



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Paul S. Nusbaum
West Virginia Department
Of Health and Human Services
State Capitol Complex
Building 3 Room 206
Charleston, WV 25305

OCT 25 2004

Dear Secretary Nusbaum:

The purpose of this letter is to respond to West Virginia's April 30, 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 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

West Virginia submitted its Self-Assessment to OSEP in October 2002. In a letter dated June 10, 2003, OSEP responded, identifying one area of noncompliance regarding general supervision under 34 CFR §303.501.

In its FFY 2001 APR (submitted July 1, 2003) and the attached "WV Birth to Three Improvement Plan" (IP), West Virginia provided improvement planning strategies in response to its Self-Assessment and provided information in response to the cluster areas required in the APR. OSEP's April 2, 2004 response to West Virginia's FFY 2001 APR directed West Virginia to provide in its September 30, 2004 Progress Report information: (1) explaining any further follow-up activities the Lead Agency has taken to ensure that Regional Administration Units (RAUs) are correcting the State-identified noncompliance; (2) confirming whether all local point of entry agencies became RAUs; and (3) demonstrating compliance in the following areas of potential noncompliance -- (a) using assessments to identify children's unique strengths and needs, and the services appropriate to meet those needs, (b) service coordination, and (c) the

transition data regarding the transition planning conference.¹ On September 30, 2004, the State submitted its progress report, which OSEP will respond to in this letter.

OSEP staff conducted a verification visit to West Virginia during the week of September 15, 2003 to determine the effectiveness of the State's systems for general supervision and data collection under section 618 of IDEA and determine how the State uses those systems to assess and improve performance, and to protect child and family rights. In OSEP's April 2, 2004 verification letter, OSEP indicated that West Virginia's systems for general supervision constituted a reasonable approach to the *identification* of noncompliance. However, as indicated in the letter, OSEP could not determine whether the State system for *correction* of noncompliance was effective.

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. OSEP's comments regarding the State's FFY 2002 APR, and September 30, 2004 progress report, are listed below by cluster area.

General Supervision

OSEP's June 10, 2003 letter regarding the State's Self-Assessment identified noncompliance in the area of general supervision because the Self-Assessment reported that a monitoring system had been revised and was in place, but that the system had not been fully implemented to ensure the provision of early intervention services for children with disabilities. During OSEP's verification visit, the State indicated that it was moving from a system of local point of entry agencies to RAUs. In its April 2004 letter regarding the verification visit, OSEP indicated it believed that the State's general supervision system constituted a reasonable approach to the identification of noncompliance; however, OSEP could not yet determine whether the State's general supervision system was effective in correcting noncompliance. In OSEP's April 2004 letter to West Virginia regarding the State's FFY 2001 APR, OSEP directed the State to provide the following information in its September 30, 2004 progress report: (1) a further explanation regarding the follow-up activities West Virginia Birth to Three (WVBTT) has taken to ensure that RAUs are correcting the State-identified noncompliance; and (2) confirmation regarding whether all local point of entry agencies had become RAUs.

In its September 2004 progress report, the State confirmed that the last three RAUs were put in place on July 1, 2004. The State's FFY 2002 APR submission indicated that three regional onsite record reviews were completed during the reporting period. The State reported that corrective action plans were submitted by each agency and technical assistance was provided by the Lead Agency. The APR indicated that the State's Continuous Quality Improvement Coordinator issued closure letters to each of the monitored agencies after receiving documentation from the agencies that the State-identified noncompliance issues were corrected. In addition, the State reported in the FFY 2002 APR that data validity reviews were completed in five regions during the period with no significant systemic noncompliance issues identified. In the September 2004 progress report, West Virginia provided an example of the State's monitoring findings, corrective actions, and closure letter for one of the payee agencies. OSEP

¹ OSEP's April 2, 2004 response to the State's FFY 2001 APR also directed the State to submit a final progress report by May 2, 2005. The State no longer has to submit that progress report, but must provide information as requested in this letter.

appreciates the State's efforts in reporting on this issue. Based on its review of the information reported in the APR and the progress report, OSEP did not identify additional concerns regarding this issue. The State should continue to report in the next APR on its strategies to ensure compliance and performance in this cluster area.

