



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

Honorable Christine C. Ferguson  
Commissioner  
Department of Public Health  
250 Washington Street  
Boston, Massachusetts 02108-4619

SEP 27 2004

Dear Commissioner Ferguson:

The purpose of this letter is to respond to Massachusetts's March 31, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for Part C of IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and Improvement Planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part C APRs directed States to address five cluster areas: General Supervision; Comprehensive Public Awareness and Child Find System; Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition.

### ***Background***

In its June 21, 2000 Monitoring Report, OSEP identified one area of noncompliance: lack of justification for the provision of some early intervention services in settings other than natural environments (34 CFR §303.344(d)(ii)). Massachusetts submitted an Improvement Plan to address that issue, and OSEP stated in its February 13, 2004 letter regarding the FFY 2001 APR and the State's September 2001 Progress Report that the State has implemented all of its improvement activities and addressed the noncompliance regarding that issue.

In July 2003, OSEP conducted a visit to Massachusetts to verify the effectiveness of the State's systems for general supervision and collection of data under section 618 of the IDEA. In OSEP's October 27, 2003 letter regarding the visit, in order to ensure that DPH could meet its responsibility to submit accurate data under 618, OSEP requested that the State submit, within 60 days of October 27, 2003, its plan for ensuring that settings data, services data, race/ethnicity

data, and IFSP data on assistive technology were accurate by February 1, 2004 and November 1, 2004, when DPH was required to make its next section 618 data submission to OSEP. DPH submitted its plan on December 22, 2003 and OSEP approved DPH's plan on April 5, 2004.

The State's APR should reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas as well as any other areas identified by the State to ensure improvement. OSEP's comments on the FFY 2002 APR are listed by cluster area.

### ***General Supervision***

Noncompliance was not identified in OSEP's Monitoring Report of June 21, 2000 for this cluster area. As noted above, in its October 2003 verification letter, OSEP informed the State that DPH must ensure that data submitted under section 618 for settings, services, race/ethnicity, and assistive technology as listed on the IFSP were accurate. In the State's February 2005 submission of its 618 report, the State must provide confirmation that its December 2003 data plan was implemented and that the data reported are accurate. The data in the FFY 2002 APR indicated an area of potential noncompliance in this cluster. DPH identified a systemic issue concerning the 45-day timeline (in Massachusetts, a 45-day timeline from referral to signature on the IFSP has been required) through program recertification visits, contract performance measures, provider assistance requests for technical assistance and service delivery data reported through the State's data management system. Data indicated a State average of 69.5 percent compliance with this requirement during this reporting period. DPH reported in the FFY 2002 APR that it did not meet its 100 percent target because of the challenge in implementing its standard with a large population of eligible children. DPH indicated that it planned to revise the 45-day requirement in 2004 to be consistent with Federal Part C requirements that evaluations and assessments be conducted and an *initial IFSP meeting* be held within 45-days after the Lead Agency receives a referral (34 CFR §§ 303.321(e)(2), 303.322(e), and 303.342(a)). In the FFY 2003 APR (due March 31, 2005), DPH must provide data on whether initial IFSP meetings were convened within 45 days of referral to Part C. If the data indicate systemic noncompliance with the Part C 45-day timeline requirement, a plan including strategies, proposed evidence of change, targets, and timelines must be included in the FFY 2003 APR to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan.

OSEP's October 27, 2003 verification letter identified a concern that DPH "has not yet ensured full and timely correction of noncompliance" in some programs. In a December 22, 2003 letter, written in response to OSEP's October 2003 letter, DPH provided further information regarding the enhancement of its monitoring process to include "interim" certification and compliance visits. In addition, on pages two through four of the FFY 2002 APR, DPH provided a summary chart of the findings of noncompliance it made during the State fiscal years (SFY) 2002 and 2003 and indicated that, in some instances, DPH conducted follow-up visits to providers. In a recent conversation with OSEP regarding this chart, the State clarified that within 30 days of its identification of noncompliance with Part C requirements, a corrective plan is requested by DPH and received from the provider. OSEP looks forward to reviewing further data regarding the State's correction of State identified noncompliance in the next APR.

The State reported that three complaints, one mediation request and one due process hearing request occurred during the reporting period. On pages 9-11, the State provided strategies that included State-wide program monitoring, and training in dispute resolution and procedural safeguards to ensure procedural safeguards were being implemented. In addition, DPH reported on activities to achieve targeted results for July 1, 2003 through June 30, 2004.

