



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

Honorable Lana Seivers
Commissioner of Education
Tennessee Department of Education
6th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243-0375

SEP 12 2005

Dear Commissioner Seivers:

The purpose of this letter is to respond to Tennessee's 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 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 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 September 2004 Progress Report (received December 2004), the plan to correct noncompliance with the 45-day timeline (received January 2005), and the FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's August 12, 2004 FFY 2002 APR response letter (OSEP's August 2004 letter) required the Tennessee Department of Education (TDE) to submit the following:

1. By September 30, 2004, its monitoring efforts to ensure timely correction of identified deficiencies, including copies of two corrective action plans (CAPs) referenced on page 2 of the FFY 2002 APR, and updated information regarding the status, findings, strategies, and timelines of those two CAPs. In addition, by March 31, 2005, TDE was to submit to OSEP a final Progress Report, containing current data and analysis demonstrating that its monitoring system was in full compliance with requiring timely correction of identified deficiencies (i.e., within one year of identification).
2. Within 60 days, TDE was to submit a plan that would ensure correction of the noncompliance TDE identified in the FFY 2002 APR regarding the 45-day timeline from referral to the initial individualized family service plan (IFSP) meeting as required by 34 CFR §303.321(e). The plan was to include strategies, proposed evidence of change,

targets and timelines that would ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepted the plan. The plan was also to include information regarding the State's monitoring activities to ensure correction of this area, the findings the State has made, and what the State was doing to ensure correction of those findings. The State was to provide evidence of progress in correcting the noncompliance in the FFY 2003 APR, including current supporting data and analysis, and provide a final Progress Report to OSEP with data and analysis demonstrating compliance, as soon as possible, but no later than thirty days following one year after the date OSEP accepts the plan.

3. In the FFY 2003 APR, TDE was to provide further clarification regarding its monitoring findings on transition conferences, including how many districts were found to be in noncompliance for the transition planning conference, how many districts have CAPs for that issue, and the status of those CAPs.

General Supervision

Identification and timely correction of noncompliance

OSEP's August 2004 letter required TDE to submit, in the September 2004 Progress Report, copies of two CAPs referenced on page 2 of the FFY 2002 APR, and updated information regarding the status, findings, strategies, and timelines of those two CAPs. TDE was also directed to submit a final Progress Report, due March 31, 2005, containing current data and analysis demonstrating that its monitoring system was in full compliance with requiring timely correction of identified deficiencies.

OSEP received the September 2004 Progress Report and copies of TDE's analysis of the two local CAPs on December 10, 2004. OSEP reviewed the analysis of the CAPs and found that the districts were correcting identified noncompliance; however, OSEP could not find evidence that TDE required the local CAPs to include timelines for correction within one year of identification.

On page 12 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting noncompliance within one year of identification, as follows: TDE reported that all nine districts submitted CAPs in response to initial findings of noncompliance as of June 30, 2004 and that the statewide monitoring data, including progress reports, reflected an overall average performance of at least 90%. Furthermore, TDE reported that three districts had not reached the one year timeline for submission of progress and therefore, the statewide averages were based on the remaining six districts that had CAPs for one year or longer.

On page 4 of the FFY 2003 APR, TDE reported that "continued review of progress reports for local CAPs will reflect compliance by all Districts by achieving a score of 90% or above on all items in the Part C monitoring document within one year of the Lead Agency's (LA) approval of their CAP." In the State Performance Plan (SPP), due December 2, 2005, TDE must provide information to OSEP demonstrating that its compliance standard for all requirements of IDEA is 100%.

As noted above, on page 4 of the FFY 2003 APR, TDE reported that it ensured correction of identified noncompliance within one year of approval of a district's CAP. However, TDE must ensure that identified noncompliance is corrected within one year of its *identification*, (i.e., one year from the date a district receives its monitoring report). In the SPP, TDE must include: (1) information indicating correction of its policies and procedures to require correction of identified noncompliance within one year of *identification*; and (2) evidence of implementation of the revised policy and procedures (i.e., samples of monitoring reports or other documents where the requirement is clearly articulated).

On page 3 of the FFY 2003 APR, TDE reported on the development of a focused monitoring system to be introduced in June 2004. The State indicated that the new system should result in a single system of monitoring for Part C that includes TDE and the State Division of Mental Retardation and Developmental Disabilities. OSEP looks forward to reviewing information from the State's focused monitoring process in the SPP.

Dispute resolution

On page 14 of the FFY 2003 APR, the State included data and analysis regarding compliance and performance in this area. TDE reported that there were 5 complaints filed in the reporting period and that four of them were investigated and resolved within 60 days. TDE noted on page 15 of its FFY 2003 APR that resolution of the fifth complaint was delayed because the investigation occurred during the Thanksgiving and Christmas holidays, and that both the family and providers were unavailable during this time. There were no requests for mediation or due process hearings. OSEP looks forward to reviewing the State's data regarding complaints, mediations and due process hearings in the SPP.

