



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

Honorable Charles Smith  
Secretary  
Agency of Human Services  
103 South Main Street  
Waterbury, Vermont 05671-0204

JUL 26 2004

Dear Secretary Smith:

The purpose of this letter is to respond to Vermont's March 31, 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 its 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 the submission of 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***

OSEP's May 2003 Self-Assessment letter identified areas of possible noncompliance in the General Supervision cluster. Part C requires, at 34 CFR §303.501, that each Lead Agency adopt and use proper methods of administering the Part C program, including monitoring agencies, institutions, and organizations used by the State and enforcing any obligations imposed on those agencies. The General Supervision priority areas are: (1) ensuring the provision of early intervention services for children with disabilities by implementing coordinated systems for monitoring (and other mechanisms for ensuring compliance) and parent protections and ensuring that decision-making is based on the collection, analysis and utilization of data from all available sources; and (2) identifying and correcting systemic issues through the analysis of findings from monitoring, complaint investigations, due process hearings and information collected from all available sources. OSEP's May 2003 Self-Assessment letter directed Vermont to examine all information related to this cluster, including data from monitoring, and determine whether the

data indicated compliance with the Part C requirements. The information was to be submitted in the July 2003 APR.

In response to OSEP's request for information regarding potential noncompliance in the General Supervision cluster, Vermont submitted an APR on July 1, 2003 that indicated that the State monitored four early intervention service provider agencies during the grant period July 1, 2001 through June 30, 2002, by using a peer review team consisting of early intervention staff, staff from the Part B Section 619 program, and staff from other early intervention programs such as Early Head Start. Monitoring activities included the development of corrective action plans, when appropriate. Vermont also used its interagency agreements, policies and procedures, child and family data system and its system of procedural safeguards and family rights to ensure overall compliance with Part C requirements.

OSEP responded to the State's July 1, 2003 APR submission on March 31, 2004. In the March 2004 APR letter to the State, OSEP indicated that Vermont had implemented general supervision mechanisms to collect data from several sources in order to assess performance in this cluster. However, Vermont did not submit the actual data (i.e., monitoring, complaint resolutions, hearing decisions, enforcement activities, etc.) and its analysis for OSEP to review. Therefore, OSEP was not able to determine if there was noncompliance in this cluster. Vermont was directed to examine all relevant information related to this cluster and determine whether the information indicated noncompliance and provide steps in the FFY 2002 APR to resolve any identified noncompliance within one year from OSEP's approval of the strategies.

OSEP's May 2003 Self-Assessment letter to the State also identified specific areas across several clusters where there were not sufficient data to make data-based performance and compliance determinations. Specifically, OSEP noted this problem in the following cluster areas: General Supervision, Early Intervention Services in Natural Environments, Family Centered Services and Early Childhood Transition. The State's July 1, 2003 APR submission described numerous activities that the State had implemented during the reporting period. OSEP's March 2004 APR letter to the State reviewed the activities and directed the State to: 1) provide specific analysis of the data the State collected relevant to the Family Centered Services Cluster in the next APR submission; and 2) determine if noncompliance existed in the Early Intervention Services Natural Environments or Early Childhood Transition cluster. If the State determined that the information analyzed indicated noncompliance, within 60 days from the date of the letter, the State was required to submit strategies, benchmarks and evidence of change statements to address the noncompliance within a reasonable time that cannot exceed one year from OSEP's approval of the strategies.

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 each cluster area within the APR are set forth below.

### *General Supervision*

On page two of the State's APR, the State indicates that it has systems of general supervision in place. These systems are described as: (1) a monitoring process that consists of parent focus groups, provider focus groups, interviews and discussions with early childhood councils and on-site file review; (2) policies and procedures; (3) a grant accountability system; (4) an electronic data system that gathers child count and other relevant information; (5) provision of procedural safeguards; and (6) personnel development and support. The State also submitted the Community Review Report that included a final report based on monitoring, recommendations and the corrective action plan developed by the host regional agency. The State approved the host agency's action plan to correct deficiencies identified during monitoring on November 24, 2003. The action plan indicated that the State would ensure that the deficiencies identified during monitoring would be fully corrected by February 2004.

The State provided evidence that it had adopted methods to monitor agencies, institutions, and organizations used by the State to implement Part C as required in 34 CFR §303.501(b)(1). However, each Lead Agency is also required to be responsible for correcting deficiencies that are identified through monitoring. In its APR, the State did not include data documenting that it had ensured the correction of identified deficiencies. See Part C regulations at 34 CFR §303.501(a)(4).

