



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

Honorable Jeremy M. Hughes, Ph.D.
Interim Superintendent of Public Instruction
Michigan State Department of Education
P.O. Box 30008
Lansing, Michigan 48909

OCT 25 2005

Dear Superintendent Hughes:

The purpose of this letter is to respond to Michigan's May 2, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part C for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR, May 9, 2005 submission, and Progress Report dated August 30, 2005. OSEP has set out its comments, analysis, and determinations by cluster area.

Background

OSEP's March 10, 2005 FFY 2002 APR response letter required that:

1. Within 60 days from the date of OSEP's March 2005 letter, Michigan:
 - a. With respect to the lack of formal sanctions, provide a plan with strategies, proposed evidence of change, targets and timelines designed to ensure compliance with 34 CFR §303.501(b), including any sanctions or enforcement procedures to ensure correction;
 - b. Provide strategies, timelines, and evidence of change for ensuring the collection of accurate data, as required by 34 CFR §303.540;
 - c. With respect to evaluations and assessments, submit a plan, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of noncompliance with 34 CFR §§303.322(c)(3)(ii) and 303.344(a) within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan;
 - d. With respect to early childhood transition, submit a plan that includes strategies, proposed evidence of change, targets, and timelines designed to correct the

- noncompliance with 34 CFR §§303.148(b)(1) and 303.148(b)(2)(i) as soon as possible, but no later than one year after OSEP accepts the plan; and
- e. With respect to including a written justification on the Individual Family Service Plan (IFSP) when early intervention services are not provided in a natural environment, as required by 34 CFR §303.344(d)(1)(ii), submit 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.
2. Michigan must:
 - a. Clarify whether the initial IFSP must be completed at the initial IFSP meeting; and if it does, provide data in the FFY 2003 APR on whether the initial IFSP meeting is held within the 45-day timeline;
 - b. If the Michigan State Department of Education (MDE) does not require that the initial IFSP be completed at the initial IFSP meeting, within 60 days from March 10, 2005, provide data on whether initial IFSP meetings are held within 45 days of referral to Part C; and
 - c. If the data demonstrated noncompliance with 34 CFR §§303.321(e)(2), 303.322(e)(1) and 303.342(a), submit a plan to OSEP, within 60 days from March 10, 2005, designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepted the plan.
 3. In a Progress Report, due August 31, 2005, Michigan must submit to OSEP:
 - a. Information demonstrating evidence of change with respect to correction of the noncompliance with 34 CFR §303.501(b) -- failure to monitor for all Part C requirements, including the Early On System Review (EOSR) data reported to MDE through the reporting date on indicators 14 and 45 regarding service provision, and MDE's response to that data, including any findings of noncompliance made, corrective actions required, or other response;
 - b. Confirmation that the revised standard for compliance, as required by 34 CFR §303.501, adopted by MDE was implemented;
 - c. Confirmation that the one-year timeline for correcting noncompliance, as required by 34 CFR §303.501, was implemented; and
 - d. With respect to the collection of data regarding adequate personnel, data and analysis demonstrating progress toward compliance.
 4. With respect to failure to monitor for all Part C requirements, as required by 34 CFR §303.501, in addition to the Progress Report due on August 31, 2005, Michigan must submit a final Progress Report demonstrating correction of this noncompliance 30 days following one year from March 10, 2005.
 5. With respect to the collection of data regarding adequate personnel, MDE must submit a report demonstrating compliance with 34 CFR §303.540, as soon as possible, but no later than 30 days following one year from March 10, 2005.

6. In the FFY 2003 APR, Michigan must continue to report on its dispute resolution system.
7. In the FFY 2003 APR, Michigan must continue to report on the implementation of its strategies to ensure that services for all infants and toddlers with disabilities are provided in natural environments to the maximum extent appropriate to the needs of the child, as required by 34 CFR §§303.12(b), 303.18, and 303.344(d)(1)(ii).
8. In the FFY 2003 APR, Michigan must submit its plan to collect and submit early childhood outcome data or targets for improved performance and strategies to achieve those targets for this area.

General Supervision

Identification and timely correction of noncompliance

OSEP's March 10, 2005 letter addressed the following four previously identified areas of noncompliance with the requirement that the State have proper methods to ensure identification and timely correction of noncompliance, as required by 34 CFR §303.501: (1) Failure to monitor for all Part C requirements including: (a) provision of early intervention services on the IFSP in a timely manner, and (b) sufficient qualified personnel to provide early intervention services; (2) standard for compliance; (3) timelines for correcting noncompliance; and (4) lack of formal sanctions.

