



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Michelle Lujan Grisham, Secretary  
Department of Health  
1190 St. Francis Drive  
P.O. Box 26110  
Santa Fe, New Mexico 87502-6110

SEP 29 2005

Dear Secretary Lujan Grisham:

The purpose of this letter is to respond to New Mexico's April 15, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part C during the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments made by the State 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 utilized by 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. OSEP's has set out its comments, analysis and determinations by cluster area.

***Background***

OSEP's December 13, 2004 FFY 2002 APR response letter required the State to submit the following information in its FFY 2003 APR:

1. With regard to the noncompliance related to the State's ability to correct State-identified noncompliance, which OSEP identified in its February 2004 verification visit letter, a summary of the corrective actions taken by, and correction data from, the six sites monitored during FFY 2002 (Mescalero, DSI, PB&J, Zia Therapy, Las Cumbres, and Casa Alegre);
2. A written assurance that all programs in the State that provide Part C services were using corrected prior written notice materials meeting the requirements of 34 CFR §303.403(b) (OSEP's February 2004 and December 2004 letters directed the State to provide this assurance);
3. A report on the State's ongoing activities to improve child find efforts in the State;

4. Information related to the State's efforts to correct the noncompliance regarding service coordination; and
5. Information regarding the correction of the noncompliance with transition planning conferences.

OSEP also indicated in its December 2004 letter that failure to demonstrate compliance with the 45-day timeline (34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a)) and IFSP service provision (34 CFR §303.344(d)) requirements by the FFY 2003 APR could result in the State's designation as a "high risk" grantee for its FFY 2005 Part C grant funds. As detailed in OSEP's FFY 2005 Grant Award letter dated July 25, 2005, OSEP determined that the State failed to provide OSEP with the required documentation or proposed actions to ensure timely correction of these two areas of noncompliance. In the State's FFY 2005 Part C Grant Award letter, OSEP designated the State as a high-risk grantee and imposed Special Conditions on the Grant Award. In the Special Conditions enclosure to that letter, OSEP included a detailed analysis of the status of the State's efforts to correct those two areas of noncompliance. OSEP's July 2005 Part C Grant Award letter also specified documentation that the State must submit in its first Progress Report, due October 28, 2005 and in its second Progress Report, due no later than April 14, 2006, demonstrating correction in those two areas. Therefore, OSEP is not addressing these two areas of noncompliance in this letter. OSEP will also respond separately to the State's Progress Reports.

### ***General Supervision***

#### Identification and timely correction of noncompliance

In its February 2004 verification visit letter, OSEP identified as noncompliance the State's ability to correct State-identified noncompliance. In its December 13, 2004 letter, OSEP accepted the State's strategies to address this noncompliance. In the December 2004 letter, OSEP directed New Mexico Department of Health (NMDOH) to submit a summary of the corrective actions taken by, and correction data from six sites monitored during FFY 2002 (Mescalero, DSI, PB&J, Zia Therapy, Las Cumbres, and Casa Alegre) that were expected to have completed their corrective action plans during FFY 2003. On pages 1 through 3 of the FFY 2003 APR, the State included data and analysis regarding this area. Of the sites monitored during FFY 2002, all corrective action plans were approved by the State. On page 4 of the FFY 2003 APR, the State indicated that all providers, except two, were in full compliance within one year from the date their corrective action plan was submitted.<sup>1</sup> As required in OSEP's December 2004 letter, by January 13, 2006, the State must submit a final progress report with updated correction data demonstrating compliance with 34 CFR §303.501(b)(4).

#### Dispute resolution

On page 6 of the FFY 2003 APR, the State reported that one complaint and two hearing requests were filed, but that both were formally withdrawn. OSEP's February 2004 letter directed

---

<sup>1</sup> The State must enforce correction of noncompliance within one year from the date the State identifies the noncompliance. In the SPP, as part of its response to indicator #9, the State must confirm that it requires noncompliance identified by the State to be corrected within one year of identification.

NMDOH to provide, by April 24, 2004, a written assurance that all programs in the State that provide Part C services were using corrected prior written notice materials consistent with the requirements of 34 CFR §303.403(b). OSEP's December 2004 letter stated that the assurance had not been received and that the State was to provide the requested assurance in the FFY 2003 APR. On pages 9 and 10 of the FFY 2003 APR, the State assured OSEP that all families receive appropriate prior written notice and procedural safeguards.

#### Personnel

On pages 11 and 12 of the FFY 2003 APR, the State included data and information regarding personnel, indicating that while numbers of providers increased for three years, the number of full time equivalency positions dropped slightly, but the State reported that the decrease was not statistically significant. In addition, the State reported that the overall ratio of eligible children to early intervention providers remained fairly constant. OSEP appreciates the State's efforts in this area.

#### Collection and timely reporting of accurate data

On pages 14 and 15 of the FFY 2003 APR, the State included data and information regarding the accuracy of its data, indicating that while paper documents were accurate, the data entered into the database included errors. NMDOH continued to provide technical assistance to ensure that data entry personnel had access to needed documents. The State intended to continue the data validation visits and required attendance at database training for sites found out of compliance. OSEP appreciates the State's efforts in this area and looks forward to reviewing the data and information in this area in the State Performance Plan (SPP), due December 2, 2005.

On page 15 of the FFY 2003 APR, the State reported, "the projected target for the next reporting period July 1, 2004 through June 30, 2005 will be 90% accuracy. Again the ultimate target is 100% accuracy in data validation." The State's target in the SPP for the indicator regarding data (# 14) must be 100%.