Within 60 days of the date of this letter, Vermont must submit the actual data, procedures and final report used by the State to document the correction of noncompliance identified at the Orleans/Essex North host agency.<sup>1</sup>

In Attachment 1 of the APR, the State reported that no mediations, complaints or due process hearings occurred during the reporting period. OSEP urges the State to examine both its policies and procedures related to its prior written notice documents to ensure that they include all of the required information regarding due process hearings, and whether any lack of required notice content might be a factor in the lack of mediations, complaints, and due process hearing requests. The Part C regulations at 34 CFR §303.403(b) require that: "The notice must be in sufficient detail to inform the parents about...(3) all procedural safeguards that are available under 34 CFR §§303.401-303.460 of this part; and (4) the State complaint procedures under 34 CFR §§303.510-303.512, including a description of how to file a complaint and timelines under those procedures."

Within the General Supervision cluster of the APR, the State was required to report on the number of administrators, service coordinators, service providers, paraprofessionals and other early intervention personnel available to sufficiently meet the early intervention needs of eligible infants and toddlers. On page 10 of the APR, the State reported a need to establish methods to gather data regarding personnel shortages and that the State intended to collaborate with State and national technical assistance resources to identify effective methods to collect this data.

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<sup>1</sup> At the time the FFY 2002 APR was submitted, Orleans/Essex North host agency was the only provider that the State had monitored during this reporting period.

The State should note the following statements in the Community Review-Reviewer Feedback protocol submitted to OSEP: (1) difficulty meeting the 45-day timeline from receipt of a referral until the convening of the initial Individual Family Service Plan (IFSP) meeting (34 CFR §303.322(e)), especially in rural and large geographical locations, was noted on several occasions; (2) in some cases, children did not receive full developmental evaluations; and (3) there was a limited number of speech-language pathologists. On page 6 of the final report from the Lead Agency to Orleans/Essex North, the State reported that: (1) "The 2002 Child Count report indicates that more than one-third of the total referrals exceed the 45-day timeline;" and (2) "...there is a limited number/lack of personnel, e.g. speech-language pathologists, and/or qualified providers who have pediatric experience." On page 10 of the Community Review-Reviewer Feedback report, the State reported that, "There is a shortage of available and qualified staff in the Orleans/Essex region."

OSEP finds that the State's APR included data that there were insufficient personnel available to provide timely early intervention services to children and families. The Community Review Conference Brief attachment to the APR reported that there was an inability to meet the 45-day timeline, and that evaluations and assessments in all five developmental areas were evident for three of nine children whose records were available for review.

The State must clarify the data related to the adequate numbers of personnel to provide early intervention services. Data sources that the State may use in addition to monitoring findings are: (1) data from the Comprehensive System of Personnel Development (CSPD), the General Supervision Enhancement Grant (GSEG) or the State Improvement Grant (SIG) that address personnel shortages; (2) analysis of pre-service and in-service activities or other community forums that identify personnel shortages; and (3) data (anecdotal or quantitative) that inform the State whether the needs of children and families are met (e.g. are services delayed or denied because of shortages in personnel?).

Vermont must examine all relevant information related to the sufficient number of early intervention personnel to make a data-based decision as to whether it contributes to the State's difficulty in meeting the 45-day timeline as required by Part C regulations at 34 CFR §303.321(e). If the State finds that personnel shortages contribute to the noncompliance related to the timely delivery of early intervention services (i.e. the 45-day timeline, initial evaluations in all five domains, or the provision of services), the State must address this issue as part of the plan to OSEP to ensure that the initial IFSP meeting is conducted within the 45 day timeline. (See page 8 of this document.)

#### ***Comprehensive Child Find/Public Awareness***

OSEP's March 31, 2004 APR letter to Vermont encouraged the State to continue to analyze its data related to this cluster to ensure compliance with the Part C requirements. Vermont continues to demonstrate a yearly increase in the percentage of infants and toddlers determined eligible for early intervention services. According to the December 1, 2001 Child Count, the State was serving 2.51% of infants and toddlers from birth to age three. The December 1, 2002 Child Count indicated that the State was serving 3.10% of infants and toddlers. The State

described several public awareness strategies that it had implemented to improve overall visibility of its early intervention programs.