Failure to monitor

With respect to failure to monitor for all Part C requirements, OSEP accepted MDE's plan in its March 2005 letter. OSEP requested two Progress Reports – one by August 31, 2005 and a final report due 30 days from one year from the date of OSEP's March 10, 2005 letter – by April 10, 2006. Each Progress Report was to include the EOSR data reported to MDE through the reporting indicators 15 and 45 regarding service provision, and was to include MDE's response to that data, including any findings of noncompliance made, corrective actions required, or other response. The State's August 30, 2005 Progress Report indicated that the State is now monitoring for Part C requirements, including the one area where OSEP raised particular concerns in its March 2003 letter -- whether early intervention services are provided in a timely manner. However, the August 2005 Progress Report did not include a list of findings of noncompliance by the State. OSEP appreciates the State's efforts to monitor for Part C noncompliance in all areas. In the final Progress Report due April 10, 2006, the State must include a list of findings of noncompliance with Part C requirements that it has made and any corrective actions it has taken, including findings and actions regarding the provision of early intervention services on the IFSP in a timely manner, as required by 34 CFR §303.501.

Standard for compliance and timelines for correcting noncompliance

In its August 30 Progress Report, the State confirmed that it had established a standard of compliance and a timeline for compliance that meets the requirements of 34 CFR §303.501(b). The State reported that its standard for compliance had been revised so that noncompliance

identified by the State as Category 2 or 3 must be corrected within one year. MDE distributed a memorandum to all service providers in January 2004 describing these changes. OSEP appreciates the State's work in this area.

Lack of formal sanctions

In Michigan's May 2005 submission, MDE stated that it developed formal sanctions as a component of Michigan's Continuous Improvement Monitoring System (CIMS), and included a draft copy of these sanctions. In that letter, MDE also stated that it would receive public comment and mail a final copy of the Formal Sanctions to OSEP with its August 31, 2005 Progress Report. OSEP notes that the August 2005 Progress Report did not contain the final version of the CIMS formal sanctions, and that the Attachment to the May 2005 submission indicated that the final version would be available in September 2005. In the State Performance Plan (SPP), due December 2, 2005, the State must provide the final version of the CIMS formal sanctions. OSEP will review that document and respond at a later date.

Dispute resolution

OSEP's March 2005 letter required that MDE continue to report on its dispute resolution system in the FFY 2003 APR. On page 10 of the FFY 2003 APR, the State included data and information regarding dispute resolution, indicating that there were no formal complaints, mediations, or due process hearings. The State also indicated, on page 11, that videos, new and revised parent information booklets, and a new public awareness campaign were developed and distributed to local service areas. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data and information regarding the State's efforts in this area in the SPP.

Personnel

OSEP's March 2005 letter accepted the State's plan with respect to the collection of data regarding adequate personnel to provide early intervention services. OSEP required the State to submit: (1) data and analysis, in the August 30, 2005 Progress Report, demonstrating progress toward compliance indicating that intermediate school districts have enough personnel to provide appropriate and timely services to infants and toddlers with disabilities; and (2) a report demonstrating full compliance, as soon as possible, but no later than 30 days following one year from the March 2005 letter. In the final Progress Report due April 10, 2006, the State must provide data and analysis demonstrating compliance with the requirement that it has mechanisms in place to collect, compile, and submit data regarding adequate personnel to provide early intervention services, as required by 34 CFR §303.540. The issue of whether the State is providing appropriate and timely services to infants and toddlers with disabilities is addressed in the Early Intervention Services in Natural Environments cluster area of this letter.

Collection and timely reporting of accurate data

OSEP's March 2005 letter required MDE to provide, within 60 days of that letter, strategies, timelines, and evidence of change for ensuring the collection of accurate data as required under

34 CFR §303.540. On page 1 and in Attachment 1 of its May submission, the State included the required plan, including timelines for implementing the plan by December 2005. The State indicated the following: (1) A data entry prototype form would be developed and distributed to local service areas; (2) training on the prototype would be provided by Early On training and technical assistance, and Interagency and Information Systems – the data collection project; and (3) data would be verified for accuracy as part of the Michigan CIMS process. OSEP has reviewed and accepts this plan. The State must provide a final report to OSEP confirming the accuracy of state-collected data and implementation of strategies no later than April 10, 2006.

