



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

Honorable Kimberly Belshé
Secretary
California Health and Human Services Agency
1600 9th Street, Room 460
Sacramento, California 95814

NOV 29 2004

Dear Secretary Belshé:

The purpose of this letter is to respond to California's April 26, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP) within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document. OSEP's Memorandum regarding submission of the Part C APRs directed States to address five cluster areas: General Supervision; Comprehensive Public Awareness and Child Find System; Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition.

Background

In 1998, OSEP conducted a targeted review of California's Part C program. As documented in OSEP's April 16, 2004 response to the State's FFY 2001 APR (submitted in 2003), the State completed all of the corrective actions specified in the State's December 30, 1999 Corrective Action Plan (CAP) that addressed the five findings of noncompliance from OSEP's July 14, 1999 Monitoring Report.

The State chose not to conduct a formal Self-Assessment, but reviewed relevant data in preparing improvement planning documents that the State submitted to OSEP in May, June and July 2002. The State did not identify noncompliance, and none of the documents included data that indicated noncompliance.

In its FFY 2001 APR, the State identified one area of noncompliance related to the requirement of 34 CFR §§303.512(a) and (b)(1), that it resolve formal written complaints within 60 calendar days of receipt, unless it extends that timeline if exceptional circumstances exist with respect to a particular complaint. This is discussed in the General Supervision section below.

The State's APR should reflect the collection, analysis, and reporting of relevant data and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by the State to ensure improvement). OSEP's comments regarding the State's FFY 2002 APR are listed by cluster area.

General Supervision

As noted above, the State identified one area of noncompliance in its FFY 2001 APR. The State's Lead Agency for Part C, the California Health and Human Services Agency, Department of Developmental Services (DDS), acknowledged that it was not in compliance with the requirement of 34 CFR §§303.512(a) and (b)(1), that it resolve formal written complaints within 60 calendar days of receipt, unless it extends that timeline if exceptional circumstances exist with respect to a particular complaint. OSEP's April 2004 response to the APR directed DDS to submit, by June 16, 2004, either: (1) documentation that it was in compliance with those requirements; or (2) its plan for correcting the noncompliance within a reasonable period of time, not to exceed one year from the date on which OSEP accepted the State's plan to correct the noncompliance. The data on pages 2 and 3 of this cluster of the State's FFY 2002 APR showed that, during the period from July 1, 2002 to June 30, 2003, DDS issued 12 decisions, all of which were within the timelines required by 34 CFR §§303.512(a) and (b)(1). OSEP appreciates the work of the State in ensuring compliance with these requirements. In the next APR, the State must continue to report on its strategies to ensure performance and compliance in this area.

On page 2 of its April 2004 letter, OSEP indicated that it was not clear in the FFY 2001 APR whether DDS was effective in ensuring that noncompliance was corrected related to children receiving comprehensive evaluations and assessments, and children receiving early intervention services as identified by the participants in the Individualized Family Service Plan (IFSP) meeting. In its May 26, 2004 response to OSEP's letter, DDS reported that findings were issued, follow-up activities occurred on a scheduled basis, and systems were in place that documented when findings were resolved, and indicated that subjecting IFSPs and the IFSP process to scrutiny on a regular basis minimized the number of records found out of compliance.

The monitoring data on pages 4, 5, 6, 9, 17, 31, 32, 37, 42 and 46 show the breadth of the findings of noncompliance that DDS made through its monitoring system. On pages 6-9, 12, 13, 32, 33, 35, 38 and 42, the State provided an extensive description of the actions that it took to ensure that Regional Centers corrected noncompliance in a timely and effective manner. As further discussed below in the sections of this letter regarding the Early Intervention Services in Natural Environments and Family Centered Services clusters, it appears that, in general, the State was implementing effective procedures for ensuring the correction of noncompliance; however, DDS was not always effective in ensuring the timely correction of noncompliance with some requirements.