The State should continue to analyze its monitoring data related to this cluster and provide a summary in the next APR to ensure compliance with Part C requirements. OSEP will review the data submitted by the State and its analysis, specific to this requirement, in the next APR.

Page 16 of the APR stated that a projected target in Child Find was to "Maintain activities and aim for ongoing 3-3.5% of the birth to three population." While it is not inconsistent with Part C of the IDEA to include a numerical goal to maintain the percentages of infants and toddlers with disabilities determined eligible for services, the State must continue to monitor to ensure that eligibility decisions for all infants and toddlers are 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.

### *Family Centered Services*

Vermont's July 2003 APR indicated that the State had a format to collect data related to child outcomes. Individual Family Service Plans (IFSPs) were required to include a statement of the major outcomes to be achieved by the child and family. The State reported that it would use the IFSP data coupled with anecdotal information from parents and providers to assess this cluster area.

Page 24 of the APR stated that a survey of parents statewide indicated that of 219 families responding, 94% reported that the initial assessment was completed in a timely manner and 91% reported that their child received all needed services. In addition, the State interviewed parents at each agency that was monitored. Parents served by the Orleans Essex/North agency reported that: (1) they felt respected by the early intervention staff; (2) families felt involved with the development of the IFSP; and, (3) families felt that a wide variety of needs are provided by the early intervention staff.

The State further reported, on page 20 of the APR, "no other data was available, during the reporting period, to determine whether child and family outcomes data is being collected or used to determine progress." As a projected target for the next reporting period, the State indicated that it would use the findings from previous monitoring combined with other State and national information as a basis for determining the best methods to collect data specific to child and family outcomes. The State also plans to sponsor a seminar with State partners, parents, and the local university to discuss meaningful outcomes for the families served in Vermont and methods to collect and analyze these data.

On page 25 of the APR, the State reported that the IFSP does not effectively collect data "on family assessment that clearly demonstrates whether families have been provided with an option of having a specific family-directed assessment." Part C requirements at 34 CFR §303.344(b) state that the IFSP must include, with the concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child. The family assessment is required as part of the initial determination of eligibility for the child. See 34 CFR

§303.322(d). Vermont must ensure that the family assessment, with the family's concurrence, is included as part of the initial evaluation of the child. OSEP will review the State's data and its analysis, specific to the requirement at 34 CFR §303.322(d), in the FFY 2003 APR.

### *Early Intervention Services in Natural Environments*

OSEP's May 2003 Self-Assessment letter indicated that Vermont had not provided OSEP with sufficient data to make data-based determinations regarding compliance in this cluster. The letter further indicated that as part of its improvement planning efforts, Vermont should collect and analyze relevant data, and make data-based determinations regarding compliance in this cluster.

### *Service Coordination*

In the current APR, the State reported data from a variety of sources to respond to this cluster area. Family survey results on page 24 of the APR indicated "that families reported high satisfaction with their service coordinators and felt that they received information and services in a timely manner from their service coordinator." Families also reported that qualified personnel did the assessment of their child in a timely manner. In its analysis of actual monitoring data, Vermont found that in three of the nine records reviewed, it was not clear who was assigned as the service coordinator (page 23) and that it was difficult to gather data regarding whether service coordinators provided the range of services required by 34 CFR §303.23. The State's data indicates that a single service coordinator is not identified on the child's IFSP.

### *IFSP Content Requirements and Provision of Early Intervention Services*

On page 25 of the APR, Vermont reported that "... the IFSP does not lend itself to documenting that all five developmental domains are assessed and it does not effectively require documentation of the specific and unique needs and strengths in each domain" as required in 34 CFR §303.322. By June 2004, the State reported that it intends to begin work on revising the monitoring system to effectively address compliance requirements related to assessments in all five domains.

In addition, Vermont stated in the APR that "the questions used to survey providers and families as part of the Community Review process did not effectively gather data to indicate if IFSPs include all services necessary to meet the identified needs of the child and family and if needed services are provided to eligible children and families." Part C requirements state that the IFSP must include a statement of the child's present level of development in five areas as described in 34 CFR §303.344(a)(1). The State's data indicates that IFSP's do not document that children are assessed in all five developmental domains, and that a child's present level of functioning in all five domains is listed on the IFSP.

