



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

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

SEP 30 2005

Dear Secretary Belshé:

The purpose of this letter is to respond to the California Health and Human Services Agency, Department of Developmental Services (DDS), April 19, 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 Improvement Plan submitted on January 12, 2005. OSEP has set out its comments, analysis and determinations by cluster area.

*Background*

The conclusion of OSEP's November 29, 2004 FFY 2002 APR response letter required the State to:

1. Within 60 days from the date of OSEP's letter:
  - a. Submit a plan to ensure correction of noncompliance in the following areas: (1) meeting the 45-day timeline requirements at 34 CFR §§303.321(e), 303.322(e), and 303.342(a); and (2) individualized family service plans (IFSPs) include justification statements where services are not provided in natural environments (34 CFR §303.344(d)(1)(ii)); and
  - b. 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 those Regional Centers, and the status of correction. If those Regional Centers did not demonstrate correction, the State was also to provide a

plan for ensuring such correction, including strategies, targets, timelines and proposed evidence of change.

2. In the FFY 2003 APR, 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), over what period of time, and provide updated data. If the updated data indicated noncompliance with 34 CFR §§303.344(b) and (c), then the State was to provide, in the FFY 2003 APR, a plan including strategies, targets, timelines and proposed evidence of change to ensure correction of these requirements within a reasonable period of time not to exceed one year from when OSEP accepted the plan.

### ***General Supervision***

#### Identification and timely correction of noncompliance

On pages 2-12 of the FFY 2003 APR, DDS included data, information and analysis regarding its monitoring system. DDS continued to monitor local program performance through on-site reviews that incorporated multiple methods to determine the degree of compliance within the 21 regions. Six monitoring site visits were conducted during the FFY 2003 reporting period. Record reviews were completed in 15 regions. A tracking system was initiated during the reporting cycle to track progress in resolving findings from previous monitoring activity. The data presented on page 6 represented several years and OSEP could not determine what percent of items requiring follow-up were cleared for each year, or whether all identified noncompliance was corrected within a one-year time frame. In the State Performance Plan (SPP), due December 2, 2005, CDS must provide data and analysis that demonstrate both the identification and correction of noncompliance for each Regional Center for a specific fiscal or calendar year.

#### Dispute resolution

On pages 13 and 14 and in Attachment 1 of the FFY 2003 APR, DDS included data and analysis regarding its efforts to ensure compliance in this area. A total of 12 formal due process hearing complaints were received and 159 requests for mediation/hearing. California has a two-step system; every parent who files for a hearing receives an offer for a mediation date and a hearing date. Parents are notified and informed that the mediation is voluntary. The data in Attachment 1 showed that 94 of 159 requests for mediation or due process were withdrawn, dismissed or closed prior to any formal resolution process. Nineteen mediations were settled. Of the eight due process hearings that were held, the State reported that four decisions were issued within the 30-day timeline, and the other four were issued within extended timelines. In an e-mail on August 9, 2005, the State reported that all 38 cases reported as pending in Attachment 1 had a 30-day extension. The State confirmed it uses the Part C due process hearing procedures in 34 CFR §§303.421 through 303.425.

The information in Attachment 1 of the FFY 2003 APR and the State's correspondence indicates the following area of noncompliance, not previously identified by OSEP: not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties (34 CFR §303.423(b)). The State

must submit a plan to OSEP with the SPP, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible, not to exceed one year from the date OSEP accepts the plan. OSEP looks forward to reviewing the State's updated data in this area in the SPP, due December 2, 2005.

#### Personnel

On page 15 of the FFY 2003 APR, DDS included data and analysis demonstrating compliance and performance. DDS reported that the number of staff for the program increased by 7.07% during 2003 and that the rate of expansion in the number of professional resources available to meet needs was expanding faster than the rate of increase in eligible children. OSEP appreciates the State's efforts to improve performance in this area.