### ***Comprehensive Public Awareness and Child Find System***

Noncompliance was not identified in OSEP's Monitoring Report of June 21, 2000 for this cluster area. On page 17 of the FFY 2002 APR, DPH reported that the enrollment of eligible children in early intervention continued to increase from 22,808 in 2001 to 27,891 in 2003. The State also reported that it was collaborating with the Department of Social Services to have a pilot program to ensure that all infants and toddlers with substantiated allegations of abuse or neglect received a referral to early intervention services. Data resulting from this collaboration was tracked by both DPH's data management system and the Heller School for Social Policy at Brandeis University. On page 18 of the FFY 2002 APR, the State listed the following factors, identified in the 2002 Massachusetts birth data report, that contributed to increased enrollment: (1) increased number of low-birth-weight infants; (2) decreased infant mortality; (3) increased number of older mothers, (4) increased number of multiple births; (5) increased number of foreign adoptions of young children; and (6) a national epidemic of young children diagnosed on the autism spectrum. Separate from the APR, DPH reported that the percentage of children under the age of three determined eligible for Part C was comparable to State and national demographic data for the percentage of infants and toddlers with developmental delays. DPH reported that the percentage of eligible infants with disabilities under the age of one receiving Part C services was comparable with national and State prevalence data. In addition, the APR data indicated that 30 percent of infants in 2003 were referred between birth and six months of age.

### ***Family Centered Services***

Noncompliance was not identified in OSEP's Monitoring Report of June 21, 2000 for this cluster area. The State reported in the FFY 2002 APR that it was improving family centered services by promoting family leadership in State and local implementation activities including parent staff positions at the Lead Agency, parent leadership projects, and parent participation in child identification and referral efforts. Although not reported in the APR, OSEP is also aware that the State intended to develop an instrument to measure outcomes and a family needs questionnaire.

OSEP's response to DPH's FFY 2001 APR requested that the State include monitoring data in the FFY 2002 APR regarding the number of IFSPs reflecting family assessments offered and conducted, and other available data to establish the effectiveness of activities related to both performance and compliance. The State did not respond whether it collected such monitoring data or describe the effectiveness of previous activities related to performance and compliance. In the next APR, DPH must submit the data and its analysis that OSEP requested, with a determination of compliance or noncompliance.

### *Early Intervention Services in Natural Environments*

One area of noncompliance was identified in OSEP's June 21, 2000 Monitoring Report in this cluster: lack of justification for the provision of some early intervention services in settings other than natural environments (34 CFR §303.344(d)(ii)). In its February 13, 2004 letter regarding the FFY 2001 APR and the State's September 2001 Progress Report, OSEP recognized that the State had completed its activities/strategies listed in the State's Improvement Plan that OSEP had previously accepted, and that the State had addressed the noncompliance regarding that issue. On pages 27 and 28 of the FFY 2002 APR, the State reported that: (1) 94.8 percent of all services were provided in community-based settings; (2) the percentage of IFSPs reviewed that lacked appropriate justification statements improved from 6.5 percent to 2.1 percent between 2002 and 2003; (3) data indicated that child group services were almost exclusively provided in community settings; (4) sampling data indicated that all services needed and identified were listed on IFSPs and were provided; and (5) 99 percent of enrolled children with IFSPs had an assigned service coordinator designated in IFSPs for 2002 and 2003. The State attributed falling short of the 100 percent target for the assignment of service coordinators to ongoing system growth and the temporary use of an intake team for initial intake and evaluation that resulted in the assignment of a service coordinator after the process was completed. DPH reported that they would continue to track the assignment of service coordinators as a quality indicator through their data management system and program monitoring.

The Part C FFY 2001 and 2002 APRs requested data on the percentage of children participating in the Part C program that demonstrated improved and sustained functional abilities (in the development areas listed in 34 CFR §303.322(c)(3)(ii)). In its FFY 2002 APR, DPH reported baseline/trend outcome data for children with IFSPs with developmental delays at the time of the child's enrollment in the early intervention system. DPH indicated that it used multiple developmental domains to collect the outcome data. DPH also indicated that it did not include outcome data for children with established medical conditions in the reported data. On pages 30-31 of the FFY 2002 APR, DPH provided outcome data on improved and sustained functional abilities for 8,750 children who were discharged from early intervention services in 2002 and 9,700 children who were discharged in 2003. For 2003, the State reported the following percentages of children with the same or improved functional abilities in these developmental domains: Gross Motor (93.1%), Fine Motor (91.1%), Expressive Language (90.0%), Receptive Language (89.1%), Cognitive (90.6%), Social/Emotional (91.7%), and Adaptive/Self Help (86.6%). OSEP appreciates the very specific responsive data collected by the State.

