 2004 (IDEA) and MARSE.



- Impact of exceptions we noted on OSE's efforts to ensure that school districts had effective special education programs that provided services resulting in optimal student progress.
- Number of school districts relying on OSE for oversight and federal and State reporting.
- Reportable conditions related to the monitoring process, results transmittals, and waiver review.

## **FINDING**

### 1. Monitoring Process

OSE did not sufficiently conduct its monitoring process. As a result, OSE could not ensure that school districts had effective special education programs that provided services resulting in optimal student progress.

*Michigan Administrative Code R 340.1839* states that OSE shall establish monitoring procedures, criteria, and evaluation activities to ensure that all public agencies achieve the minimum federal and State standards. OSE established the focused monitoring manual to provide guidance for monitors conducting special education reviews of school districts to ensure compliance with IDEA and MARSE. OSE relies on the school districts' use of the focused monitoring manual to ensure school district compliance with IDEA and MARSE through self, desk, and on-site reviews.

During an on-site review, a monitoring team gathers information regarding local practices through interviews; student record reviews (SRRs) of IEPs; and reviews of policies, procedures, and practices. OSE contracts with monitors to conduct the on-site reviews using priority monitoring criteria from IDEA and MARSE. OSE randomly selects the student records to review from a list generated from the student data submitted to the Michigan Student Data System by the school district. If correctable student-level noncompliance is identified through an SRR, school districts must complete a student level corrective action plan (SLCAP) to resolve the noncompliance for that student. In addition, if any noncompliance is identified, an overall corrective action plan (CAP) is also required for the entire school district.

We reviewed the monitoring documentation for students at 7 judgmentally selected school districts that included 2 large and 2 medium sized school districts, 2 public school academies, and 1 intermediate school district and noted:

- a. OSE did not identify noncompliance with required measurable annual goals for 14 (26%) of the 53 students reviewed. *Michigan Administrative Code R 340.1721e(1)(a)* requires that an IEP include a statement of measurable annual goals for the student with short-term objectives, including academic and functional goals designed to meet all of the student's needs that result from the disability. Title 34, Part 300, section 320(a)(2)(i) of the *Code of Federal Regulations\** (CFR) also requires these goals to be measurable. According to OSE's IEP reference guide, an annual goal must have identifiable criteria in order to be measurable.

Examples of annual goals that we did not consider measurable were:

- (1) "Student will develop/increase reading comprehension skills."
- (2) "Student will develop/increase math computation skills."
- (3) "Student will develop an understanding of own abilities as a learner."
- (4) "Improve his listening awareness and spatial response to peers around him."

- b. OSE did not ensure that caseloads were appropriate at 4 (57%) of the 7 school districts. We reviewed a total of 126 caseloads at the 7 school districts and determined that 7 (6%) caseloads exceeded the allowable amount according to MARSE and the ISD plan. The amount that caseloads exceeded the allowable amount according to MARSE and the ISD plan ranged from 1 to 15 students. *Michigan Administrative Code R 340.1738 - 340.1749* state the maximum caseload permitted by the type of service provided. OSE monitors determined who at the school district monitored caseloads but did not review caseloads to determine compliance with MARSE.

\* See glossary at end of report for definition.