#### Collection and timely reporting of accurate data

On pages 18-20 of the FFY 2003 APR, the State included information regarding its efforts to ensure compliance and improve performance in this area. A table on pages 18-19 described the multiple methods for collecting data related to the Part C program. DDS reported that progress was made during the FFY 2003 reporting period on refining data systems and determining appropriate uses for existing data including newly introduced reports pertaining to regional percent-served rates. DDS did not describe methods or reach conclusions regarding the accuracy of their data. This is an indicator in the SPP. In preparation for the submission of the SPP on December 2, 2005, DDS should carefully consider its current data collections against the requirements related to this indicator in the SPP packet to ensure that all data will be accurate. The State must include data and analysis in the SPP to address this indicator.

#### Fiscal responsibility

In Attachment 2 of the FFY 2003 APR, the State included data and analysis regarding its performance in this area to ensure the coordination of funding resources within the State that resulted in the provision of early intervention services. DDS reported that State general funds constituted the greatest financial support. OSEP appreciates the State's efforts in this area.

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

On pages 21-28, the State included data and information regarding its efforts to ensure compliance and improve performance. The State reported 18 different types of public awareness/child find activities conducted by each Regional Center. Future activities would address efforts to identify the most effective outreach, child find and public awareness activities. Additional measures were taken during the 2003-2004 reporting period to identify regional rates compared to State rates of growth. DDS reported that comparisons showed that some regions were dramatically under-serving children in the Part C program, compared to State averages. Technical assistance plans were written for these regions as part of the comprehensive program evaluation process. According to the annual child count submitted under section 618 of IDEA, California served 1.72% of its birth-through-two population in 2002 and 1.76% in 2003. OSEP

appreciates the State's efforts in this area and looks forward to reviewing updated data and information responsive to the child count indicators in the SPP.

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

On pages 29-30 of the FFY 2003 APR, the State included information indicating that DDS used monitoring methods to obtain evidence that IFSPs contained documentation of family concerns, priorities, and resources that were reflected in outcomes in IFSPs. The State reported that, since January 2003, data collection occurred on 896 records. Of the records reviewed, 98.4% contained evidence that concerns, priorities, and resources were documented in the IFSP and 97.77% contained evidence that documented concerns, priorities, and resources were reflected in outcomes for the child and family. OSEP appreciates the State's efforts to ensure compliance in this area.

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

#### Service coordination

On page 33 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. The State reported that family interviews occurred with over 180 families during the FFY 2003 reporting period and no findings were issued regarding timely assignment of a service coordinator. OSEP appreciates the States efforts in this area.

#### Evaluation and identification of needs

On pages 34-36 of the FFY 2003 APR, the State included data and information indicating continued noncompliance in the following area: initial evaluation and assessment are completed, and the initial IFSP meeting convened within 45 days from referral (34 CFR §§303.321(e), 303.322(e), and 303.342(a)). The State reported that, based on monitoring data, 87.66% of the cases sampled had IFSPs completed within 45 days.<sup>1</sup> This was a slight increase from the monitoring data reported in the FFY 2002 APR when 84.5% of the evaluations and assessments were completed within the 45-day timeline and a decrease (and or contradiction) from the data in the January 12, 2005 Improvement Plan submitted to OSEP. In that plan, DDS indicated that "almost 12 months of data compiled during the 2004 calendar year show improvement in the development of IFSPs within 45 days, from 84.7% to 91.6%." The strategies, targets and timelines in the January 12, 2005 Improvement Plan resulted in slight improvement but were not successful in correcting the noncompliance; therefore, the State must submit updated data and analysis to OSEP with the SPP reporting on the most current status of compliance with 34 CFR §§303.321(e), 303.322(e), and 303.342(a). To the extent that the data and analysis do not demonstrate correction of the noncompliance, the State also must submit a revised Improvement Plan with additional 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 OSEP accepts the plan.

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<sup>1</sup> The State completes initial IFSPs at the initial IFSP meeting.

### Individualized family service plans (IFSPs)

In its January 12, 2005 Improvement Plan, DDS submitted data and indicated that it “more accurately represents the State’s performance in IFSP content for specific items.” A total of 471 records were reviewed for required IFSP content. The State reported that all 21 of the Regional Centers were above 90% compliance. In a table on page 5, however, DDS indicated that compliance was at 83% for IFSPs containing current levels of development in all five domains as required by 34 CFR §303.344(a).