Comprehensive Public Awareness and Child Find System

On pages 17 through 26 of the FFY 2003 APR, the State included data and information regarding this cluster area, including the efforts the State is making to identify eligible infants and toddlers. On page 21 of the FFY 2003 APR, the State reported the percentage of eligible infants and toddlers with disabilities under the age of one who were receiving Part C services, indicating that the percent of the population served under 1 year old is 1.1 percent and the national average was 1 percent. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data and information in the SPP regarding the percent of infants and toddlers, birth to one, with IFSPs, compared to other States with similar eligibility definitions and national data.

On page 21 of the FFY 2003 APR, the State reported the percentage of eligible infants and toddlers with disabilities, birth to three, who were receiving Part C services, and indicated that the percent of the population served is 2.8 percent and the national average was 2.2 percent. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data and information in the SPP regarding the percent of infants and toddlers, birth to three, with IFSPs, compared to other States with similar eligibility definitions and national data.

Family Centered Services

On pages 27 through 31 of the FFY 2003 APR, the State included data and analysis regarding its efforts to improve performance in this area. The State reported that its family survey indicated that 71 percent of families surveyed in 2004 reported that the *Early On* program helped support the family in caring for their child. Michigan provided the following strategies to improve performance: (1) distribution of the video "Early On 101" produced in English, Spanish and Arabic; (2) training and technical assistance including conferences and workshops for parents; (3) quarterly meetings for State Interagency Coordinating Council parents; (4) inclusion of additional questions on family capacity to enhance outcomes for infants and toddlers included in the annual parent survey; (5) monitoring and self-assessment data collection on child progress toward outcomes; and (6) Early On guidebooks distributed to all ISDs. OSEP appreciates the State's efforts to improve performance in this area, and looks forward to the State's response to the family outcome indicator (#4) in the SPP.

Early Intervention Services (EIS) in Natural Environments (NE)

Service coordination

On page 33 of the FFY 2003 APR, the State included data and analysis demonstrating progress in ensuring that all families had access to a service coordinator: Data from a 2003-2004 review of 12 (out of 57 sites) indicate that: (1) 96.9 percent of IFSPs included the name of the service coordinator; and (2) a service coordinator participated in 96.5 percent of initial IFSP meetings. In addition, on page 36 of the FFY 2003 APR, the State reported that data from local self-assessments indicate that 100 percent of IFSPs identify a service coordinator. OSEP appreciates the State's efforts in this area.

Evaluation and identification of needs

OSEP's March 2005 letter found that the State was not in compliance with the requirement to provide a timely, comprehensive, multidisciplinary evaluation of each child, and identify, on the child's IFSP, the present level of functioning in each of the five developmental areas, as required by 34 CFR §§303.322(c)(3)(ii) and 303.344(a). OSEP directed the State to submit a plan within 60 days of that letter 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. On page 2 of its letter and on page 1 of Attachment 1 in its May 2005 submission, Michigan included strategies, proposed evidence of change, targets, and timelines designed to ensure compliance as soon as possible, as required in the March 2005 letter. OSEP has reviewed and accepts this plan. In the SPP, the State must include data and analysis, including the quarterly reports referenced in page 1, section c, number 5 of Attachment 1 to its May 2005 submission, documenting progress toward compliance. In addition, the State must provide a final report to OSEP, including data and analysis and any additional quarterly reports submitted to MDE between the date of the SPP and the final report, demonstrating compliance with 34 CFR §§303.322(c)(3)(ii) and 303.344(a), no later than 30 days following one year from the date of this letter.

Individualized family service plans (IFSPs)

45-day Timeline

OSEP's March 2005 letter required Michigan to clarify within 60 days of the date of that letter whether, under Michigan law, the initial IFSP must be completed at the initial IFSP meeting. In addition, if the data in the FFY 2003 APR indicated noncompliance with this standard, OSEP required the State to provide 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. On page 2 and in Attachment 2 of its May 2005 submission, Michigan indicated that, under Michigan law, IFSPs must be completed within 45 days from the date of referral.¹

¹ The Federal regulations at 34 C.F.R. §§303.321(e)(2)(ii), 303.322(e)(1), and 303.342(a) require an initial IFSP meeting to be convened within 45 days of referral to Part C.