- c. OSE did not complete 62 (4%) of the 1,407 total SRR items for 53 students reviewed. Examples of SRR items left blank include: "The student's schedule matches the IEP" and "The student is receiving all programs and/or services specified in the IEP." The focused monitoring manual requires completion of all SRRs before issuing a report of noncompliance. Completion of the SRR ensures that monitors reviewed the students for all the priority monitoring criteria from IDEA and MARSE.
- d. OSE did not complete an SLCAP finding for 5 (9%) of the 53 students reviewed when correctable items of noncompliance were noted. The focused monitoring manual requires issuance of SLCAP findings when monitors identify any correctable SRR noncompliance. For example, in one instance, OSE did not require an SLCAP finding when a parent did not attend the IEP meeting and there was no evidence of repeated attempts to invite the parent. In another instance, OSE did not require an SLCAP finding when the IEP lacked explanation of how the student's disability affected the student's involvement in the general education curriculum.
- e. OSE did not ensure the correction of student-level noncompliance for 3 (8%) of 36 students with SLCAPs. The focused monitoring manual requires correction of SLCAP findings within 30 days, including the verification of correction by the ISD. Correction of SLCAP findings ensures that students' IEPs are appropriate to satisfy the requirements of IDEA and MARSE. Management informed us that, effective July 3, 2014, policies changed to require monitors to provide documentation of the verification of correction of noncompliance. OSE will then sample one SLCAP from each monitor to ensure the appropriateness of verification activities.
- f. OSE did not add SLCAP items of noncompliance for 3 (8%) of 36 students to the overall CAP. The focused monitoring manual requires the monitors to address any findings of noncompliance in the overall CAP. Addressing all items of noncompliance in the overall CAP ensures correction of systematic issues at school districts to prevent future noncompliance with IDEA or MARSE.

- g. OSE did not include a review of parent stakeholders during its on-site monitoring of school districts. Performing interviews of parents would help ensure the involvement of all applicable stakeholders and, therefore, help improve the completeness and usefulness of the on-site reviews. During our prior audit, OSE included parent surveys during its on-site monitoring; however, it discontinued those surveys.

Management informed us that IDEA does not require parent surveys; however, including parents in the interview process provides a valuable opportunity for OSE to obtain one-on-one input from stakeholders not employed by the school districts.

The aforementioned conditions can be attributed, in part, to a lack of written procedural guidance and training by OSE, especially on what constitutes a measurable goal. OSE has IEP reference guides on its Web site and provides links to national guidance concerning IEP components; however, OSE had not provided additional training or resources to school districts and monitors regarding acceptable IEP statements, such as measurable annual goals. In addition, OSE's monitoring processes do not require monitors to verify caseloads at school districts, complete every probe question on the SRR form, or automatically carry items of noncompliance forward to SLCAP or CAP findings.

### **RECOMMENDATION**

We recommend that OSE sufficiently conduct its monitoring process.

### **AGENCY PRELIMINARY RESPONSE**

MDE provided us with the following response:

*OSE agrees with the recommendation.*

*OSE informed us that it will conduct training of all ISD monitors based on its focused monitoring cycles beginning in September 2014. All OSE contractors were included.*

*The training will:*

- *Outline responsibilities of the ISD monitor and OSE contractor to provide technical assistance to districts.*
- *Address the requirement to fully complete the SRR.*
- *Address the requirement to issue SLCAPs when a finding of noncompliance is issued and is able to be corrected.*

*In addition to the training, OSE informed us that:*

- *OSE will review a sample of caseloads for each district monitored for general supervision.*
- *The Continuous Improvement and Monitoring System\* (CIMS) will be programmed so all questions in the SRR must be answered.*
- *OSE will review a sample of SRRs and SLCAPs to ensure that items of noncompliance that are able to be corrected are included in the SLCAP.*
- *OSE sent a memo to the field addressing the new process of verifying correction of SLCAPs as follows. ISD monitors will upload documentation of student level correction into CIMS. OSE contractors will verify correction of the SLCAP. OSE will then sample at least one district from each monitor and contractor to ensure correction of SLCAPs.*

## **FINDING**

### **2. Results Transmittals**

OSE did not review the contents of results transmittals\* or follow up with school districts. As a result, OSE could not ensure that school districts took necessary steps to progress toward meeting results indicator targets.

OSE requires school districts to complete a results transmittal after failing to meet IDEA results indicator targets. School districts report through CIMS, the OSE

\* See glossary at end of report for definition.

monitoring system. A results transmittal is a form within CIMS used to guide discussion at school districts to improve upon the results indicator target. After performing data review in CIMS, school districts must notify OSE of the creation of an improvement plan. OSE does not review the improvement plans or the contents of the results transmittals.