The APR indicated that no written complaints, requests for mediation, or requests for due process hearings were received during the reporting period. As requested in OSEP's April 2004 verification letter, the State indicated in the FFY 2002 APR that it was reviewing its prior notice and procedural safeguard information to ensure it included all required Part C regulations. The State submitted its revised prior notice and procedural safeguards with its September 2004 progress report. OSEP reviewed the State's revised notice, and found that much of the required information has been added to the notice, but a few issues are still not addressed. OSEP is sending its notice analysis under separate cover.

Comprehensive Child Find/Public Awareness

OSEP's April 2004 letter regarding the State's FFY 2001 APR indicated that noncompliance had not been previously identified in this cluster. The State's FFY 2001 APR stated that West Virginia's coordinated child find efforts in collaboration with Maternal and Child Health and other State-wide infant screening programs resulted in the State serving 2.67% of its population of children birth through age two (based on December 1, 2001 child count). The FFY 2002 APR reported that as of the December 1, 2002 child count, the State was serving 2.85% of its population of children birth through age two. According to the APR, this increase occurred even though there was a drop in population in this age group from 58,472 in 2001 to 56,777 in 2002. The APR also reported that the percentage of children served under age one was 1.6% according to the December 1, 2002 child count, an increase from 1.2% for the December 1, 2001 child count.

For the next reporting period, July 1, 2003 through June 30, 2004 and ongoing, the APR (page 6) contained the following numerical goals for the number of children identified by Part C: (1) at least 2.8% of the State's population of infants and toddlers under age three will be identified and receive Part C services; (2) at least 1.3 % of the State's population of infants and toddlers under the age of one will be identified and receive Part C services; and (3) at least 70% of the counties in the State will identify and serve more than 2% of the population of infants and toddlers in the county. While it is not inconsistent with Part C of the IDEA to include a numerical goal regarding the percentages of infants and toddlers with disabilities determined eligible for services, the State must continue to monitor to ensure that eligibility decisions for all infants and toddlers are made in conformity with the individual evaluation and assessment requirements of Part C of IDEA (at 34 CFR §§303.320 through 303.323) and not based upon a numerical goal. In addition, the State must ensure it does not find local and county provider programs out of compliance for failing to meet a particular numerical goal when eligibility decisions are made consistent with Part C.

Family Centered Services

In its FFY 2002 APR, the State reported that through its on-site reviews, it found 100% of families reported that Part C services resulted in their child's improved functional abilities across daily activities. In the State's FFY 2002 APR, and September 2004 progress report; the State reported that it planned to implement a family exit survey that would offer parents the

opportunity to provide comments. In the APR, West Virginia also indicated that it planned to continue its collaborative activities with Early Head Start, childcare providers and preschool education to increase the capacity of the various systems to support families of infants and toddlers with special needs. In the September 2004 progress report, the State also provided information regarding the choices that families have in selecting service providers and service coordinators, and information regarding training that the State has provided to service providers and service coordinators.

In the next APR, the State should continue to report on its strategies to ensure compliance and performance in this cluster area.

Early Intervention Services in the Natural Environment

OSEP's April 2004 letter identified the following two areas of potential noncompliance for the following requirements in this cluster: (1) that assessments are used to identify the child's unique strengths and needs, and the services appropriate to meet those needs; and (2) that the requirements regarding service coordinators are met. In its April 2004 letter, OSEP directed the State to provide information demonstrating compliance with those two areas in the State's September 2004 progress report.

With regard to assessments, the FFY 2002 APR reported that, "data gathered through onsite monitoring during this period (July 1, 2002 through June 30, 2003) was able to confirm that for 100% of records reviewed, children received a multidisciplinary evaluation process" (page 10). The FFY 2002 APR also reported that: (1) "one hundred percent of the records reviewed during onsite record reviews for the reporting period reflected that information was gathered across all developmental domains in order to address each child's unique developmental needs;" (2) "onsite record reviews identified that one hundred percent of initial and annual evaluations were completed by required multidisciplinary process;" and (3) "onsite record reviews identified [that] one hundred percent of the IFSPs identified the early intervention services necessary to meet the needs of the child and family, including the intensity, frequency, location and payment source of the service" (page 9). In its September 2004 progress report, the State provided further consistent information regarding assessments and content of IFSPs. The State's data did not indicate noncompliance in this area, and based on its review of the data and information reported in the APR, OSEP did not identify additional concerns regarding this issue.