Personnel

On pages 16-17 of the FFY 2003 APR, the State included data and analysis regarding compliance and performance in this area. TDE reported that contracts with local districts required them to maintain sufficient numbers of qualified personnel and that the lead agency supported four early intervention resource agencies that employed full-time instructional staff. TDE also reported §618 data that indicated that the number of early intervention personnel has continued to increase since 1999. OSEP appreciates the work of the State in this area.

Collection and timely reporting of accurate data

Based on OSEP's visit to Tennessee in August 2003 to verify the State's systems for general supervision and the collection of data under §618 of IDEA, TDE developed a system to verify the accuracy of its §618 data. On page 5 of TDE's December 10, 2004 Progress Report, TDE reported that its consultants made site visits to verify the accuracy of the December 1, 2003 child count data. In addition, on page 19 of the FFY 2003 APR, TDE reported activities to ensure the collection of accurate data that included: (1) a review of the current data system to determine needed improvements and the development of proposals for updates; and (2) training and follow-up to local service providers and data managers to ensure accuracy in data. OSEP looks forward

to reviewing the State's response to the indicator regarding its reported data (618 and State Performance Plan and Annual Performance Report) that are timely and accurate in the SPP.

Comprehensive Public Awareness and Child Find System

OSEP's August 2004 letter required TDE to monitor to ensure that eligibility decisions for all infants and toddlers were made in conformity with the individual evaluation and assessment requirements of Part C of IDEA (at 34 CFR §§303.320 through 303.323), and not based upon a numerical goal.

On pages 21-35 of the FFY 2003 APR, TDE reported data on its child count and indicated that it was no longer using a numerical goal to determine performance. On page 23, TDE reported an 18% increase in referrals, and that data correlated with population increases. TDE's development of a system to verify the accuracy of data has resulted in significant changes in the child count data. TDE determined that there were duplication problems with previous child count data that resulted in higher child count numbers and, based on the redesign of the system, the child count numbers dropped. TDE reported December 2002 child count data of 2.32% for children birth to three, and December 2003 data of 1.78%. The child count data for December 2002 for children birth to one was 1.03% and for December 2003, .70%. TDE reported some examples of future activities to address this area, including: (1) the development of a statewide child find plan; and (2) the reporting of data on newborn hearing screenings. TDE reported that preliminary findings indicated that over 500 referrals were made to the early intervention system based on the newborn hearing screenings. OSEP looks forward to reviewing the State's data in the SPP regarding the percent of infants and toddlers birth to one and birth to three with IFSPs compared to: (a) other States with similar eligibility definitions; and (b) National data.

Family Centered Services

On pages 37 - 40 of the FFY 2003 APR, the State included data and analysis regarding performance in this area. TDE reported that six districts were monitored during the reporting period and family forums were held in each district. The results of those forums indicated that families believe that their children have made progress and that services were family centered. In addition, TDE reported on page 40 of the FFY 2003 APR that it is developing training for service coordinators that will specifically include a module addressing family centered services, and has conducted other training in this area. Furthermore, as of April 2004, TDE reported on page 40 of its FFY 2003 APR that CAPs revealed a 14% improvement in family centered services. OSEP appreciates the State's efforts in this area and looks forward to reviewing the plan for collecting data in the SPP regarding the percent of families in Part C who report that early intervention services have helped the family: (a) know their rights; (b) effectively communicate their children's needs; and (c) help their child develop and learn.

Early Intervention Services in Natural Environments

Service coordination

On page 47 of the FFY 2003 APR, TDE reported data that indicated an increase in the number of service coordinators from 81 in 2002 to 103 in 2004. Monitoring data indicated that 100% of families were assigned a service coordinator and 95% of all service coordinators assisted the family in facilitating the timely delivery of services, the coordination of early intervention services and other services needed by the child and family. OSEP appreciates the work of the State in this area.

Evaluation and identification of needs

OSEP's August 2004 letter required TDE to submit a plan, within 60 days of the date of the letter, including specific strategies, evidence of change, targets and timelines for correction of the noncompliance regarding the 45-day timeline from referral to initial IFSP meeting as required by 34 CFR §303.321(e), within a reasonable period of time, not to exceed one year from OSEP's acceptance of the plan. OSEP received a plan on January 14, 2005 and found that it included strategies, activities, and resources with some timelines; however, no information was provided on targets, evidence of change and timelines for full correction of the noncompliance.

On page 48 of the FFY 2003 APR, TDE reported that of 3,193 IFSPs developed in 2004, only 42% met the 45-day timeline from referral to initial IFSP meeting as required by 34 CFR §303.321(e). The data indicated an increase in compliance from the previous year, in which, only 31% of 2,914 IFSPs developed met the 45-day timeline from referral to initial IFSP meeting. However, on page 49 of the FFY 2003 APR, TDE reported systemic noncompliance with meeting the 45-day timeline from referral to the initial IFSP meeting and TDE stated "current data does not identify reasons (family vs. system) for delay in IFSP completion." Furthermore, on pages 47-58 of the FFY 2003 APR, the State included some strategies and activities, targets, and timelines designed to ensure compliance by July 2006, but the strategies did not include specific activities to identify or address the factors contributing to the delay. OSEP accepts the plan and requires TDE to submit a Progress Report in the SPP, including a description of the causes for exceeding the 45-day timeline as required under 34 CFR §303.321(e), with a final report demonstrating compliance, as soon as possible, not to exceed 30 days following one year from the date of this letter. The State may want to look at causes for exceeding the timeline, such as service coordination, personnel, funding, Medicaid, family issues, and time involved in completing evaluations.