We noted that 555 (81%) of 686 total school districts requiring results transmittals during our audit period had more than one results transmittal issued from April 15, 2012 through April 15, 2014. We analyzed the school districts' results indicator data and noted:

- The majority of school districts regressed from the target rather than progressed after issuance of multiple consecutive results transmittals for graduation, dropout, and facilitated parent involvement. This indicates a lack of corrective action.
- The majority of school districts slightly progressed rather than regressed after issuance of multiple consecutive results transmittals for educational environments and preschool outcomes. This indicates limited corrective action.
- The majority of school districts progressed rather than regressed after issuance of multiple consecutive results transmittals for postsecondary outcomes.

The results of our analysis are summarized below:

Number of Consecutive Results Transmittals	Change After Results Transmittals	Number of School Districts by Indicator					
		Graduation	Dropout	Educational Environments	Preschool Outcomes	Facilitated Parent Involvement	Postsecondary Outcomes
One	Progress	213	50	727	456	43	5
	Regress	360	110	478	402	24	1
Two	Progress	195	26	552	450	3	5
	Regress	319	49	409	366	9	1
Three	Progress	103	7	*	**	0	3
	Regress	181	19	*	**	2	0

\* Results transmittals were not issued for educational environments in the 2014 school year because of a change in federal data reporting requirements. Therefore, three consecutive results transmittals were not possible.

\*\* The first year of preschool outcomes data collection was 2012. Therefore, no results transmittals were issued and three consecutive results transmittals were not possible.

**Indicator Topics**

**Graduation:** Percentage of youth with IEPs graduating with regular diploma.

**Dropout:** Percentage of youth with IEPs dropping out.

**Educational Environments:** Percentage of 6- through 21-year-old children inside the regular class or receiving services at a public/private separate school, residence, home, or hospital.

**Preschool Outcomes:** Percentage of preschool children with improved positive social-emotional skills, acquisition and use of knowledge and skills, and use of appropriate behaviors.

**Facilitated Parent Involvement:** Percentage of parents with child receiving special education services who report school facilitated parent involvement.

**Postsecondary Outcomes:** Percentage of youth who had IEPs and are no longer in secondary school who have been employed, enrolled in postsecondary school, or both within one year of leaving high school.

OSE did not have policies and procedures in place that require a review of results transmittals. OSE did verify submission of results transmittals; however, OSE did not review the content of the results transmittals. Review of the content of results transmittals would allow OSE to ensure that school districts are on track for progress toward meeting results indicator targets.

## **RECOMMENDATION**

We recommend that OSE review the contents of results transmittals and follow up with school districts to ensure that school districts are on track for progress toward meeting results indicator targets.

## **AGENCY PRELIMINARY RESPONSE**

MDE provided us with the following response:

*OSE does not agree with the issuance of this specific finding.*

*OSE was not federally required to review and follow up with districts related to results transmittals/indicators. Therefore, OSE did not have established policies or procedures to review results transmittals/indicators.*

*The federal government is now requiring states to implement a State Systemic Improvement Plan (SSIP). The SSIP will address some results indicators and actions the states will take to improve performance on the results indicators.*

## **FINDING**

### 3. **Waiver Review**

OSE did not review waivers to Michigan Administrative Rules for Special Education (MARSE) Part 3, included in ISD plans, in a timely manner. As a result, MDE could not ensure that all waivers were applicable and met the intent of the rule.

MARSE Part 3 establishes the department rules for the administration of an educational program for students with disabilities. These rules cover such critical areas as student to teacher ratios. Section 1281(3) of the Revised School Code of 1976, as amended, states that the State Board of Education may grant a limited time waiver from a department rule for no more than three years. The Revised School Code also specifies that a waiver may only be granted if the requesting school district demonstrates that it can address the intent of the rule in a more effective, efficient, or economical manner or that the waiver is necessary to stimulate improved pupil performance. MARSE Part 7, section 340.1832(e) allows an ISD to include waivers to MARSE Part 3 in its ISD plans, thereby forgoing the



more formal waiver process. The Revised School Code's requirement for waiver reviews every three years does not exclude waivers written into ISD plans. OSE is responsible for the review of ISD plans and waivers written into those plans.