### *45-Day Timeline Requirement*

The APR stated that Vermont was able to collect data regarding the Part C requirement at 34 CFR §303.321(e) that the evaluation and assessment of the each child (including the family

assessment) must be completed within 45 days and an initial IFSP meeting held. The State's monitoring data indicated that the 45-day timeline had been exceeded in six of nine records reviewed (page 26) with one folder providing reason for the delay. The 2002 Child Count Data Report indicated that more than one-third of the total referrals exceed 45-day timeline (See page 6 of the Final Report). On page 25 of the APR, the State reported that "in the most recent monitoring review (the Orleans/Essex-North region) there was no documentation for why the 45-day timeline was not met and it was a significant area of concern for that region."

Pages 26-28 of the APR lists strategies the State intends to implement to improve its data collection system to capture data specific to the Part C requirements. The APR reported that the surveys had been revised and used in regional monitoring visits. Page 25 of the APR indicated that the "IFSP and other ways of obtaining information were under review." The State also indicated that it intended to work with the University of Vermont Research Team to analyze existing monitoring activities and produce recommendations for revisions by June 2004.

On pages 25 and 26 of the APR, the State reported that the current IFSP form does not collect these data. The State acknowledged that it has failed to meet the requirement at 34 CFR §§303.320(d), 303.321(e) and 303.342(a) that the evaluation and assessment must be conducted and the initial IFSP meeting must be conducted within the 45-day timeline. The State did not provide strategies, benchmarks, targets, proposed evidence of change or timelines to demonstrate how the State will correct the noncompliance related to the 45-day timeline requirement. The data provided by the State indicates noncompliance on the 45-day timeline.

#### *Natural Environments*

Vermont indicated on page 31 of the APR that the State's December 2002 Child Count data indicated that 89% of children were served in natural environments, including the home and community-based early childhood programs. The APR also indicated that the State intended to maintain the current level of services in natural environments for the next reporting period. The use of data reported under IDEA Section 618, while a helpful indicator, does not establish compliance with Part C's natural environments requirements because the appropriateness of a service setting is determined based on a child's IFSP.

In addition, setting a numerical goal to serve a specific percentage of the State's population in natural environments raises concerns under Part C of IDEA. The Part C regulations, at 34 CFR §303.12(b), require that "[t]o the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate." The IFSP must include a statement of the natural environments in which early intervention services will be provided, and "a justification of the extent, if any, to which the services will not be provided in a natural environment." See 34 CFR §303.344(d)(1)(ii). Therefore, in the next APR, the State must revise its goal and must provide data demonstrating that early intervention services for 100% of its infants and toddlers with disabilities are provided either in natural environments or are provided under IFSPs that contain an appropriate justification for a setting that is not the natural environment.

Within 60 days from the date of this letter, Vermont must submit the strategies, benchmarks, targets, proposed evidence of change and timelines to ensure correction within a reasonable period of time, not to exceed one year from the date OSEP accepts the strategies, to address each of the three areas of noncompliance identified in the Early Intervention Services in the Natural Environment cluster related to the Part C requirement at 34 CFR §303.322 which requires that (1) Each IFSP will identify a single service coordinator; (2) IFSP's will contain each child's present level of functioning and confirmation that evaluations and assessment are conducted in all five developmental domains; (3) The initial IFSP meeting must be conducted within the 45-day timeline. The State must provide evidence of progress in correcting each area of noncompliance, including supporting data and its analysis, in the FFY 2003 APR.

#### *Child Outcome Data*

The Part C APR for FFY 2001 and FFY 2002 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 did not provide OSEP with any data in response to this performance indicator. In the next APR (for FFY 2003), the State must submit responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program evidence improved and sustained functional abilities in the five developmental areas.

#### **Early Childhood Transition**

OSEP's May 2003 Self-Assessment letter indicated that this cluster did not include sufficient data to make data-based performance and compliance determinations and it directed the State to collect and analyze relevant data, and make a decision regarding compliance and submit it as part of the FFY 2001 APR. OSEP's March 2004 APR letter directed the State to examine all relevant information, specific to this cluster, and determine if that information indicated noncompliance. The State was directed to submit, with the next APR or within 60 days, which ever was later, the benchmarks, evidence of change and proposed strategies to address the noncompliance with a reasonable time that could exceed one year from OSEP's approval of the strategies.