On page 33 of the FFY 2003 APR, the State reported that data from a review of 12 out of 57 sites indicate that 68.2 percent of initial IFSPs were completed within 45 days of referral. On page 35 of the FFY 2003 APR, Michigan reported that, according to a family survey, in 2004 71.5 percent of families indicated that their first IFSP meeting was within 45 days or less from referral. This data indicates noncompliance, and accordingly, Michigan submitted a plan in May 2005 designed to correct this noncompliance. Michigan's plan requires all service areas to provide data on the date of the initial IFSP meeting by August 2005. In addition, page 36 of the FFY 2003 APR, and Attachment 2 of Michigan's May 2005 submission indicated that the IFSP, Early On Standards, and the Record Review Checklist would be amended to include signature and date to indicate when the initial IFSP meeting was held. These strategies are designed to collect more accurate data, but do not provide strategies, proposed evidence of change, targets and timelines designed to ensure compliance with 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a) as soon as possible, as required in the March 2005 letter. In the SPP due December 2, 2005, the State must provide a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance with 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a) as soon as possible, not to exceed one year from the date OSEP accepts the plan. Michigan's plan must provide data on whether there are sufficient personnel to meet the 45-day timelines, and if there are not, the State's plan must address the lack of sufficient personnel. In addition, the State must provide a final report to OSEP, including data and analysis demonstrating compliance with 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a) no later than 30 days following one year from the date OSEP accepts the plan.

Natural environments

OSEP's March 2005 letter found that Michigan was not in compliance with the requirement that IFSPs include a justification of the extent, if any, to which the early intervention services will be provided in natural environments, as required by 34 CFR §303.344(d)(1)(ii). In that letter, OSEP directed the State to submit, within 60 days of the date of that letter, a plan, including strategies, proposed evidence of change, targets, and timelines, designed to ensure correction of the noncompliance with 34 CFR §303.344(d)(1)(ii) within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. On page 2 and in Attachment 1 of the May 2005 submission, Michigan included strategies, proposed evidence of change, targets, and timelines designed to ensure compliance. OSEP has reviewed and accepts this plan. The State must include data and analysis documenting progress toward compliance in the SPP and provide a final report to OSEP, including data and analysis demonstrating compliance with 34 CFR §303.344(d)(1)(ii), no later than 30 days following one year from the date of this letter.

OSEP's March 2005 letter also required Michigan to submit, in the FFY 2003 APR, a report on the implementation of its strategies to ensure that services for all infants and toddlers with disabilities are provided in natural environments to the maximum extent appropriate to the needs of the child, as required by 34 CFR §§303.12(b) and 303.18. On page 51 of the FFY 2003 APR, and on page 2 of its May 2005 submission, Michigan included data and analysis indicating that approximately 81 percent of the services identified on the IFSP were provided in the child's natural environment. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data and information regarding Michigan's efforts to improve performance in this area in the SPP.

Provision of services on the IFSP

Part C regulations require the Lead Agency to ensure that an IFSP is developed and implemented for each eligible child (34 CFR §§303.340(c) and 303.342(e)). On page 37 of the FFY 2003 APR, the State reported that it was conducting family interviews in order to determine whether early intervention services listed on the IFSP are being delivered. MDE reported in its August 2005 letter that it conducted 93 telephone family interviews, and concluded that 78 percent of services listed on the IFSPs were provided, but also indicated that this data was not representative of the State and was anecdotal. In the SPP, the State must provide the full report on this issue referenced in its FFY 2003 APR. If the data in that report indicates noncompliance, the State must submit a plan, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance with 34 CFR §§303.340(c) and 303.342(e) as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Early childhood outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. §1116, the effectiveness of the IDEA Part C program is measured based on the extent to which children receiving Part C services demonstrate improved and sustained functional abilities in the cognitive, physical, communication, social or emotional, and adaptive developmental areas. On page 54 of the FFY 2003 APR, Michigan provided early childhood outcome data and information as follows: data from 12 sites that participated in the State monitoring system in 2003 through 2004, indicated that 39.3 percent of the children had their progress toward outcomes assessed and of the children assessed, 69 percent made progress toward outcomes on their IFSPs. The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR, due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

Early Childhood Transition

OSEP's March 2005 letter required Michigan to submit a plan within 60 days of the date of that letter to address the following two areas of noncompliance as soon as possible but no later than one year after OSEP accepts the plan: (1) notification of the local educational agency (LEA) for the area in which the child resides, that the child will shortly reach the age of eligibility for preschool services under Part B, as required by 34 CFR §303.148(b)(1); and (2) in the case of a child who may be eligible for preschool services under Part B, and with the approval of the family of the child, a conference is convened among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to six months² before the child is eligible for preschool services, to discuss any services that the child might receive, as required by 34 CFR §303.148(b)(2)(i).

