



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

Honorable Douglas D. Christensen
Commissioner of Education
Nebraska Department of Education
301 Centennial Mall South
P.O. Box 94987
Lincoln, Nebraska 68509-4987

SEP 30 2005

Dear Commissioner Christensen:

The purpose of this letter is to respond to the Nebraska Department of Education's (NDE's) and Department of Health and Human Services' (HHSS') March 31, 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. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's July 23, 2004 FFY 2002 APR response letter requested that the State provide clarification about conclusions drawn by the State from individualized family service plan (IFSP) file reviews. NDE submitted the clarification on November 4, 2004. NDE did not identify noncompliance and concluded that the questions related to services were not related to the developmental needs of the child (i.e., child care); therefore, no improvement plan was submitted. OSEP appreciates NDE's response.

The conclusion of OSEP's July 23, 2004 FFY 2002 APR response letter required that the State provide data and information documenting that: (1) IFSPs contained a justification statement if services could not be provided in the natural environment; (2) year-round early intervention services listed on an IFSP were provided; (3) child outcome data was collected; and (4) early childhood transition requirements were implemented. OSEP will respond to each area in the appropriate sections below.

General Supervision

Identification and timely correction of noncompliance

On pages 1 through 9 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure continued compliance in this area. NDE described its monitoring process for determining compliance with the State Rule 51 and IDEA, training for stakeholders using the monitoring process, a summary of findings that were identified as a result of new monitoring process, corrective action procedures for both compliance and performance, and methods used to inform the public about program outcomes. OSEP looks forward to reviewing the State's data about identification and correction of noncompliance in indicator #9 in the State Performance Plan (SPP), due December 2, 2005.

Dispute resolution

On pages 1, 2, 10, and 11 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance in this area. There were no complaints, requests for mediation, or due process hearings during the reporting period. NDE provided information about technical assistance provided to ensure stakeholder understanding of the complaint process. OSEP looks forward to reviewing the State's data related to dispute resolution in indicators #9 C through #13 in the SPP, due December 2, 2005.

Personnel

On pages 12 through 16 of the FFY 2003 APR, the State included data and analysis regarding its efforts to improve performance in this area. NDE described strategies adopted by NDE and HHSS to ensure an adequate supply of administrators, service coordinators, teachers, service providers, and paraprofessionals. NDE emphasized efforts to ensure adequate recruitment, retention and professional development of personnel. NDE also described knowledge and skill expectations for service coordinators, caseload sizes, results of vacancy studies, grants to support personnel training and encourage collaboration between institutions of higher education, efforts with other child service providers to develop Memoranda of Agreement, and training targeted to specific need areas (vision, hearing, and autism). The State described its use of data about personnel (i.e., anticipated retirement; student enrollment in training programs) and child referrals to prepare for future personnel needs. OSEP appreciates the State's efforts in this area.

Collection and timely reporting of accurate data

On pages 17 through 19 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. NDE provided descriptions of strategies with HHSS to streamline data collection that is used by the State in general supervision. The State modified its data systems to ensure consistency with IDEA requirements, included direct billing that was linked to services that were provided, and web-based monitoring review forms. NDE described training and due dates for different types of data. OSEP looks forward to reviewing the State's updated data related to reporting timely and accurate data in indicator #14 in the SPP, due December 2, 2005.

Comprehensive Public Awareness and Child Find System

On pages 20 through 33 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. Information and data submitted by NDE included: approximately 1.7% of the population of infants and toddlers were receiving services on December 1, 2003; population data by ethnicity is comparable to the ethnicity data for children receiving early intervention services; family survey information was used to identify strengths and needs in public awareness strategies; every region in the State reviewed public awareness and child find efforts and materials; referral source data was analyzed; interagency collaborations with Early Head Start, Head Start, the Medically Handicapped Children's Program, Developmental Tracking Infants Progress Statewide, and newborn hearing screening were established or strengthened; and strategies were created to focus on children who are homeless and affected by the Child Abuse Prevention and Treatment Act.

On page 46 of the FFY 2003 APR, NDE stated that 83.33% of children had an evaluation within 45 days of referral. NDE did not provide documentation of the reasons 16.67% of children did not have an evaluation within 45 days of referral to Part C or improvement strategies to ensure that 100% of children have an evaluation and initial IFSP meeting within 45 days of referral, consistent with 34 CFR §§303.321(e)(2), 303.322(3)(1), and 303.342(a). In the SPP, NDE must account for children who do not have an evaluation and an initial IFSP meeting within the 45-day timeline and include an improvement plan (including strategies, timelines, targets, and evidence of change) to correct any identified noncompliance within one year of identification of the noncompliance. The information about the 45-day timeline should be included in indicator #7 of the SPP, due December 2, 2005.