#### ***Comprehensive Child Find System***

OSEP's December 2004 letter requested that the State continue to report on its ongoing activities to improve child find efforts in the State in the FFY 2003 APR. On page 17 of the FFY 2003 APR, the State reported that most counties experienced growth in the number of children served over the past five years. On pages 20 and 21, the State reported that the average age of children at the time of referral did not vary significantly over the past five years, staying between 16.5 and 16.9 months of age. The State developed activities to reduce the average age at which children are referred. OSEP looks forward to reviewing the State's data in this area in the SPP.

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

On pages 23 and 24 of the FFY 2003 APR, the State included data and analysis regarding performance and compliance in this area, including meeting the State's target of at least 95% of families who reported an increased capacity to meet their child's developmental needs due to the

early intervention supports and services received. In addition, the State funded efforts to provide family training and promote parent leadership. OSEP appreciates the State's performance in this area and looks forward to reviewing the State's response to the family outcome indicator (#4) in the SPP.

### ***Early Intervention Services in Natural Environments***

In its 2000 Monitoring Report, OSEP identified four areas of noncompliance in this cluster. As stated in OSEP's December 2004 letter, based on the information in the FFY 2002 APR and Progress Reports, OSEP did not identify any further concerns regarding the identification of early intervention services on the IFSP. However, the FFY 2002 APR did not provide data demonstrating correction in the remaining three areas identified in OSEP's 2000 monitoring report: 45-day timeline, service coordination, and provision of IFSP services. As explained above, OSEP addressed in detail two of those findings in the Special Conditions attached to the State's FFY 2005 Part C grant award (45-day timeline and provision of IFSP services). The other area is addressed below.

#### Service coordination

OSEP's December 2004 letter directed NMDOH to report on its efforts to correct the noncompliance regarding service coordination. In the FFY 2003 APR, the State reported on its efforts regarding service coordination. On page 27 of the FFY 2003 APR, the State indicated that agencies monitored during FFY 2003 were required to develop corrective action plans and achieve compliance within one year. OSEP appreciates the State's efforts in this area.

#### Evaluation and identification of needs

On pages 28 through 30 in the FFY 2003 APR, the State addressed evaluation and identification of needs within the 45-day timeline. OSEP responded separately to that data and analysis as part of the FFY 2005 Grant Award Special Conditions.

#### Individualized family service plans (IFSPs)

On pages 33 and 34 of the FFY 2003 APR, the State provided data and analysis regarding the provision of early intervention services listed on the child's IFSP. OSEP responded separately to that noncompliance issue as part of the FFY 2005 Grant Award Special Conditions.

#### Natural environments

On pages 34 to 37 of the FFY 2003 APR, the State indicated an increase in the primary location for services listed on the IFSP as being either home and other community based settings or programs for typically developing children. On Page 35 Table 18 showed an increase from 56.9% in FY 2000 to 77% in FY 2004 for the home as primary setting and an increase from 2.9% in FY 2000 to 12.5% in FY 2004 for the program for typically developing children. Table 18 showed a decrease from 29.6% to 7.5% in programs designed for children with

developmental delay and a decrease from 8.2% to 1.6% for the service provider location. OSEP looks forward to reviewing the State's response to indicator #2 in the SPP.

#### 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. The Part C FFY 2001, 2002 and 2003 APRs requested data on the percentage of children participating in the Part C program that demonstrate improved and sustained functional abilities in the developmental areas listed in 34 CFR §303.322(c)(3)(ii). On page 39 of the FFY 2003 APR, the State provided data and information from one provider agency that served a diverse population, including methodology, progress ratings and results and indicated this data would form a baseline for the State. On page 40 of the FFY 2003 APR, the State indicated that it would develop methodology to measure the child outcomes statewide. The SPP instructions establish a new indicator for this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection.

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

In its January 2000 Monitoring Report, OSEP identified noncompliance with the requirement to hold transition conferences for children potentially eligible for Part B at least 90 days before the child's third birthday. OSEP's December 2004 letter directed NMDOH to report on the status of the corrective action plans in the four provider agencies found noncompliant with the transition planning conference requirement at 34 CFR §303.148(b)(2)(i) during the FFY 2002 reporting period. On page 43 of the FFY 2003 APR, NMDOH reported that corrective action plans for providers found to be noncompliant with this requirement included better documentation of transition plans and the conferences, with documentation of the required participants. The State also reported that providers established tickler systems to remind service coordinators when it was time to arrange the conference. On page 41 of the FFY 2003 APR, the State reported that 92% of families said that a transition conference was held at least 90 days prior to transition. As requested in Indicator #8, the State must provide updated data regarding transition in the SPP.

#### ***Conclusion***

In its final Progress Report, due January 13, 2006, New Mexico must submit updated correction data demonstrating compliance with 34 CFR §303.501.

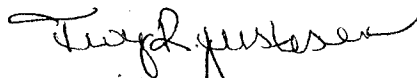
In the SPP, due December 2, 2005, New Mexico must:

- (1) Confirm that its target for the collection and timely reporting of accurate data, in Indicator #14, is 100% compliance;
- (2) Confirm that it requires noncompliance identified by the State to be corrected within one year of identification as required by Indicator #9; and
- (3) Provide updated data regarding transition as requested by Indicator #8.

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 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 any questions, please contact Ginger Johnson at 202-245-7353.

Sincerely,



Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: Andrew Gomm,  
Part C Coordinator