Comprehensive Public Awareness and Child Find System

On page 3 of its April 2004 response to the State's FFY 2001 APR, OSEP indicated that, due to the limited data in the State's FFY 2001 APR, OSEP could not determine the status of performance or compliance in California's public awareness and child find system. On pages 23-27 of its FFY 2002 APR, the State reported that the Part C child count grew at a rate of approximately 7.4% per year for the most recent three years (2001 – 2003), and this increase in the Part C child count outpaced population growth by roughly threefold. On pages 24-26, the State reported that: (1) it had compared child find efforts and identification rates by region, and determined that there was not always a clear correlation; (2) regional variation in the number of identified children suggested the need to redirect resources to public awareness efforts that yielded the greatest results in identifying children; and (3) DDS was developing methods to track service enrollment rates compared to local census data.

On page 23 of the APR, the State reported that it identified 1.72% of infants and toddlers with disabilities, which was below the national average of 2.24%. The State did not disaggregate data or its analysis by racial/ethnic group. The State may want to disaggregate its data to identify any groups that may be underserved, factors that may be inhibiting the referral and identification of infants and toddlers with disabilities, and strategies to address its findings.

Family Centered Services

In its April 2004 response to the State's FFY 2001 APR, OSEP indicated that it could not determine the status of compliance related to Family Centered Services. On page 31 of its FFY 2002 APR, the State reported that it found no noncompliance related to the completion of comprehensive family assessments. On page 32, the State reported monitoring data showing: (1) compliance in 86.9% of files that DDS reviewed related to including results from family assessments in IFSPs; and (2) compliance in 83.91% of the files that DDS reviewed related to linking family assessment information to IFSP child outcomes. In the next APR, the State must clarify the data on page 32 of the FFY 2002 APR to indicate how many records were reviewed, and over what period of time, and provide updated data. If the updated data indicate noncompliance with 34 CFR §§303.344(b) and (c), then in the next APR, the State must also submit a plan including strategies, targets, timelines and evidence of change to ensure correction of these requirements within a reasonable period of time not to exceed one year from when OSEP accepts the plan.

Early Intervention Services in Natural Environments

As noted earlier, OSEP informed the State, in its April 2004 response to the State's FFY 2001 APR, that the State had completed all of the corrective actions specified in the December 1999 CAP that addressed the findings of noncompliance from OSEP's Monitoring Report. As explained below, however, the State included monitoring data in its FFY 2002 APR that showed that some Regional Centers were not in compliance with two of the areas of noncompliance identified in OSEP's 1999 Report.

In the 1999 Report, OSEP found that the State was not ensuring that the initial evaluation and assessment were completed, and the initial IFSP meeting convened, within 45 from referral (34 CFR §§303.321(e), 303.322(e), and 303.342(a)). The State did not provide data on Part C's 45-day timeline requirement in its FFY 2001 APR. On page 35 of its FFY 2002 APR, the State reported monitoring data indicating that IFSPs were completed within 45 days for 84.5% of the children found eligible for the State's Part C program, and explained that the Regional Centers continued to experience problems in securing vision and hearing evaluations within 45 days. On pages 17-18, the State indicated that, "Challenges exist in service areas for pediatric vision and hearing evaluation. Scarcity of providers is often the reason when findings indicate that children do not receive evaluation and assessment or prompt service delivery." The State did not include in the FFY 2002 APR any targets or data-based evidence of change and included only two strategies to address this noncompliance. The strategies included were monitoring performance related to evaluation and assessment, and providing technical assistance in target regions. California must submit a plan to OSEP, within 60 days of the date of this letter, including additional strategies (to address causal reasons for the noncompliance such as increasing the number of vision and hearing evaluators), evidence of change, targets and timelines to ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. In the next APR, the State must include updated data on the 45-day timeline requirement.

