



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Susan Castillo  
Superintendent  
Oregon Department of Public Instruction  
255 Capital Street NE  
Salem, Oregon 97310-0203

OCT - 4 2005

Dear Superintendent Castillo:

The purpose of this letter is to respond to Oregon's April 4, 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 and the State's July 1, 2005 progress report. OSEP has set out its comments, analysis and determinations by cluster area.

*Background*

The conclusion of OSEP's January 14, 2005 FFY 2002 APR response letter required the State to submit in the next APR the following information to OSEP:

1. Data demonstrating compliance with Part C's 45-day timeline requirements at 34 CFR §§303.321(e)(2)(i) and (ii), 303.322(e)(1) and 303.342(a) and if compliance cannot be demonstrated for specific providers, then additional and/or revised strategies, proposed evidence of change, targets and timelines to ensure compliance as soon as possible;
2. Strategies, proposed evidence of change, targets and timelines designed to ensure that noncompliance identified by the Oregon Department of Education (ODE) is corrected in a timely manner (i.e., one year from identification) and updated monitoring and correction data and analysis;

3. Strategies, proposed evidence of change, targets and timelines designed to ensure that complaint decisions under 34 CFR §303.512 are issued in a timely manner;
4. Data and analysis regarding ODE's performance in the area of child find (including a review of its primary referral source analysis and analysis by district in order to identify those districts that may be potentially underserving eligible children) and additional and/or revised strategies and performance targets;
5. Data, regarding services in natural environments, the provision of transportation and the IFSP decision-making process, along with its analysis of these data and a determination of compliance or noncompliance related to the factors found in the WESTAT study to be contributing to the increase of services not being provided in the natural environments, specifically: (1) 34 CFR §303.344(d)(1), transportation not being provided as an early intervention service; (2) 34 CFR §303.344(d)(1)(ii), services not being provided in the natural environments or appropriate justifications not included on the IFSP; and (3) 34 CFR §303.343, IFSP decisions not being made by all members of the IFSP team. If the data for any of these areas demonstrated noncompliance, the State was required to include in the FFY 2003 APR the data, its analysis and a plan with 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 when OSEP accepts the plan; and
6. Data (if available), whether collected through sampling, monitoring or other methods, on the percentage of children with disabilities participating in the Part C program who demonstrate improved and sustained functional abilities in the developmental areas listed at 34 CFR §303.322(c)(3) or its plan to collect and report on such data to OSEP by the FFY 2004 APR.

### ***General Supervision***

On pages 1-30 of the FFY 2003 APR, ODE reported its efforts to fulfill general supervision responsibilities including: (1) monitoring; (2) dispute resolution; (3) personnel; and (4) data systems. ODE reported on implementation activities since its last APR and improvements to its monitoring, dispute resolution and data systems.

### **Identification and timely correction of noncompliance**

The conclusion of OSEP's January 14, 2005 FFY 2002 APR response letter required the State to submit, in the FFY 2003 APR, the following information: strategies, proposed evidence of change, targets and timelines designed to ensure that noncompliance identified by ODE was corrected in a timely manner, and updated monitoring and correction data and analysis.

On pages 7-10 of the FFY 2003 APR, ODE submitted updated monitoring and correction data and analysis. ODE conducted 15 comprehensive reviews of EI/ECSE programs,

during the implementation phase of System Performance Review & Improvement (SPR&I). Of the 15 reviews: (1) one program had no identified noncompliance; (2) ten programs demonstrated correction of all procedural noncompliance and received approval; and (3) four programs documented partial correction of procedural noncompliance and received conditional approval contingent upon achieving full compliance by May 16, 2005.

On pages 6-12 of the FFY 2003 APR, the State submitted the plan required by OSEP's January 2005 letter, including strategies, proposed evidence of change, targets and timelines designed to ensure compliance as soon as possible, as required in OSEP's January 2005 letter. OSEP accepts this plan. On page 17 of the FFY 2003 APR, ODE proposed that the reporting dates be June 30, 2005 and November 30, 2005. OSEP has reviewed and accepts these reporting dates. Because ODE must also report data and analysis documenting progress toward compliance in this area in the State Performance Plan (SPP), ODE is given the option of submitting the November progress report as part of the SPP. ODE must submit a final report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter.