NDE demonstrated its use of multiple sources of public and private data to compare State performance with the anticipated percentage of children who might be eligible for early intervention services. Examples of data used to anticipate child eligibility rates include: rates of mothers who received prenatal care; tobacco use; infant mortality rate; age of the parent; and child birth weight. NDE concluded that it was finding children and children were born healthier than in the past, but efforts would continue to be made to ensure that the State informs referral sources about entry into early intervention, that families have access to information during the entire time the child is under the age of three years, and that data systems continue to ensure that children who are at risk of developing delays are tracked at the earliest sign of risk factors. OSEP looks forward to reviewing the State's updated data about child identification in indicators #5 and #6 in the SPP, due December 2, 2005.

Family Centered Services

On pages 34 through 41 of the FFY 2003 APR, the State included data and analysis regarding its efforts to increase the family's capacity to enhance outcomes for infants and toddlers. NDE reported data from surveys completed by families, service providers, and service coordinators, as well as information from family representatives to the interagency coordinating councils. NDE concluded that early intervention services enhanced the family's capacity to improve child development; identified family need areas for regional programs to prioritize; and identified the need to enhance information available to families about services after the child exited early intervention programs. OSEP looks forward to reviewing the State's updated information about

family outcomes in Indicator # 4 of the SPP, due December 2, 2005. Since indicator #4 is a new data requirement, the SPP must include a description of how data are to be collected so that the State will be able to report baseline entry data in the FFY 2005 APR, due February 1, 2007.

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

Service coordination

OSEP's July 2004 letter required that NDE provide data and information documenting that year-round early intervention services listed on an IFSP are provided. On page 59, NDE reported that Service Provider/Service Coordinator survey results indicated that 82.2% of respondents agreed that services were provided year-around with the same frequency. NDE did not provide an explanation for why respondents reported that 17.8% of services were not provided year-around with the same frequency. In the SPP, NDE must provide an analysis of whether decisions about frequency of services are based on child or family needs or are due to lead agency reasons that would indicate noncompliance. If noncompliance is identified, NDE must include a plan with the SPP, due December 2, 2005, including strategies, timelines, targets, and evidence of change, to correct this noncompliance.

Evaluation and identification of needs

On pages 45 and 46 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. NDE reported that 96.66% of files reviewed demonstrated children were assessed in each area of development and that present levels of development were recorded on the IFSP. On pages 50 through 54, NDE described improvement strategies that included: revisions to the State Rule to include a requirement for evaluation in the five areas of development; and revised monitoring procedures that would provide regional data that the State could use to review evaluation and assessment data more comprehensively. OSEP appreciates the State's efforts in evaluation of children in all five areas, but requests a plan in the SPP (as noted above under *Comprehensive Child Find and Public Awareness*) to address the 45-day timeline requirement, if noncompliance is identified.

Individualized family service plans (IFSPs)

OSEP's July 2004 letter required that NDE provide data and information documenting that IFSPs contain a justification statement if services could not be provided in the natural environment. NDE did not provide the requested data in the FFY 2003 APR. On page 58 of the FFY 2003 APR, NDE provided performance data collected for Section 618 of IDEA that demonstrated 83% of services in Nebraska were provided in natural environments. In the SPP, NDE must provide compliance data documenting whether IFSPs included a child-outcome based justification of why services were not provided in the natural environment for children who did not receive early intervention services in the natural environment. If NDE determines that justification statements were not included on the IFSPs, NDE must submit a plan, including strategies, proposed evidence of change, targets and timelines to ensure compliance with 34 CFR §§303.12 (b) and 303.344 (d)(ii) and correction of identified noncompliance no later than one year from when OSEP accepts the plan. Identification of noncompliance related to justifications on the IFSP would be included in indicator #9 (B) (a) of the SPP, due December 2, 2005.

Natural environments

On pages 58 through 61 of the FFY 2003 APR, the State included data and analysis regarding its efforts to improve performance in this area. NDE data demonstrated that 83% of children received services primarily in the natural environment and families, service providers, and service coordinators agreed that most services were provided in the home or community setting; regions across the State were consistent in the opportunity children had to receive services in the natural environment; extensive training was provided to ensure staff members across Nebraska are aware of natural environment priorities; a description was provided about grants to support school and community-based organizations to work together to provide high quality programs that involve children without disabilities and their families; a description was provided that efforts were established to collaborate with Head Start and community child care programs to increase the number of inclusive early childhood programs for birth to age five. OSEP looks forward to reviewing NDE's updated data about the percent of children who primarily receive early intervention services in the home or programs for typically developing children in indicator #2 in the SPP, due December 2, 2005.