Individualized family service plans (IFSPs)

On page 60 of the FFY 2003 APR, the State included data and analysis regarding compliance and performance in this area. TDE reported monitoring data that indicated that services are provided in a timely manner 91% of the time. OSEP looks forward to reviewing the State's data in the SPP demonstrating full compliance regarding the percent of infants and toddlers with IFSPs who receive the early intervention services on their IFSPs in a timely manner.

Natural environments

On page 65 of the FFY 2003 APR, the State included data and analysis regarding compliance and performance in this area. TDE reported that 64% of children received services in the home and 11% in programs for typically developing children. Although there was an increase in the typically developing program setting from 6% in 2002 to 11% in 2003, the overall percentage of children served in home and programs for typically developing children decreased from 77% in 2002 to 75% in 2003. OSEP looks forward to reviewing the State's data in the SPP regarding the percent of infants and toddlers with IFSPs who primarily receive early intervention services in the home or programs for typically developing children.

On page 66 of the FFY 2003 APR, TDE reports that only 78% of IFSPs include a justification when services were not provided in a natural environment. This data identifies noncompliance not previously identified by OSEP. In the SPP, TDE must submit a plan, including specific strategies, proposed evidence of change, targets, and timelines for correction of the noncompliance for the Part C requirement under 34 CFR §303.344(d)(ii), and provide a final Progress Report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 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. 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, TDE provided additional data and information as follows: (1) current monitoring data indicated that the provision of services resulted in progress toward achieving the outcomes 84% of the time; (2) 618 data indicated that 14% of children exited the Part C system due to the completion of the IFSP; and (3) an outcomes committee will identify outcomes with benchmarks for the Part C and Part B systems. 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

OSEP's August 2004 response letter required TDE to provide further clarification regarding its monitoring findings on transition planning conferences, including how many districts were found to be in noncompliance with the transition planning conference timelines, how many districts have CAPs for that issue, and the status of those CAPs.

On page 75 of the FFY 2003 APR, TDE reported that as of June 30, 2004, 83% of children and families had a written transition plan. While this is an improvement from June 30, 2003, when only 71% of children and families had a written transition plan, Tennessee is not meeting the requirements of 34 CFR §§303.148(b)(4) and 303.344(h).

On page 72 of the FFY 2003 APR, TDE indicated that initial monitoring data found that three districts were out of compliance with the transition planning conference timelines. Those districts were required to complete CAPs and, as of June 30, 2004, one district had not fully implemented the CAP. TDE also reported that TDE was not in compliance with the requirement to convene a transition planning conference at least 90 days prior to the child's third birthday as required by 34 CFR §303.148(b)(2)(i). The data indicated that 60% of transition meetings were held less than 90 days prior to the child's third birthday.

On pages 79 – 81 of the FFY 2003 APR, TDE included strategies, proposed evidence of change, targets and timelines designed to ensure compliance with 34 CFR §§303.148(b)(4), 303.344(h), and 303.148(b)(2)(i) within a reasonable period of time. OSEP has reviewed and accepts this plan. In the SPP, TDE must include data and analysis demonstrating progress toward compliance with 34 CFR §§303.148(b)(4), 303.344(h), and 303.148(b)(2)(i) and provide a final Progress Report to OSEP, with data and analysis demonstrating compliance as soon as possible, but not later than 30 days following one year from the date of this letter.

Conclusion

In the State's Performance Plan, due December 2, 2005, TDE must submit to OSEP:

1. Information demonstrating that its compliance standard for all requirements of IDEA is 100%;
2. Information indicating correction of its policies and procedures to require correction of identified noncompliance within one year of *identification*, including evidence of implementation of the revised policy and procedures (e.g., samples of monitoring reports or other documents where the requirement is clearly articulated);
3. With respect to evaluation and identification of needs, TDE must submit a Progress Report in the SPP, including a description of the causes for exceeding the 45-day timeline as required under 34 CFR §303.321(e), with a final report demonstrating compliance, as soon as possible, not to exceed 30 days following one year from the date of this letter;
4. With respect to services in natural environments, in the SPP, TDE must submit a plan, including specific strategies, proposed evidence of change, targets, and timelines for correction of the noncompliance for the Part C requirement under 34 CFR §303.344(d)(ii), and provide a final Progress Report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than one year from the date OSEP accepts the plan;

5. With respect to early childhood outcomes, a review of its data reported in the FFY 2003 APR to address the SPP requirements related to this indicator; and
6. With respect to transition requirements, data and analysis demonstrating progress toward compliance with 34 CFR §§303.148(b)(4), 303.344(h), and 303.148(b)(2)(i), and provide a final Progress Report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year from the date of this letter.

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 the 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 Julia Martin at (202) 245-7431.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Brenda Bledsoe