The following strategies were included in ODE's proposed plan: (1) all Part C Early Intervention (EI) and Part B Early Childhood Special Education (ECSE) programs must report documented evidence of correction and sustained correction of any identified noncompliance on an annual basis; (2) all correction of individual child procedural noncompliance found during self-assessment must be completed within 45 calendar days of receipt of ODE's Phase 1 Summary findings; and (3) all EI/ECSE programs must correct systemic procedural noncompliance (falling below 80%) within 60 calendar days of receipt of ODE's Phase 1 Summary findings. The State's July 1, 2005 progress report provided further updated data on the 25 programs monitored by the State and indicated that six programs had yet to complete demonstration of full correction.

OSEP appreciates the State's efforts to ensure the correction of systemic noncompliance. In the SPP due December 2, 2005, the State must describe how the State ensures that all 33 local programs monitored are in full compliance with Part C requirements.

#### Dispute resolution

OSEP's January 2005 letter required the State to submit, in the FFY 2003 APR, strategies, proposed evidence of change, targets and timelines designed to ensure that complaint decisions under 34 CFR §303.512 are issued in a timely manner. On pages 21-27 of the FFY 2003 APR, ODE reported on dispute resolution systems including formal written complaints, mediations, and due process hearings. ODE uses the same dispute resolution systems for both Part B and Part C but tracks the disputes separately. ODE reported no Part C disputes during FFY 2003. Part B dispute resolution data will be addressed in the Part B FFY 2003 APR response letter under separate cover.

Although, on pages 24 and 25 of the FFY 2003 APR, the State included strategies, proposed evidence of change, targets and timelines designed to ensure compliance as soon as possible, as required in OSEP's January 2005 letter, the State's July 1, 2005 progress report submission provided updated data indicating that all (100%) complaints in 2005 were appropriately resolved (as compared to 89% in 2004, 58% in 2003 and 29% in 2002). OSEP appreciates the State's substantial improvement in this area and looks forward to the State's updated data in response to the dispute resolution indicators in the SPP.

#### Personnel

On pages 27-29 of the FFY 2003 APR, ODE reported on personnel but questioned the accuracy of its data. The State included data and analysis indicating a need to improve performance in reporting personnel data. The State also included strategies to improve performance and the accuracy of its data. OSEP looks forward to the State's response to the data indicator in the SPP.

#### Collection and timely reporting of accurate data

On pages 27 through 31 of the FFY 2003 APR, ODE reported on its efforts to ensure compliance and improve performance in this area. On page 27 of the APR, ODE reported that in the FFY 2002 APR, it incorrectly reported the number of children receiving EI services as having decreased from the previous year and stated that the number actually increased from 1,881 in 2001 to 1,933 in 2002. From the prior page ODE noted that its child count and personnel data may not be accurate and included strategies to ensure accuracy. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data and information demonstrating that its data are accurate, or a plan to ensure accuracy in the SPP, due December 2, 2005. OSEP looks forward to the State's response to the data indicator in the SPP.

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

OSEP's January 2005 letter required the State to submit, in the FFY 2003 APR, data and analysis regarding child find (including a review of its primary referral source analysis and analysis by district in order to identify those districts that may be potentially underserving eligible children) and additional and/or revised strategies and performance targets.

On pages 32-43 of the FFY 2003 APR, ODE reported data and analysis regarding its performance in child find (including a review of its primary referral source analysis and analysis by district in order to identify those districts that may be potentially underserving eligible children) and additional and revised strategies and performance targets. On page 33, ODE reported that the number and percent of children receiving early intervention services decreased between December 1, 2002 (1,933 or 1.42%) and December 1, 2003 (1,838 or 1.34%). On page 36, ODE reported that according to the December 1 special education child count, the number of children in Oregon receiving EI services increased

from 2003 (1,838) to 2004 (2,083) but an estimate of the general population of birth through age two was not yet available, making it impossible to calculate Oregon's percentage of children from birth through age two receiving services in December 2004. On page 39, ODE reported that the number of eligible infants with disabilities under the age of one that received Part C services decreased between December 1, 2002 (235 or .52%) and December 1, 2003 (184 or .40%). OSEP looks forward to reviewing the State's updated data and information regarding the percent of infants and toddlers with IFSPs birth to three, compared to other States with similar eligibility determinations and national data in the SPP, including the implementation of strategies and resulting data and analysis.

### *Family Centered Services*

On pages 44-50 of the FFY 2003 APR, ODE reported data and information regarding family-centered services. The data and information was from files reviewed during monitoring, family surveys, and topics of and numbers of parents attending Oregon Parent Training Institute (PTI)/ODE trainings, and methods of communication used by the PTI and numbers of times each method was used. OSEP appreciates the State's efforts in this area.