As requested by OSEP, specific information was included in the January 2005 Improvement Plan for the five Regional Centers that were not in compliance with IFSP content requirements at 34 CFR §303.344 in the FFY 2002 APR. The State indicated that “these regional centers now demonstrate substantial compliance with IFSP content requirements.” The State also reported that two of the Regional Centers had continuous improvement plans for the two IFSP elements found in noncompliance and that both Regional Centers would be reviewed again in 2005 to determine progress.

On pages 37–41 of the FFY 2003 APR, the State included data and analysis regarding its progress in ensuring compliance with the IFSP content requirements of 34 CFR §303.344 as follows: 93.40% of records reviewed included outcomes that contain procedures, criteria and timelines; 95.32% of records reviewed listed services with method, frequency, intensity, and duration; 98.94% of records reviewed had service providers and location of services identified; and 98.51% had concerns, priorities and resources reflected in outcomes. The State’s data indicated noncompliance with the requirement at 34 CFR §303.344(a)(1) that IFSPs include a statement of the child’s present level of development in five areas, in that 85.74% of records reviewed included this information. The State must submit with the SPP a revised Improvement Plan with additional 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 OSEP accepts the plan.

### Natural environments

In its January 2005 Improvement Plan, DDS submitted data indicating that “justifications for services provided in segregated environments are now present in 97.7% of the instances when a multidisciplinary team has determined that such circumstances are warranted.” Seventeen Regional Centers were represented in the data.

On pages 43–46 of the FFY 2003 APR, the State included data and analysis that demonstrated correction of noncompliance identified in OSEP’s November 2004 letter, in the following area: IFSP justification statements where services are not provided in natural environments 34 CFR §303.344(d)(1)(ii). DDS reviewed 470 records during 2004 and revised the review process for determining if services were provided in natural environments and established new baselines. Not all regions had reviews for services in natural environments using the newer criteria. Of the 59 records reviewed using the new criteria, the State reported that 93.22% contained the required justifications. For the 6.78% of records that did not contain justification the State reported that corrective action plans were approved and implemented and follow-up from Part C State staff

occurred. OSEP appreciates the work of the State in ensuring compliance with these requirements.

### 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 47-50 of the FFY 2003 APR, DDS provided OSEP with limited information in response to this performance indicator. The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR, due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting the data, in the SPP.

### *Early Childhood Transition*

On pages 51-55 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. DDS monitors for eight standards specific to transition and was demonstrating compliance in all eight areas. Percentages included 91% compliance for families receiving notice at 2.6 years of age, 92% for local educational agencies (LEAs) participating in transition planning, and 94% for transition steps included in IFSPs. Oversampling of transition records occurred during 2004 in order to ensure that transition activities occurred in a manner consistent with State and Federal regulations. The State reported that improved follow-up on previous monitoring findings may be responsible for improvements in transition planning. OSEP looks forward to reviewing the State's updated data in this area in the SPP.

### *Conclusion*

As noted above, in the SPP, DDS must submit to OSEP:

1. Data and analysis demonstrating full compliance with the requirement that an initial evaluation and assessment is completed, and an initial IFSP meeting is convened within 45 days from referral (34 CFR §§303.321(e), 303.322(e), and 303.342(a)); and
2. An improvement plan to correct noncompliance with 34 CFR §303.344(a)(1) that IFSPs include a statement of the child's present level of development in five areas; and
3. An improvement plan to correct noncompliance with 34 CFR §303.423(b) that not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

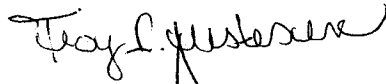
The Improvement Plan must include strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

In the State Performance Plan (SPP), due December 2, 2005, DDS must submit data and analysis that demonstrate both the identification and correction of noncompliance for each Regional Center for a specific fiscal or calendar year.

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, the same as clusters and probes in the APR. OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State, and we look forward to collaborating with you as you continue to improve results for infants and toddlers with disabilities and their families. If you have questions, please contact Rhonda Spence at (202) 245-7382.

Sincerely,



Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: Rick Ingraham