In the State's analysis of its monitoring data related to transition, Vermont reported on page 38 of the APR that "questions were asked although they could be more focused" and that "the Child Count data collection instruments need to be revised for the next reporting period, to ask questions about transition planning." Page 13 of the Community Review, submitted as part of the APR, indicated "records reviewed of children who exited services did not include transition plans." In response to the monitoring findings, the State recognized that there was a need to revise its data collection instruments to more concisely collect data on transition plan content, timelines and participation of required partners and proposed to complete the revisions by June 2004. The revisions would include a checklist to document the activities conducted during transition planning and the status of each activity.

The data in the State's FFY 2002 APR has not demonstrated implementation of the Part C transition requirements. OSEP does not know how the State determines if: (1) with the approval of the family, a conference is 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 six months before the child's third birthday, for any child who may be eligible for preschool services under Part B of IDEA, to discuss services that the child may receive, as required by 34 CFR §303.148(b)(2)(i); and (2) in the case of a child who may not be eligible for preschool services under Part B of IDEA, with the approval of the family, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children, to discuss appropriate services that the child may receive as required by 34 CFR §303.148(b)(2)(ii). In addition, the State has not demonstrated if the IFSP included the transition-related content required by 34 CFR §303.344(h) when the child was eligible for transition services.

OSEP concurs with Vermont that it must revise its monitoring system to ensure that it collects the transition related data required in this cluster. At a minimum, any revision must provide for the collection of data to ensure that the State is fully implementing the Part C requirements at 34 CFR §303.148(b)(2) and §303.344.

Within 60 from the date of this letter, Vermont must examine the IFSP records referenced on page 13 of the Community Review and any other relevant information related to the Part C transition requirements at 34 CFR §303.148(b)(2) and §303.344, including data from monitoring, and clarify the State's compliance with these requirements. The State must submit the data and its analysis to OSEP for review. If the State determines that the data indicates noncompliance, the State must include steps to resolve the noncompliance within a reasonable period of time that cannot exceed one year from the date of this letter. The plan must include relevant baseline data and evidence of correction to ensure compliance. The State must provide evidence of progress in correcting the noncompliance, including supporting data and its analysis, in the FFY 2003 APR.

### ***Conclusion***

As noted above, within 60 days, from the date of this letter, Vermont must submit to OSEP:

- 1) The actual data, procedures and final report used by the State to document the correction of noncompliance identified at the Orleans/Essex host agency.
- 2) Strategies, benchmarks, targets, proposed evidence of change and timelines to ensure correction within a reasonable period of time, not to exceed one year from the date OSEP accepts the strategies, to address each of the three areas of noncompliance identified in the Early Intervention Services in the Natural Environment cluster related to the Part C requirement at 34 CFR §303.322 which requires that (1) Each IFSP will identify a single service coordinator; (2) IFSP's will contain each child's present level of functioning and confirmation that evaluations and assessment are conducted in all five developmental domains; 3) The initial IFSP meeting must be conducted within the 45-day timeline. The State must provide evidence of progress in correcting each area of noncompliance, including supporting data and its analysis, in the FFY 2003 APR.

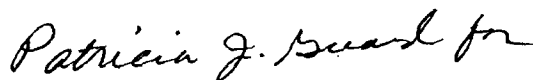
- 3) An examination of the IFSP records referenced on page 13 of the Community Review and any other relevant information related to the Part C transition requirements at 34 CFR §303.148(b)(2) and §303.344, including data from monitoring, and clarify the State's compliance with these requirements. The State must submit the data and its analysis to OSEP for review. If the State determines that the data indicates noncompliance, the State must include steps to resolve the noncompliance within a reasonable period of time that cannot exceed one year from the date of this letter. The plan must include relevant baseline data and evidence of correction to ensure compliance. The State must provide evidence of progress in correcting the noncompliance, including supporting data and its analysis, in the FFY 2003 APR.

In addition, in the next APR the State must:

- 1) Provide the actual data and its analysis to demonstrate that, with the family's concurrence, a family assessment is included as part of the initial evaluation of the child as required at 34 CFR §303.322(d).
- 2) Submit responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities in the five developmental areas.
- 3) Revise its goal stated on page 31 of the APR that indicated that the State intended to maintain the current level of services in natural environments for the next reporting period. The State must ensure that the requirement at 34 CFR §303.344(d)(1)(ii) is fully implemented and ensure that services for all of its infants and toddlers with disabilities are provided either in natural environments or are provided under IFSPs that contain an appropriate justification for a setting that is not the natural environment.

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 Jill Harris at (202) 245-7372.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Helen Keith  
Part C Coordinator