We reviewed a listing of the waivers to MARSE Part 3 in each ISD plan and the approval dates of the ISD plans. We noted that 50 (89%) of 56 ISD plans included waivers as allowed by MARSE Part 7, section 340.1832(e); however, OSE had not reviewed 24 (48%) of those 50 ISD plans, or the waivers written into those plans, in over three years.

The lack of timely review of waivers included in ISD plans is due in part to an inconsistency between MARSE Part 7, section 340.1831(3), which states that once an ISD plan is approved, it remains in effect and does not require regular review until the ISD deems it necessary to submit modifications and the Revised School Code, which requires the review of waivers every three years.

### **RECOMMENDATION**

We recommend that OSE review waivers to MARSE Part 3, included in ISD plans, in a timely manner to ensure that all waivers are applicable and meet the intent of the rule.

### **AGENCY PRELIMINARY RESPONSE**

MDE provided us with the following response:

*OSE agrees with the recommendation.*

*OSE recognizes the need to review administrative rule waivers included in ISD plans in a timely manner, consistent with Michigan law. In a set of proposed changes to MARSE (2013-116 ED, currently moving through the promulgation process), OSE proposes to strike Rule 340.1832(e). Adopted in 2002, Rule 340.1832(e) established the use of the ISD plan as an alternative to the traditional waiver process. OSE informed ISD directors that they would no longer receive approval to include waivers and waiver language in their plans. It should also be noted that OSE had previously attempted to eliminate Rule 340.1832(e) through the rule promulgation process. Public comment overwhelmingly rejected the removal of the Rule and the rescission of Rule 340.1832(e) was withdrawn.*

*OSE recognizes the need to modify the development, approval, and review of all ISD plans for the delivery of special education programs and services in Michigan. OSE informed us that it is currently developing an improved process that will remove all waivers, standardize the plans, and allow for periodic review of each plan. The improved process will include electronic components. OSE will work with ISDs over the next three years to systematically review and revise each plan to include only required components.*

## **EFFECTIVENESS OF EFFORTS TO PERFORM FISCAL REVIEWS**

### **COMMENT**

**Audit Objective:** To assess the effectiveness of OSE's efforts to perform on-site program fiscal reviews.

**Audit Conclusion:** We concluded that OSE's efforts to perform on-site program fiscal reviews were moderately effective.

Factors leading to this conclusion included the:

- Significant number of program fiscal reviews not conducted by OSE during our audit period.
- Lack of OSE performing a review of State-funded special education expenditures during program fiscal reviews.
- Number of school districts relying on OSE for program fiscal reviews to determine allowable special education expenditures.
- Reportable condition related to on-site program fiscal reviews.

## **FINDING**

### **4. On-Site Program Fiscal Reviews**

OSE needs to complete additional on-site program fiscal reviews and establish policies and procedures to follow up on internal control weaknesses. These enhancements would help OSE ensure that all school districts submit allowable costs for reimbursements.

Federal and State guidelines identify allowable program cost requirements that school districts must comply with when expending program funds. OSE allocated approximately \$916 million and \$905 million in State funds and \$396 million and \$400 million in federal funds to special education programs in fiscal years 2011-12 and 2012-13, respectively. State funds are allocated directly to local educational agencies (LEAs), whereas federal funds are allocated directly to ISDs, which then allocate federal funds to LEAs in accordance with an approved ISD plan.

OSE conducts on-site program fiscal reviews of federally funded expenditures at the 56 ISDs on a three-year cycle. OSE selects LEAs within the ISD using a risk-based approach and performs on-site reviews to examine both fiscal and programmatic records at an ISD and certain LEAs within the ISD. In addition, OSE reviews individual federally funded transactions to determine their appropriateness and allowability.

At the end of each fiscal year, school districts file a detailed report of actual State-funded costs for their special education programs with OSE. OSE performs an annual desk review of the actual cost reports for all districts. The desk review consists of an evaluation of individual line items on each report, using a series of reasonableness tests. The desk review function is a cost-effective method of providing fiscal oversight of the State-funded portion of school district special education programs. However, a desk review may not identify inherent deficiencies in a school district's internal control that result in consistent or occasional overcharges to the State.