With regard to service coordination, the FFY 2002 APR indicated "all families were identified through the integrated child/family data system as having a service coordinator assigned at referral" (page 9). The State also reported that, "one hundred percent of onsite record reviews identified that the family had an assigned service coordinator and received service coordination" (page 9). The State also indicated that it increased the number of service coordinators and service providers in order to meet the individual needs of children and families (page 10). The FFY 2002 APR also reported that the State implemented a comprehensive program to train and certify service coordinators; the program emphasized increasing the service coordinator's awareness of required responsibilities. In its September 2004 progress report, the State indicated that it would continue to monitor the delivery of service coordination services in order to assure that families are receiving needed services. The State's data did not indicate noncompliance in this area, and based on its review of the data and information reported in the APR, OSEP did not identify additional concerns regarding this issue.

The instructions for completing Part C FFY 2001 and FFY 2002 APRs requested data on the percentage of children participating in the Part C program that demonstrated improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). The FFY 2002 APR indicated that the State modified its IFSP review form to gather information regarding the child's improved functional abilities with daily routines, and the Office of Maternal Child and Family Health (OMCFH) monitoring instrument was modified to capture this information during onsite reviews (page 9). The State also indicated that it would continue to work with the National Center on Early Childhood Outcomes to identify additional strategies to evaluate the impact of Part C services for children and families (page 10). The State reported that "one hundred percent of the records reviewed during onsite monitoring reviews indicated that Part C services and intervention strategies had resulted in improved functional abilities for the child in typical daily routines and activities" (page 9). In the FFY 2003 APR, the State must continue to submit responsive data (whether collected through sampling, monitoring, IFSP review, or other methods), targets for improved performance, and strategies to achieve those targets for this area.

Early Childhood Transition

OSEP's April 2004 letter regarding the FFY 2001 APR identified potential noncompliance in the area of transition conferences required under 34 CFR §303.148(b)(2)(i). In the FFY 2001 APR, the State reported 66% of IFSP folders reviewed indicated that the required transition meeting had occurred at least 90 days before the child's third birthday. OSEP stated in its April 2004 letter that it was unclear whether the remaining folders that were reviewed (where the required transition meeting had not occurred) included children who may be eligible for preschool services under Part B of the Act. In its April 2004 letter, OSEP stated that, in the September 30, 2004 progress report, the State must clarify this data and confirm whether it can demonstrate compliance in this area. On page 12 of the APR, the Lead Agency reported that data relevant to this cluster were collected through on-site monitoring showing that "sixty-six percent (66%) of records reviewed for toddlers transitioning at age three indicated that a face-to-face meeting was held within at least 90 days prior to the third birthday." However, the State also reported in the APR that "the monitoring did not identify whether those children for whom a face-to-face transition planning was not held were likely eligible for Part B" (page 12). The September 2004 progress report further indicated that the State "is unable at this time to document compliance with the time line requirements for 90 day face-to-face meetings." In the next APR, the State must submit data that identifies whether those children for whom a transition conference was not held as required by Part C were likely eligible for Part B. If those data demonstrate noncompliance with the Part C requirements, the State must submit in its FFY 2003 APR, 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

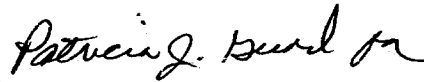
In the FFY 2003 APR, due March 31, 2005, the State must:

1. Continue to submit responsive data (whether collected through sampling, monitoring, IFSP review, or other methods) regarding the percentage of children participating in the Part C program that demonstrated improved and sustained functional abilities, targets for improved performance and strategies to achieve those targets for this area; and

2. Submit data that identify whether those children for whom a transition conference was not held as required by Part C were likely eligible for Part B. If those data demonstrate noncompliance with the Part C requirements, the State must submit in its FFY 2003 APR, 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.

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 Virginia Johnson at (202) 245-7353.

Sincerely,



Stephanie Smith Lee
Director
Office of Special
Education Programs

cc: Pam Roush, Part C Coordinator