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

#### Service coordination

On pages 51-55 of the FFY 2003 APR, ODE reported data indicating one area of noncompliance, not previously identified by OSEP: failure to ensure that a service coordinator is appointed as soon as a public agency receives a referral. ODE did not include strategies, proposed evidence of change, targets or timelines to correct the noncompliance. ODE reported that in 2003, eight EI programs were monitored and 75% (six of eight) were in compliance with the requirement to ensure the immediate appointment of a service coordinator upon referral, using the 80% compliance threshold established by ODE (see General Supervision for comment on the 80% standard).

On page 54 of the FFY 2003 APR, ODE reported that data collected through focused reviews indicated that initial service coordinators were appointed, ongoing service coordination was occurring, and that service coordinators did help families obtain needed resources and services. ODE concluded that the problem was one of documentation rather than service coordination but no data was included to support the conclusion. OSEP finds that ODE has not ensured compliance with 34 CFR §§303.23 and 303.322(e) requiring that once the public agency receives a referral, it must appoint a single service coordinator as soon as possible. ODE must submit, in the SPP, a plan to OSEP, including strategies, proposed evidence of change, targets and timelines, designed to ensure correction of the noncompliance with 34 CFR §§303.23 and 303.322(e) as soon as possible, not to exceed one year from the date OSEP accepts the plan.

### Evaluation and identification of needs

On page 57 of the FFY 2003 APR, ODE reported that, in 2003, 100% of the eight programs monitored were in compliance with: (1) asking parents to be involved in the development of family outcomes in the IFSP (34 CFR §303.344(c)); and (2) identifying family priorities, concerns, and resources (34 CFR §303.344(b)).

Also on page 57, ODE reported data that indicated the following area of noncompliance, not previously identified by OSEP: ODE did not ensure that children receive evaluations in all five developmental areas as required by 34 CFR §303.322(c). ODE reported that, in 2003, 75% of EI programs (six of eight) evaluated children in all five developmental areas, using the 80% compliance threshold established by ODE (see General Supervision for comment on the 80% standard). ODE did not include strategies, proposed evidence of change, targets or timelines to correct the noncompliance.

Regulations at 34 CFR §303.322(c)-(d) require that evaluations must be conducted by personnel trained to utilize appropriate methods and procedures, be based on informed clinical opinion and include: (1) a review of pertinent records related to the child's current health status and medical history; (2) an evaluation of the child's level of functioning in each of the following developmental areas: (a) cognitive development; (b) physical development, including vision and hearing; (c) communication development; (d) social or emotional development; and (e) adaptive development; (3) an assessment of the unique needs of the child in terms of each of these developmental areas, including the identification of services appropriate to meet those needs; and (4) family assessments that are family-directed and designed to determine the resources, priorities and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

In the SPP, ODE must submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance with 34 CFR §303.322(c) as soon as possible, not to exceed one year from the date OSEP accepts the plan.

### Individualized family service plans (IFSPs)

On page 66 of the FFY 2003 APR, ODE provided data regarding its compliance in this area. The State reported that 100% of eight programs monitored (using the 80% compliance threshold) were implementing services as described on the IFSP. OSEP looks forward to the State's response to the service provision indicator (#1) in the SPP.

### Natural environments

OSEP's January 2005 letter required the State to submit in the FFY 2003 APR, data (e.g., IFSP record review data) regarding: (1) the provision of early intervention services in natural environments or justifications for services not provided in natural environments (34 CFR §303.344(d)(1)(ii)); (2) the provision of transportation (34 CFR

§303.344(d)(1)); and (3) IFSP decisions not being made by all members of the IFSP team (34 CFR §303.343), along with analysis of the data and a determination of compliance or noncompliance related to the factors, found in the WESTAT study, to be contributing to the increase of services not being provided in the natural environments. If the data for any of these areas demonstrate noncompliance, the State was to include a plan with 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 when OSEP accepted the plan.

On pages 65 and 66 of the FFY 2003 APR, ODE submitted the information required by OSEP's January 2005 letter. ODE reported that monitoring data indicated no noncompliance in any of the issues listed above. ODE reported that, in 2003, file review data indicated 55% of infants and toddlers were receiving services in natural environments. ODE reported that it reviewed 18 files with IFSPs indicating they did not receive services in natural environments and found that 94% had an appropriate justification statement. ODE reported that the transportation issues reported in the WESTAT study were actually increased amounts of travel time required by staff to arrive at children's homes. ODE found no cases where decisions were not made by all members of the IFSP teams.