During our review, we noted:

- a. OSE completed 14 (25%) of 56 ISD on-site program fiscal reviews, which included 43 (9%) of 474 LEAs, within our audit period of October 1, 2011

through April 30, 2014. The 14 ISD on-site program fiscal reviews identified \$2.1 million in unallowable costs.

Performance of additional on-site program fiscal reviews would enhance OSE's ability to ensure that special education expenditures are appropriate and allowable.

- b. OSE did not perform a review of State-funded special education expenditures during its on-site program fiscal review for all reviews completed during our audit period.

We reported a similar issue in our prior audit. OSE agreed with our recommendation to conduct on-site program fiscal reviews of State-funded special education program costs. OSE developed procedures to review State-funded transactions during our audit period, and we were informed that OSE began utilizing those procedures in January 2014.

- c. OSE did not have policies and procedures to follow up on internal control weaknesses noted in program fiscal reviews.

OSE auditors are responsible for reviewing expenditures to determine if school districts expended special education monies properly. During our review, we determined that OSE identified potential internal control weaknesses related to an opportunity for potential fraud during 1 (7%) of the 14 ISD audits completed. OSE management informed us that it usually does not review for internal control weaknesses during its program fiscal reviews, but instead relies on single audits performed at the school districts to identify internal control weaknesses. OSE did not have an established protocol, procedures, or process in place to address and forward potential internal control weaknesses identified outside of OSE's scope of review. OSE recouped unallowable costs with interest of \$12,563; however, it did not forward the issues noted or perform additional on-site follow-up to determine if the school district corrected the noted potential internal control weaknesses.

## **RECOMMENDATION**

We recommend that OSE complete additional on-site program fiscal reviews and establish policies and procedures to follow up on internal control weaknesses.

## **AGENCY PRELIMINARY RESPONSE**

MDE provided us with the following response:

*OSE agrees with the recommendation.*

*OSE agrees that performing additional program fiscal reviews would enhance OSE's ability to ensure special education expenditures are appropriate and allowable. The time period reviewed included the additional American Recovery and Reinvestment Act (ARRA) funds that doubled the IDEA funds being reviewed and an IDEA Hearing resulting from significant program fiscal review findings that impacted OSE's ability to perform additional program fiscal reviews.*

*OSE informed us that it continues to develop and implement processes that promote improved and more efficient program fiscal reviews based upon risk assessments. As an example, a new process recently implemented is the completion of a program fiscal review that was conducted without a site visit.*

*OSE also informed us that it has established as a part of the program fiscal review process a protocol that identifies the types of findings that require an on-site follow-up. Concerns identified as "opportunities for fraud" would require an on-site follow-up to ensure corrective actions have been implemented.*

*OSE will assist MDE in the development of an MDE procedure that will provide all program areas with procedures to be followed when any concerns related to opportunities for potential fraud are identified.*

## **EFFECTIVENESS OF EFFORTS TO INVESTIGATE AND RESOLVE COMPLAINTS**

### **COMMENT**

**Audit Objective:** To assess the effectiveness of OSE's efforts to investigate and resolve complaints related to special education services.

**Audit Conclusion:** We concluded that OSE's efforts to investigate and resolve complaints related to special education services were effective.

Factors leading to this conclusion included the:

- Significant improvement since the prior audit of State complaints investigated within the 60-day time requirement.
- Consistent timely completion of all ordered corrective action relating to the State complaints and due process complaints we reviewed.
- Reportable condition related to due process complaint resolution sessions.

## **FINDING**

### 5. Due Process Complaint Resolution Session

OSE did not have an effective monitoring process to accurately determine when school districts held due process complaint resolution sessions. As a result, OSE could not ensure that school districts were in compliance with federal program requirements.

Federal regulations 34 *CFR* 300.532(c)(3)(i) and 34 *CFR* 300.510(a)(1) require a resolution session to be held within seven days of receiving an expedited due process complaint and 15 days of receiving a nonexpedited due process complaint, respectively. If the State finds that a school district is not in compliance with these requirements, it must issue a finding of noncompliance and ensure correction of the noncompliance as soon as possible and in no case more than one year after the State identification, as required by federal regulation 34 *CFR* 300.600(e).