In the 1999 Report, OSEP found that the State was not ensuring that IFSPs included, as required by 34 CFR §303.344: (1) present levels of functioning; (2) family concerns, priorities, and resources; (3) duration; (4) location; and (5) a list of early intervention services. On page 4 of the FFY 2002 APR, the State included baseline and trend monitoring data for 2000-2002, indicating that the following percentages of the IFSPs that DDS reviewed included all required content: (1) 2000, 73%; (2) 2001, no quantifiable data were available; (3) 2002, 68%; and (4) 2003, 75%. On pages 6, 7, 8, 12, 13, 17, 18, 32, 33, 36, 37, 38 and 42 of the APR, the State described the steps that it took to ensure correction of identified noncompliance, including the IFSP content finding. In general, the State explained in the APR that when it found noncompliance in a Regional Center, it required the Regional Center to implement an agreed-upon continuous improvement plan, and conducted frequent monitoring to verify improvement efforts. However, other than including goals to continue to monitor and provide technical assistance, the State did not identify the local regions that represented the 25% not in compliance with this requirement in 2003, the corrective actions required by the State, and the status of correction. Nor did the State include any strategies to specifically address this finding, targets, timelines, and evidence of change. Within 60 days of this letter, please identify the Regional Centers that the State found out of compliance with the IFSP content requirements during 2003, the corrective actions that the State required of these Regional Centers, and the status of correction. If these Regional Centers have not demonstrated correction, please also provide within 60 days a plan for ensuring such correction, including strategies, targets, timelines and evidence of change.

On page 42, the State reported that it reviewed a stratified sample of IFSPs for children receiving some or all of their services in a setting other than a natural environment, and found that 57.14% of those IFSPs included the justification required by 34 CFR §303.344(d)(1)(ii). The State did not include, in the FFY 2002 APR, strategies, 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 of OSEP's acceptance of the proposed strategies. Therefore, the State must submit a plan to OSEP within 60 days of the date of this letter, 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. In the next APR, the State must include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline.

The Part C FFY 2001 and FFY 2002 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)). The State indicated on page 43-45 of its FFY 2002 APR that it was currently considering several approaches for collecting these data. In the FFY 2003 APR, the State must report the status of its plan to collect data and, if available, data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area.

Early Childhood Transition

In its April 2004 response to the State's FFY 2001 APR, OSEP indicated that it could not, from the limited data in the APR, determine the status of compliance related to early childhood transition. On pages 45-46 of the FFY 2002 APR, the State reported that DDS monitored for compliance with six Part C requirements related to early childhood transition, and provided three years of monitoring data that showing that, while DDS had identified some noncompliance during 2001 and 2002, it did not identify any noncompliance in 2003. OSEP looks forward to receiving data and analysis in the next APR demonstrating continued implementation of strategies to ensure performance and compliance in this area.

Conclusion

As noted above, the State must submit a plan to OSEP, within 60 days of the date of this letter, to ensure correction of noncompliance in: (1) meeting 45-day timeline requirements (34 CFR §§303.321(e), 303.322(e), and 303.342(a)); and (2) IFSP justification statements where services are not provided in natural environments (34 CFR §303.344(d)(1)(ii)). The plan must include strategies, proposed evidence of change, targets and timelines 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. In the next APR, the State must include updated data on the State's progress in correcting these areas of noncompliance.

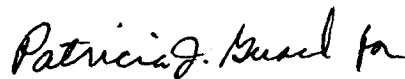
As also noted above, the State must, within 60 days of this letter, identify the Regional Centers that the State found out of compliance in 2003 with the IFSP content requirements of 34 CFR §303.344, the corrective actions that the State required of these Regional Centers, and the status of correction. If these Regional Centers have not demonstrated correction, please also provide

within 60 days a plan for ensuring such correction, including strategies, targets, timelines and evidence of change.

As further noted above, the State must, in its FFY 2003 APR, due March 31, 2005, clarify the data on page 32 of the FFY 2002 APR to indicate how many records were reviewed for compliance with 34 CFR §§303.344(b) and (c), and over what period of time, and provide updated data. If the updated data indicate noncompliance with 34 CFR §§303.344(b) and (c), then in the next APR, the State must submit a plan including strategies, targets, timelines and evidence of change to ensure correction of these requirements within a reasonable period of time not to exceed one year from when OSEP accepts the plan.

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 questions, please contact Rhonda Spence at (202) 245-7382.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Rick Ingraham
Part C Coordinator