OSEP appreciates the work of the State in collecting, analyzing and reporting data in these areas and looks forward to reviewing the State's natural environments data in the SPP.

#### 45-day timeline

Although OSEP's FFY 2005 Part C grant letter attached special conditions requiring the State to report on its progress to ensure compliance with Part C's 45-day timeline requirements in 34 CFR §§303.321(e)(2), 303.322(e)(1) and 303.342(a), the State submitted information in its July 1, 2005 progress report indicating substantial improvement in this area. OSEP looks forward to the State's progress report under the special condition due on October 28, 2005 and will respond to that progress report separately.

#### Early childhood outcomes

OSEP's January 2005 letter required the State to submit, in the FFY 2003 APR, data (if available), whether collected through sampling, monitoring or other methods, on the percentage of children with disabilities participating in the Part C program who demonstrated improved and sustained functional abilities in the developmental areas listed at 34 CFR §303.322(c)(3), or its plan to collect and report on such data to OSEP by the FFY 2004 APR.

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 pages 68-70 of the FFY 2003 APR, the State included a plan for collecting early childhood outcomes and data on satisfaction of families receiving EI/ECSE services. In preparing the SPP, the State must determine whether plans currently in place to collect data related to this area will be responsive to those requirements. The SPP instructions establish a new indicator in 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 section 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***

On page 71 of the FFY 2003 APR, ODE reported that 100% of EI/ECSE programs completed both ECSE eligibility evaluations and IFSP meetings prior to the child's third birthday. On page 72 of the FFY 2003 APR, ODE reported data and information that indicated the following one area of noncompliance, not previously identified by OSEP: failure to conduct the transition meeting at least 90 days before the child's third birthday (34 CFR §303.148 (b)(2)(i)). ODE did not include strategies, proposed evidence of change, targets or timelines to correct the noncompliance.

ODE reported that, in 2003, 75% (six of eight) programs were in compliance with the requirement to conduct the transition planning meeting at least 90 days prior to the child's third birthday, using the 80% compliance threshold (see General Supervision for comment on the 80% standard). Part C requires at 20 U.S.C. §1437(a)(9)(A)(ii)(II) and 34 CFR §303.148(b)(2)(i) 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 9 months before the child is eligible for preschool services, to discuss any services that the child may receive.

ODE must submit in the SPP a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance with 34 CFR §303.148(b)(2)(i) as soon as possible, not to exceed one year from the date OSEP accepts the plan.

### ***Conclusion***

Oregon must submit on October 28, 2005, as required by the special conditions attached to ODE's FFY 2005 Part C grant letter, a progress report including data and information demonstrating progress toward compliance with the 45-day timeline requirements in 34



CFR §§303.321(e)(2), 303.322(e)(1) and 303.342(a) and ODE must submit a final progress report on April 14, 2006.

Oregon must submit on November 30, 2005 or in the SPP due December 2, 2005, a Progress Report, including data and information demonstrating progress toward compliance in the following areas. ODE must submit a final report, demonstrating full compliance in these areas no later than 30 days after one year from the date of this letter.

1. the identification and timely correction of noncompliance; and
2. a target of 100% compliance and a description of how it ensures full correction for all agencies.

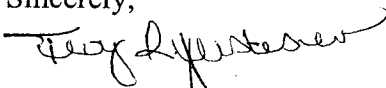
Oregon must submit, in the SPP, a plan to OSEP, including strategies, proposed evidence of change, targets and timelines, designed to ensure correction of the noncompliance listed below, as soon as possible, not to exceed one year from the date OSEP accepts the plan.

1. 34 CFR §§303.23 and 303.322(e) requiring that once the public agency receives a referral, it must appoint a service coordinator as soon as possible;
2. 34 CFR §303.322(c) requiring that children receive evaluations in all five developmental areas; and
3. 34 CFR §§303.148 (b)(2)(i), 303.344(h)(2)(i) and 303.344(h)(2)(ii) requiring the convening of a transition planning conference at least 90 days prior to a child's third birthday.

IDEA 2004, §616, requires each State to submit a 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 Linda Whitsett at (202) 245-7573.

Sincerely,



Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: Nancy Lantini  
Assistant Superintendent