Early childhood outcomes

OSEP's July 2004 letter required that NDE provide child outcome data. On pages 62 through 64 of the FFY 2003 APR, the State included data and analysis regarding its efforts to improve performance in this area. Family survey data collected by NDE demonstrated 82% of families reported children participating in Part C demonstrated improved and sustained functional abilities. NDE did not find differences in responses based on the child's age, disability, or region where the family received services. Approximately 90% of service providers, service coordinators, and planning region team members who were surveyed also reported that children receiving services demonstrated improved and sustained functional abilities. NDE described its efforts to increase understanding about outcome measurement through numerous training opportunities offered through OSEP funded grantees. 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 submitting its plans for this collection with the SPP, due December 2, 2005.

Early Childhood Transition

OSEP's July 2004 letter required that NDE provide data and information documenting that early childhood transition requirements were implemented. On page 46 of the FFY 2003 APR, NDE stated that four planning regions were reviewed for compliance in June 2004. Results presented by NDE indicated that 83.33% of children had a conference including the family and school district at least 90 days and up to six months prior to the child's third birthday.

Regulations at 34 CFR §303.148(b)(2)(i) require that, in the case of a child who may be eligible for preschool services under Part B, with the approval of the family of the child, a conference must be 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 6 months before the child is eligible for preschool services, to discuss any services that the child may receive. 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. Data and information describing compliance with this requirement may include: (1) the number of children with disabilities exiting Part C during the reporting period; (2) the percentage of those children who were determined to possibly be eligible for preschool services under Part B and for whom the parents concurred in holding a transition meeting; (3) the percentage of those children in number (2) for whom a transition conference was convened within the required timelines; and (4) reasons conferences were not held within required timelines, when applicable. NDE did not provide information in the FFY 2003 APR about the 16.77% of children who did not receive a transition planning meeting within required timelines (e.g., did families decline the meeting? Were conferences held outside the timeline?).

In indicator #8 in the SPP, due December 2, 2005, NDE must provide data that children who are potentially eligible for Part B have a transition planning meeting at least 90 days or up to nine months prior to the third birthday. If less than 100% compliance is identified, NDE must account for the children who did not receive the transition planning meeting and submit a plan, including strategies, proposed evidence of change, and timelines, to ensure correction of the noncompliance within one year.

Nebraska is a birth-mandate State and the eligibility criterion is the same for Part B preschool services as it is for Part C early intervention services, so all children who exited Part C and had not completed their IFSP outcomes were likely eligible for Part B services. However, State-reported exit data for FFY 2003 showed 90 of 712 (12.6%) children exited with Part B eligibility not determined (page 65 of the FFY 2003 APR). NDE developed staff training and data analysis steps to explain or correct any inaccurately reported data for the FFY 2004 APR. NDE modified its data collection system to ensure accurate collection and reporting of compliance data regarding early childhood transition requirements. OSEP appreciates NDE’s efforts to ensure accurate data. The State could include a discussion of any data corrections in indicator #14 of the SPP, due December 2, 2005.

Conclusion

As noted above, in the State’s Performance Plan, due December 2, 2005, NDE must submit to OSEP:

- (1) an analysis of data about children who do not have an initial IFSP meeting within the 45-day timeline. If NDE identifies noncompliance, a plan to correct any identified noncompliance within one year of identification of the noncompliance should also be submitted. The information about the 45-day timeline should be included in indicator #7 of the SPP.

Also noted above, in the State’s Performance Plan, due December 2, 2005, NDE must submit to OSEP its plan to correct any noncompliance with the Part C requirements that:

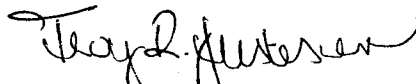
- (2) early intervention services be provided in accordance with IFSPs and any analysis of whether the decision about frequency of services are based on child or family needs or are due to lead agency reasons that would indicate noncompliance. If noncompliance is identified, NDE would include its plan in indicator #9B of the SPP;

- (3) data documenting whether IFSPs include child-outcome based justifications of why services are not provided in the natural environment for children who did not receive services in the natural environment. If justification statements were not included on the IFSPs, NDE must submit a plan, including strategies, proposed evidence of change, and timelines to ensure compliance with 34 CFR §§303.12 (b) and 303.344 (d)(ii) and correction of identified noncompliance no later than one year from when OSEP accepts the plan; and
- (4) children who are potentially eligible for Part B and whose parent concurred to have a transition planning meeting at least 90 days or up to nine months prior to the third birthday. If less than 100% compliance is identified, NDE must account for the children who did not receive the transition planning meeting in indicator #8 and also submit a plan, including strategies, proposed evidence of change, and timelines, to ensure correction of the noncompliance within one year.

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 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 Kelly Worthington at (202) 245-7581.

Sincerely,



Troy R. Justesen
Acting Director

Office of Special Education Programs

cc: Barbara Schliesser, NDE
Linda Shandera, HHSS