DPH reported that it had limited capacity to provide clear and comprehensive child outcomes information. DPH indicated that while the State's early intervention system provided services for thousands of children, it did not have the evaluative capacity necessary to provide child specific outcome information. The State reported strategies designed to enhance data collection and information in this area that included: (1) the implementation of a Service Tracking Electronic Payment (STEPS) data/payment system to collect early intervention system process outcomes and to collect larger amounts of child specific information for analysis; and (2) ongoing State involvement with the Early Childhood Outcomes National Center (ECO). OSEP suggests that DPH continue to pursue technical assistance regarding: (1) conceptual decisions such as the purpose of the system, the key areas of child functioning to be addressed, and the

relationship of outcomes to the nature and quantity of services received; (2) measurement decisions such as including all children in the system or sampling; and (3) decisions regarding data reporting methods to assist in the development and implementation of the State's child and family outcome system. As part of the FFY 2003 APR, OSEP looks forward to reviewing the State's continued reporting of data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate the percentage of children participating in the Part C program who demonstrate improved and sustained functional abilities in the five developmental areas.

### ***Early Childhood Transition***

Noncompliance was not identified in OSEP's Monitoring Report of June 21, 2000 for this cluster area. OSEP's February 2004 letter requested that the State include in the FFY 2002 APR data on the numbers of children for whom: (1) transition conferences are convened at least 90 days prior to the child's third birthday; (2) the school district was notified of the child's turning three, as required; and (3) transition plans were included on IFSPs. In the FFY 2002 APR, DPH included data and information regarding the inclusion of transition plans in IFSPs, but did not provide data on timely transition conferences or notification of school districts of children turning three. In the next APR, DPH must provide compliance data under 34 CFR § 303.148(b) on the number of children for whom transition conferences are convened, as required, at least 90 days prior to the child's third birthday and on whether school districts are notified by the lead agency as part of transition.

The data provided by DPH in the FFY 2002 APR indicated the following area of potential noncompliance not previously identified by OSEP: ensuring that IFSPs included the transition-related content required by 34 CFR §303.344(h). DPH reported data that indicated that 54 % of 268 files reviewed demonstrated that transition plans were completed and up to date. Within 60 days of the date of this letter, DPH must review its data and provide to OSEP an explanation of whether the files reviewed were those of children at the age of transition and thus data indicating noncompliance with 34 CFR §§ 303.148 and 303.344(h), or all children. If the data indicate noncompliance, DPH must also submit to OSEP within 60 days of the date of this letter, a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

### ***Conclusion***

As noted in the Early Childhood Transition cluster, within 60 days of the date of this letter, DPH must review its data regarding transition-related content in IFSPs, and provide to OSEP an explanation of whether the files reviewed were those of children at the age of transition and thus data indicating noncompliance with 34 CFR §§ 303.148 and 303.344(h), or all children. If the data indicates noncompliance, DPH must also submit to OSEP, within 60 days from the date of this letter, a plan that includes strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP approves the plan.

In the State's February 2005 submission of its 618 report, the State must include confirmation that the State's December 2003 data plan was implemented and that the data reported are accurate.

In the FFY 2003 APR (due March 31, 2005), the State must include:

1. Data on whether initial IFSP meetings are convened within 45 days of referral to Part C. If the data indicate systemic noncompliance, a plan including strategies, proposed evidence of change, targets, and timelines, must be included in the FFY 2003 APR to ensure correction of noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan;
2. Data and analysis regarding compliance in the Family Centered Services cluster;
3. The State's continued reporting of data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate the percentage of children participating in the Part C program who demonstrate improved and sustained functional abilities in the five developmental areas; and
4. Data under 34 CFR § 303.148(b) on the number of children for whom transition conferences are convened, as required, at least 90 days prior to the child's third birthday and on whether school districts are notified by the lead agency as part of transition.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and we look forward to collaborating with you as you continue to improve results for infants and toddlers with disabilities and their families. If you have questions, please contact Jacquelyn Twining-Martin at (202) 245-7558.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Ron Benham  
Part C Coordinator