In addition, MDE's special education due process complaint procedures require school districts to complete a resolution session summary form for each due process complaint. This form provides OSE with documentation regarding when resolution sessions are held.

OSE informed us that it does not require school districts to submit the resolution session summary form as required by MDE's special education due process complaint procedures; however, as a compensating control, OSE allows school districts to provide the necessary information through other means. These other means include a letter or an e-mail from the district or complainant attorney, an informal dispute resolution notification form indicating when both parties agreed to

enter mediation, or inclusion in later reports as part of the due process hearing. Although OSE has established compensating controls, these controls and established procedures were not effective in accurately informing OSE of when resolution sessions were held.

During our review of the due process complaints filed from October 1, 2011 through April 30, 2014, we randomly selected 16 complaints for testing, which included 6 expedited due process complaints and 10 nonexpedited due process complaints. We noted that for 5 (83%) of the 6 selected expedited due process complaints and 2 (20%) of the 10 selected nonexpedited due process complaints, school districts did not hold the required resolution sessions in a timely manner. For all 7 (100%) due process complaint resolution sessions not held in a timely manner, the State did not issue a finding of noncompliance.

### **RECOMMENDATION**

We recommend that OSE develop an effective monitoring process to accurately determine when school districts hold due process complaint resolution sessions.

### **AGENCY PRELIMINARY RESPONSE**

MDE provided us with the following response:

*OSE agrees with the recommendation.*

*OSE recognizes the need to improve and implement effective controls to accurately determine when due process complaint resolution sessions are held and issue findings of noncompliance when necessary.*

*To improve controls regarding due process complaint resolution sessions, OSE informed us that:*

- *Rule set 2013-116 ED, currently moving through the promulgation process, includes new language that requires specific resolution session data be delivered to OSE within a specific timeline.*

- *OSE will develop procedures to ensure timely review of due process complaint resolution session data for compliance that will:*
  - *Engage the Program Accountability Departmental Analyst to design a comprehensive due process complaint data system, including resolution session data.*
  - *Establish, minimally, a weekly review of due process complaint resolution session data to identify necessary follow-up communication, determine compliance, and issue, when necessary, findings of noncompliance.*
- *OSE will develop a communication plan for distribution of the revised rule and procedural content to include:*
  - *Correspondence to attorneys and LEAs.*
  - *Presentations at stakeholder meetings beginning August 2014.*



# GLOSSARY

## Glossary of Abbreviations and Terms

CAP	corrective action plan.
<i>Code of Federal Regulations (CFR)</i>	The codification of the general and permanent rules published by the departments and agencies of the federal government.
Continuous Improvement and Monitoring System (CIMS)	The monitoring system used to promote positive outcomes of special education services, analyze and interpret data, keep track of monitoring activities, and ensure compliance with federal and State regulations.
effectiveness	Success in achieving mission and goals.
individualized education program (IEP)	A written plan of action defining the special education services to be provided to and the goals to be achieved by a student participating in special education.
Individuals with Disabilities Education Act of 2004 (IDEA)	Federal law that establishes the provision of a free and appropriate public education in the least restrictive environment to special education students ages 3 through 21.
intermediate school district (ISD)	An educational agency that helps oversee special education in local areas, including regional educational service agencies, for the purposes of this report.
internal control	The plan, policies, methods, and procedures adopted by management to meet its mission, goals, and objectives. Internal control includes the processes for planning, organizing, directing, and controlling program operations. It also includes the systems for measuring, reporting, and

monitoring program performance. Internal control serves as a defense in safeguarding assets and in preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grant agreements; or abuse.

local educational agency (LEA)	A local school district, including public school academies, for the purposes of this report.
MARSE	Michigan Administrative Rules for Special Education.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
MDE	Michigan Department of Education.
OSE	Office of Special Education.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal

control that is significant within the context of the audit objectives; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.

results transmittal	A form within CIMS used to guide discussion at school districts to improve upon the results indicator target.
school district	An ISD or an LEA.
SLCAP	student level corrective action plan.
SRR	student record review.
SSIP	State Systemic Improvement Plan.