On page 2 of Attachment 1 of its May 2005 submission, and on pages 60 through 61 of the FFY 2003 APR, Michigan included strategies, proposed evidence of change, targets, and timelines

² Section 637(a)(9)(A)(ii)(II), effective July 1, 2005, requires that the discretionary timeline be changed from "up to 6 months" to "not more than 9 months" before the child is eligible for preschool services.

designed to ensure compliance with both transition requirements as soon as possible, but no later than one year from the date OSEP accepted the plan, as required in the March 2005 letter. OSEP has reviewed and accepts this plan regarding both transition requirements. The State must include data and analysis documenting progress toward compliance in the SPP and provide a final report to OSEP, including data and analysis demonstrating compliance with 34 CFR §§303.148(b)(1) and 303.148(b)(2)(i), no later than one year from the date of this letter.

Conclusion

In the State Performance Plan due December 2, 2005, the State must:

1. with respect to a lack of formal sanctions, as required by 34 CFR § 303.501(b), provide the final version of the CIMS formal sanctions;
2. with respect to the requirement to provide a timely, comprehensive, multidisciplinary evaluation of each child, and identify, on the child's IFSP, the present level of functioning in each of the five developmental areas, submit data and analysis, including the quarterly reports referenced in page 1, section c, number 5 of Attachment 1 to the May 2005 submission, documenting progress toward compliance. In addition, the State must provide a final report to OSEP, including data and analysis and any additional quarterly reports submitted to MDE between the date of the SPP and the final report, demonstrating compliance with 34 CFR §§303.322(c)(3)(ii) and 303.344(a), no later than 30 days following one year from the date of this letter;
3. with respect to the 45-day timeline, provide a plan, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance with 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a) as soon as possible, not to exceed one year from the date OSEP accepts the plan. Michigan's plan must provide data on whether there are sufficient personnel to meet the 45-day timelines, and if there are not, the State's plan must address the lack of sufficient personnel. In addition, the State must provide a final report to OSEP, including data and analysis demonstrating compliance with 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a) no later than 30 days following one year from the date OSEP accepts the plan;
4. submit data and analysis documenting progress toward compliance with the requirement that IFSPs include a justification of the extent, if any, to which the early intervention services will be provided in natural environments, and provide a final report to OSEP, including data and analysis demonstrating compliance with 34 CFR §303.344(d)(1)(ii), no later than 30 days following one year from the date of this letter;
5. with respect to the requirement that an IFSP is developed and implemented for each eligible child, provide the full report on this issue referenced in its FFY 2003 APR. If the data in that report indicates noncompliance, the State must submit a plan, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance with 34 CFR §§303.340(c) and 303.342(e) as soon as possible, not to exceed one year from the date OSEP accepts the plan; and

6. with respect to early childhood transition, include data and analysis documenting progress toward compliance, and provide a final report to OSEP, including data and analysis demonstrating compliance, with 34 CFR §§303.148(b)(1) and 303.148(b)(2)(i), no later than one year from the date of this letter.

In the final Progress Report due April 10, 2006, the State must:

1. with respect to the failure to monitor for all Part C requirements to ensure the provision of early intervention services on the IFSP are delivered in a timely manner, as required by 34 CFR §303.501, include a list of findings of noncompliance with Part C requirements that it has made and any corrective actions it has taken, including findings and actions regarding the provision of early intervention services on the IFSP in a timely manner;
2. provide data and analysis demonstrating compliance with the requirement that it has mechanisms in place to collect, compile, and submit data regarding adequate personnel to provide early intervention services, as required by 34 CFR §303.540; and
3. with respect to the requirement that the State has mechanisms in place for ensuring the collection of accurate data, as required under 34 CFR §303.540, provide a final report confirming the accuracy of state-collected data and implementation of strategies.

IDEA 2004, §616, requires each State to submit a State Performance Plan (SPP) that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, similar to clusters and probes in the APR. OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that that the APR and its related activities represent only a portion of the work in your State and looks 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 Dr. Al Jones at (202) 245-7394.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Dr. Jacqueline Thompson
Vanessa Winborne